IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.11.2023

C O R A M

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

Writ Petition No.17766 of 2023
and
W.M.P.No.16867 of 2023

M/s.Neikarapatty Ilanthendral Manamakizh Sangam,
represented by its Secretary Sri.R.Niresh,
9/130 B Seelanaickenpatti Byepass,
Salem - 636 201. ... Petitioner

Vs.

The State Tax Officer (Intelligence),
Central Intelligence Wing II,
Salem. ... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus directing the respondent herein to return the petitioner's cheque No.000005 dated 31.05.2023 and the two account books which was taken by the respondent at the time of inspection.

For Petitioner : Mr.B.Raveendran

For Respondent : Ms.Amirta Poonkodi Dinakaran
Government Advocate

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ORDER

This writ petition has been filed seeking issuance of a writ of mandamus directing the respondent to return the petitioner's cheque bearing No.000005 dated 31.05.2023 and the two account books, which was taken by the respondent at the time of inspection.

2. The case of the petitioner is that the respondent had conducted a surprise inspection at the petitioner's premises on 31.05.2023. After the surprise inspection, they have collected two account books and one signed cheque for a sum of Rs.15,37,125/- dated 31.05.2023 towards payment of tax. The contention of the petitioner is that the respondent had forcibly collected the same from the petitioner and thereafter, recorded the sworn statement. In this aspect, he has also sent a retraction letter to the respondent on 06.06.2023 stating that the cheque was collected forcibly and the said action of the officials is in contravention of the Circular No.01/2022.23 dated 25.05.2022. As per the said circular, at the time of search, the officials of the department are not supposed to collect any tax dues without any receipt unless or otherwise which is paid voluntarily in accordance with law. Thereafter, the petitioner made a

request to the respondent to return the document seized by them. However, they have failed to do so. Hence, the present writ petition has been filed seeking for the aforesaid relief.

3. Heard Mr.B.Raveendran, learned counsel for petitioner and Ms.Amirta Poonkodi Dinakaran, learned Government Advocate appearing for respondent.

4. Learned Government Advocate appearing for respondent submitted that as far as Books of Accounts are concerned, they would permit the petitioner to take photocopies since scrutiny of the said Books of Accounts has not been completed. As far as the cheque is concerned, learned Government Advocate submitted that it was voluntarily issued by the petitioner and they have not used any force to get the cheque as contended by the petitioner. Hence, learned Government Advocate would submit that appropriate orders may be passed.

5. In reply, learned counsel for petitioner submitted that as far as two Books of Accounts, which were seized by the respondent, is

concerned, the petitioner is ready to visit the respondent premises and take photocopy of the same. As far as the cheque is concerned, learned counsel reiterated that it was obtained by force only.

6. Upon hearing and on perusal of documents, this Court finds that in the present matter, a surprise inspection was conducted on 31.05.2023. After the inspection, sworn statement was recorded wherein it has been stated that a cheque for a sum of Rs.15,37,125/- was voluntarily issued and in the said sworn statement, the petitioner also signed. However, the petitioner has sent a retraction letter dated 06.06.2023 stating that the cheque was obtained by force by the officials at the time of inspection without quantifying the tax and in contrary to the Circular No.01/2022.23 dated 25.05.2022 wherein it has been clearly stated that the officials who are all inspecting the premises are not supposed to use force to pay tax dues and the same should be collected only in accordance with law. It was also stated in the circular that in the event the assessee is coming forward to pay the tax amount voluntarily at the time of inspection, the same can be accepted to discharge the liability of the assessee.

7. In the present case, the cheque was issued and sworn statement was recorded stating that the petitioner on his own volition has come forward and paid the tax by way of cheque. On the other hand, the petitioner has sent a retraction letter on 06.06.2023 stating that the cheque was obtained by force by the officials at the time of inspection.

8. In the said circumstances, this Court passes the following order:

(i) the respondent is directed to permit the petitioner to take photocopy of the two Books of Accounts seized from the petitioner.

(ii) the respondent is directed to retain the cheque with them and the same can be encashed subsequent to quantification of tax liability by the respondent.

With the above direction, this Writ Petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

03.11.2023

Index: Yes/No
Speaking Order/Non-speaking Order
Neutral Citation: Yes/No
gm

KRISHNAN RAMASAMY, J

gm

To

The State Tax Officer (Intelligence),
Central Intelligence Wing II,
Salem.

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