

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.06.2017

CORAM

THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

Writ Petition No.13641 of 2017

M/s. G.V.Tex,
Rep.by its Proprietor,
Mr. N. Gopalakrishnan,
No.27-E, V.O.C. Nagar, 1st Street,
Kodikambam Bus Stop,
Kongu Main Road,
Tiruppur - 641 607. ... Petitioner

Vs.

1. The Assistant Commissioner (CT),
Lakshmi Nagar Assessment Circle,
Tiruppur.
2. The Commercial Tax Officer (Enf),
Group -II, Tiruppur.
3. The Commercial Tax Officer (Enf),
CEW-II,
Coimbatore. ... Respondents

Prayer:

Writ petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus, directing the 1st, 2nd and 3rd respondents to arrange to return back the collection of four cheques bearing Nos. 000801 dated 29.5.2017 for a value of Rs. 15,66,845/-, 000802 dated 29.06.2017 for a value of Rs.15,66,845/-, 000803 dated 29.7.2017 for a value of Rs.15,66,845/- and 000805 dated 29.08.2017 for a value of Rs.15,66,845/-, issued by Bank of Baroda, Avinashi Road Branch, Tiruppur as the cheques being collected contrary to the principle laid down by this Hon'ble Court in the Judgment reported in (1992) 87 STC 513 (Hotel Blue Nile Vs. State of Tamil Nadu & others).

For Petitioner	: M/s.P.Aruna Devi
For Respondents	: Mr.K.Venkatesh Government Advocate

O R D E R

Mr.K.Venkatesh, learned Government Advocate, takes notice for the respondents. By consent of the parties, the main writ petition itself is taken up for final disposal at the admission stage itself.

2. The petitioner is aggrieved against the action of the respondents in collecting four cheques at the time of inspecting the premises of the petitioner. Therefore, the petitioner seeks for a mandamus directing the respondents to return the four cheques bearing Nos. 000801, 000802, 000803 and 000805.

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 four 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.

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. Accordingly, the respondents are liable to return the cheques which have been collected from the petitioner, since those cheques were collected even before making an order of assessment.

5. The learned Government Advocate is not disputing the fact that the issue involved in this case is covered by the above said order passed by this Court in W.P.No.38393/2016 dated 04.11.2016.

6. Accordingly, this 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.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

1. The Assistant Commissioner (CT),
Lakshmi Nagar Assessment Circle,
Tiruppur.

2. The Commercial Tax Officer (Enf),
Group -II, Tiruppur.

3. The Commercial Tax Officer (Enf),
CEW-II, Coimbatore.

+1cc to Mr.P.Rajkumar, Advocate Sr.39388
+1cc to the Special Government Pleader Sr.39663

W.P.No.13641 of 2017

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