IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.03.2017

CORAM:

THE HONOURABLE MR. JUSTICE K.KALYANASUNDARAM

W.P. No.42864 of 2016
and WMP Nos.36755 & 36756 of 2016

M/s.K.B.Creations,
Rep by its Partner, Mr.Khaleel Ur Rahman,
No.16 A. Ramaiya Colony,
2nd Street (West), Tirupur 641 602. .. Petitioner

Vs.

1 The Assistant Commissioner (CT)
Tirupur North Assessment Circle,
Tirupur.

2 The Branch Manager,
Dhanalaxmi Bank Ltd.,
Tirupur Main Road,
Avinashi Road, Tirupur 641 602. .. Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, to call for the impugned proceedings of the first respondent in RC.No.33442312087/ A3 and Form U dated 23.11.2016 addressed to the second respondent and quash the same and further direct the first respondent to return back the cheque bearing No.754200 dated 28.09.2016, 5.10.2016 for a value of Rs.1,50,000/-, cheque bearing No.754201 dated 28.10.2016 for a value of Rs.2,00,000/-, cheque bearing No.754202 dated 28.11.2016 for a value of Rs.2,00,000/- and cheque bearing No.7542013 dated 28.12.2016 for a value of Rs.2,00,000/- and cheque bearing No.7542014 dated 28.12.2016 for value of Rs.2,50,000/- all issued the second respondent's bank as the cheques being collected is 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 : Mr.P.Rajkumar

For Respondents : Mr.K.Venkatesh
Government Advocate

O R D E R

Heard Mr.P.Rajkumar, learned counsel appearing for the petitioner and Mr.K.Venkatesh, learned Government Advocate appearing on behalf of the respondents.

2. The learned counsel for the petitioner submits that the petitioner is a registered dealer under the TNVAT Act, 2006 and an assessee on the file of the 1st respondent herein. The petitioner is a trader in yarn and cloth and the petitioner place was inspected by the 1st respondent on 22.08.2011. During the inspection the 1st respondent alleged incorrect availment of input tax credit by the petitioner for the reasons that in the purchase bills, mode of transport and vehicle numbers were not mentioned, L.R. Copies not maintained etc. Further the 1st responded alleged that the above sated reasons proved that the petitioner utilized the input tax credit based on bills only without movement of goods and money consideration which is essential in sale and disallowed the input tax credit of Rs.19,42,927/-.

3. Time and again, this Court held that the officials of the Enforcement Wing cannot collect cheques or even collect tax in the nature of advance tax and this practice has been deprecated and the leading decision on this point is in the case of Hotel Blue Nile Vs. State of Tamil Nadu & others [reported in (1992) 87 STC 513].

4. In the light of the law laid down by this Court in the said decision, the action of the second respondent in retaining the cheques issued by the petitioner is not sustainable.

5. Accordingly, the writ petition is allowed and there will be a direction to the second respondent to return the cheque in question within a period of two days from the date of receipt of a copy of this order. No costs.

Jv

Sd/-
Assistant Registrar
/TRUE COPY/

Sub-Assistant Registrar

To

1 The Assistant Commissioner (CT)
Tirupur North Assessment Circle,
Tirupur.

2 The Branch Manager,
Dhanalaxmi Bank Ltd.,
Tirupur Main Road,
Avinashi Road, Tirupur 641 602.

+1 CC to Mr.P.Rajkumar Advocate SR.NO.13196
+1 CC to Special Govt. Pleader SR.NO.13403

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RK[CO]
MK:14/03/2017