IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.11.2016

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.40817 of 2016 &
WMP No.34798 of 2016

Sri Amman Steels
rep. by its Partner .. Petitioner

vs.

1.The Commercial Tax Officer (Enforcement)
BTPS, Coimbatore.

2.The Assistant Commissioner (CT)
Avarampalayam Circle
Coimbatore.
.. Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of mandamus, to direct the respondents to arrange to return the cheque collected from the petitioner by letter dated 07.11.2016 to the petitioner forthwith.

For Petitioner : Mr.A.P.Srinivas

For Respondents : Mr.K.Venkatesh
Govt. Advocate (Taxes)

O R D E R

Heard Mr.A.P.Srinivas, learned counsel appearing for the petitioner and Mr.K.Venkatesh, learned Government Advocate (Taxes) appearing for the respondents. With the consent of the learned counsel appearing on either side, the Writ Petition itself is taken up for disposal.

2.The petitioner-Partnership Firm, which is a registered dealer on the file of the second respondent under the provisions of the Tamil Nadu Value Added Tax Act, 2006 [TNVAT Act], has approached this Court for a direction to the respondents to arrange to return back the five post dated cheques collected from them, on the spot, without having any order of assessment and the same is contrary to the principles laid down by this Court in the Judgment reported in (1992) 87 STC 513 (Hotel Blue Nile Vs. State of Tamil Nadu & Others).

3.Time and again, this Court has reiterated that the Enforcement Officials are not entitled to effect spot collection as if it is an advance tax nor they are empowered to collect tax from the dealer during the course of investigation. As early as in the year 1992, this Court, in the case of *Hotel Blue Nile Vs. State of Tamil*

Nadu (Mad.), [(1992) 87 STC 513], held that the collection of cheques by the Enforcement Wing Officials, is without jurisdiction. This view has been consistently followed in several decisions of this Court. Thus, the action of the first respondent, in collecting the cheques from the petitioner is without jurisdiction.

4.In the light of the above legal position, there will be a direction to the first respondent to return the cheques, collected from the petitioner, within a period of one week from the date of receipt of a coy of this order.

The Writ Petition is disposed of accordingly. No costs. Consequently, connected Miscellaneous Petition is closed.

22.11.2016

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To

1.The Commercial Tax Officer (Enforcement)
BTPS, Coimbatore.

2.The Assistant Commissioner (CT)
Avarampalayam Circle
Coimbatore.

T.S.SIVAGNANAM, J.

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