IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.07.2018

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.23976 of 2006 and M.P.No.1 of 2006

M/s.English Tools and Castings Ltd.,
100/1A, Pollachi Main Road,
Thamaraikulam (P.O.),
Pollachi (TK), Coimbatore-642 109. ... Petitioner

-vs-

1. The Deputy Commercial Tax Officer,
   (Enforcement), Group V,Coimbatore.

2. The Deputy Commercial Tax Officer,
   Trichy Road Circle. ... Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus to call for the records of the 1st respondent in O.R.No.Nil/06-07, quash the proceedings dated 19.07.2006 issued therein and further direct him not to insist upon payment of taxes without a provisional or a final assessment in the light of the law laid down by this Court in the judgment reported in 17 STC 305 and 87 STC 513.

For Petitioner :Mr.B.Raveendran
For Respondents :Mr.M.Hariharan,
Additional Government Pleader

O R D E R

Heard Mr.B.Raveendran, learned counsel for the petitioner and Mr.M.Hariharan, learned Additional Government Pleader for the respondents.

2.The petitioner is aggrieved by the impugned proceedings issued by the first respondent, who is the Deputy Commercial Tax Officer (Enforcement), wherein on conducting an inspection, the first respondent has issued a demand notice and directed the petitioner to pay tax along with surcharge. The settled legal position is that Enforcement Officers cannot act as Assessing Officers.

3.The Hon'ble Division Bench of this Court, in the case of A.Appathurai Nadar and Another vs. Government of Madras and Others reported in (1996) 17 STC 305, has held that there is no provision in the Madras General Sales Tax Act, 1959 or the Rules made thereunder, which enables the Sales Tax Department to receive any amount from the dealer as advance towards provisional or final assessment to be made.

4.Further, this Court in the case of Hotel Blue Nile vs. State of Tamil Nadu and Others reported in (1992) 87 STC 513, held that the Inspecting Officers cannot collect cheques from the petitioner as if they are for advance tax.

5.The above referred decisions would clearly support the stand taken by the petitioner and it has to be necessarily held that the first respondent cannot demand tax and surcharge from the petitioner as done by way of the impugned proceedings. However, that does not mean that the entire proceedings should stand abated and all that the first respondent has to do is to forward the proposal to the Assessing Officer for appropriate action in accordance with law.

6.Hence, for the above reasons, the writ petition stands disposed of by directing the first respondent to forward the impugned communication to the second respondent for appropriate action in accordance with law. No costs. Consequently, M.P.No.1 of 2006 is closed.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

abr

To

1. The Deputy Commercial Tax Officer,
   (Enforcement), Group V,Coimbatore.

2. The Deputy Commercial Tax Officer,
   Trichy Road Circle.

+1cc to Mr.B.Ravendran, Advocate, S.R.No.45883
+1cc to the Special Government Plader, S.R.No.46233

W.P.No.23976 of 2006

SR(CO)
BM 01/08/2018