IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :19.07.2021

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.Nos.34992 & 34993 of 2012

W.P.No.34992 of 2012

Srikanth Tourist Home
Christo Building,
Near State Bank of India,
Ooty, Nilgiris District Represented by its
Manager,
S.Babu ...Petitioner

Vs

1.The Commercial Tax Officer,
Udhagamandalam (North)
Nilgiris.

2.The Commercial Tax Officer (Enforcement)
Roving Squad – I, Coimbatore. ... Respondents

Prayer in W.P.No.34992 of 2012: Writ Petition filed Under Article 226 of the Constitution of India to issue of Writ of Mandamus, directing the 1st respondent to refund the sum of Rs.1,46,800/- (Rupees One Lakh Fourty Six Thousand Eight Hundred only) collected illegally and without authority.

W.P.No.34993 of 2012

Hotel Blue Hills International
Christo Buildings,
No.3/261 F, State Bank Road,
Ooty, Nilgiris District,
Represented by its Manager
S.Babu ...Petitioner

Vs

1.The Commercial Tax Officer,
Udhagamandalam (North)
Nilgiris.

2.The Commercial Tax Officer (Enforcement)
Roving Squad – I, Coimbatore. ... Respondents

Prayer in W.P.No.34992 of 2012: Writ Petition filed Under Article 226 of the Constitution of India to issue of Writ of Mandamus, directing the 1st respondent to refund the sum of Rs.2,50,000/- (Rupees Two Lakhs and Fifty Thousand only) collected illegally and without authority.

For Petitioner : Mr.M.Hariharan
[in both W.Ps]

For Respondents : Mr.V.Veluchamy
Government Advocate
[in both W.Ps]

COMMON ORDER

The relief sought for in the present writ petitions is to direct the 1st respondent to refund the sum of Rs.1,46,800/- and Rs.2,50,000/- collected illegally and without authority.

2. The petitioners are running the Lodging and boarding unit and is a registered dealers on the file of the 1st respondent, who is entitled to collect Luxury tax for the services provided by the petitioners. The petitioners have been filing their return properly and also remitting the appropriate Luxury tax to the first respondent. The petitioners filed their returns for the Assessment Years 2010-11 and 2011-12 and also paid the tax as applicable. The second respondent Enforcement Wing officials inspected the premises of the petitioners on 16.08.2012 and on 26.04.2012 respectively and found that the accounts were properly maintained. However, they have unnecessarily interfered by making some observations and directed the petitioners to pay the tax. The petitioners with protest, paid a sum of Rs.1,46,800/- and Rs.2,50,000/- by way of cheques.

3. The learned counsel for the petitioners made a submission that the Enforcement Wing authorities have no power to collect tax amount or any such cheque from the registered dealers and they have to follow the due process of law as contemplated under the provisions of the Act. Even before passing an assessment order, the cheques have been collected by the Enforcement Wing authorities, which is illegal and not in accordance with the provisions of the Act.

4. The learned counsel for the petitioner relied on the judgment of the High Court of Madras dated 27.01.2016 passed in W.P.Nos.3084 to 3092 of 2016, wherein this Court made the following observations:

> *"25. This Court has time and again held that the enforcement wing officials have no authority to collect cheques. Their duty under Section 65 of the TNVAT Act is limited to inspection and drawing of a report. As per Section 65 (3), the enforcement wing officials, even when they discover that there is an attempt to evade tax, they can only seize the records for the purpose of enquiry. However, the demand can be made only after assessment and that has to be in accordance with law by the assessing authority.*

26. At this juncture, it is worthwhile to refer to Circular No.7/2014, wherein the Commissioner has issued administrative instructions as under:

> *"f) Collection of Cheques during the course of inspection/VAT Audit:*
>
> *At present there is no provision in the Act/Rules for spot collection of cheques from the dealers during inspection. Many writ Petitions are being filed challenging the collection of cheques during inspections, in the above cases, the High Court of Madras has also issued directions to the Enforcement authorities to return the cheques along with interest stating that there is no express provision in the TNVAT Act 2006. The law officer of High Court has expressed their opinion to handle this issue carefully and not to collect cheques under duress. In such cases, Assessing officer shall collect taxes after making assessment as provision of the Act."*

27. This Court in numerous cases has also directed the refund of the amounts so collected. This Court after considering various cases, in its order dated 04.11.2015 in W.P.Nos.35533 and 35534 of 2015 has held as follows:

> *"4. Learned Counsel for the petitioners*

would submit that the issue involved in these writ petitions is covered by the decision of this Court in M/s.Astek Electricals and Controls Vs. The Assistant Commissioner (CT), The Commercial Tax Officer Enforcement and The Branch Manager, Canara Bank ((2014) 67 VST 321 (Mad.) and prays for allowing the writ petition.

5.This Court time and again held that there is no power vested with the enforcement wing authorities to compel the petitioners to handover the cheques and despite the same, they are collecting cheques. As rightly submitted by the learned Counsel for the petitioners, the issue raised in the writ petitions is squarely covered by the above decision of this Court.

6.Following the decision in M/s.Astek Electricals and Controls's case (cited supra), these writ petitions are allowed and the respondents 1 and 2 are directed to return the nos. 147162 to 147165 dated 31.10.2015 for a value of Rs.52,54,722 and cheque bearing No.147162 dated 31.10.2015 for a value of Rs.2,11,224/-respectively to the petitioners forthwith. It is always open to the assessing authority to pass appropriate orders in accordance with law. No costs. Consequently, *connected miscellaneous petitions are closed."*

5. The learned counsel for the petitioners has reiterated that based on the judgment, the respondents are bound to refund the said amount and in the event of passing an assessment order, the petitioners will take appropriate steps for further course of action.

6. This Court is of an opinion that the collection, if made in violation of the provisions of the Act, the same is to be considered with reference to the principles laid down by the High Court in the judgment cited supra and further actions are to be initiated. In this regard, the petitioners are at liberty to submit a fresh representation, setting out all the facts and circumstances and by enclosing the copy of the judgment as well as the documents within a period of four weeks from the date of receipt of a copy of this order. In the event of receipt of any such representation from the petitioners, the respondents are directed to consider the same on merits and in accordance with law and pass appropriate orders within a period of eight weeks from the date of receipt of a copy of the representation submitted by the writ petitioners.

7. With these directions, both the writ petitions stand disposed of. No costs.

19.07.2021

Speaking order/Non-speaking order
Index : Yes/No
Internet: Yes/No
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To

1.The Commercial Tax Officer,
Udhagamandalam (North)
Nilgiris.

2.The Commercial Tax Officer (Enforcement)
Roving Squad – I, Coimbatore.

S.M.SUBRAMANIAM, J.

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