IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.04.2017

CORAM

THE HON'BLE Mr. JUSTICE K.RAVICHANDRABAABU

W.P.No.10878 of 2017

M/s.J.P.G.Housings & Projects (P) Limited,
Represented by Thiru.M.J.Gopinathan,
Managing Director,
9/196, V.S. Complex east car Street,
Avinashi-641652. ... Petitioner

Vs.

1. The Commercial Tax Officer (Enforcement)
Group II,
Tirupur.

2. The Assistant Commissioner (CT),
Avinashi assessment Circle,
1st Floor, 56, North Car Street,
Avinashi-641 654. ... Respondents

This writ petition is filed under Article 226 of the Constitution of India, to issue a writ of Mandamus, directing the respondents to return the 3 cheques bearing cheque nos. 105454/28.03.2017, 105455/28.04.2017 and 105456/28.05.2017 to the petitioners.

For Petitioner : Mr.C. Venkatraman
For Respondent : Mr.K.Venkatesh, Government Advocate

O R D E R

The petitioner is seeking for a Mandamus directing the respondents to return the three cheques bearing cheque nos. 105454, 105455 and 105456.

2. Heard the learned counsel for the petitioner and Mr.K.Venkatesh, learned Government Advocate who takes notice for the respondents. 3. The grievance of the petitioner is that the respondents are not entitled to collect the tax, that too, by force, at the time of conducting inspection. Therefore, the subject matter, three cheques, collected during such

inspection at the petitioner business place are liable to be returned. In support of such contention, the learned counsel for the petitioner invited this Court's attention to the order passed in W.P.No.38393/2016 dated 04.11.2016 wherein at paragraph Nos.3 and 4, it has been observed as follows:

> 3. The law on the issue has been settled by this court in several decisions and the first of being in the case of HOTEL BLUE NILE V. STATE OF TAMIL NADU AND OTHERS [(1992) 87 STC 513], wherein it has been held that it was not open to the authorities to by pass the procedure prescribed under the Act, and the collection of compounding fee and tax were without authority of law, and liable to be refunded. Furthermore, it was held that the Inspecting Authorities are not entitled to collect cheques from the dealer, as if it is an advance tax. This view has been consistently followed by this court in several decisions. Therefore, the action of the respondents in collecting cheques from the petitioner at the time of inspection is held to be without jurisdiction.
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> 4. Accordingly, the respondents are directed to return the cheques which have been collected from the petitioner on 01.09.2016, within a period of two weeks from the date of receipt of a copy of this order.

4. The learned Government Advocate is not disputing the above said position. Accordingly, the writ petition is allowed and the respondents are directed to return the cheques which have been collected from the petitioner within a period of two weeks from the date of receipt of a copy of this order. However, it is open to the respondents to proceed against the petitioner in accordance with law. No costs.

-s/d-
Assistant Registrar(CS-IV)

True Copy

Sub-Assistant Registrar

To

1. The Commercial Tax Officer (Enforcement)
   Group II,
   Tirupur.

2. The Assistant Commissioner (CT),
   Avinashi assessment Circle,
   1st Floor, 56, North Car Street,
   Avinashi-641 654.

+1 CC to Mr.C. Venkatraman, Advocate sr 25565
+1 CC to Spl.Govt. Pleader sr 25916

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SSI(CO)
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