BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 02.12.2016

CORAM

THE HONOURABLE DR.JUSTICE S.VIMALA

W.P(MD)No.23613 of 2016
and
W.M.P(MD)No.16976 of 2016

Tvl.Harikrishna Timbers,
Represented by its Partner
M.Shivji, aged about 42 years
S/o. Mavji Kanji
No.125/1, Mettupatti Road,
Dindigul-624 002. ... Petitioner

vs.

1)The Commissioner of Commercial Taxes,
O/o. The Principal and Special Commissioner of
Commercial Taxes,
Ezhilagam, Chepauk,
Chennai-600 005.

2)The Assistant Commissioner (CT)-V,
Commercial Taxes Buildings,
Court Road,
Dindigul-624 001.

3)The Commercial Taxes Officer
(Enforcement) Group-II
Commercial Taxes Complex,
Dr.Thangaraj Road,
Madurai-625 020. ... Respondents

Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned proceedings of the 2nd respondent in impugned notice in TIN : 33075380158/14-15 dated 08.11.2016 and to quash the same and consequently direct the respondents to return the Cheque leafs bearing No.346320, 346321 and 34622 all drawn on Tamilnadu Mercantile Bank, Dindigul Salai Road Branch to the petitioner.

For Petitioner : Mr.B.Rooban
For Respondents : Mr.R.Karthikeyan,
Additional Government Pleader

ORDER

This Writ of Certiorarified Mandamus has been filed, calling for the records pertaining to the impugned notice of the 2nd respondent in TIN : 33075380158/14-15 dated 08.11.2016, by which, the 2nd respondent directed the petitioner to pay a sum of Rs.7,00,000/- along with interest at the rate of 2% and to quash the same and consequently to direct the respondents to return the Cheque leafs bearing Nos.346320, 346321 and 34622 all drawn on Tamilnadu Mercantile Bank, Dindigul Salai Road Branch to the petitioner.

2.By consent, the writ petition itself is taken up for final disposal.

3.Mr.R.Karthikeyan, learned Additional Government Pleader takes notice for the respondents.

4.The petitioner challenges the impugned notice issued by the 2nd respondent in TIN : 33075380158/14-15 dated 08.11.2016, by which, the 2nd respondent directed the petitioner to pay a sum of Rs.7,00,000/- along with interest at the rate of 2%. The said amount was given by the petitioner by way of Cheques bearing Nos.346320, 346321 and 34622 in favour of the department and when the same were sent for collection, they were returned with an endorsement "Exceeds arrangement".

5.The case of the petitioner is that there is no legally enforceable demand and the 3rd respondent arbitrarily collected the cheques from the petitioner when he made surprise inspection in the petitioner's concern.

6.The learned Additional Government Pleader pointed out that the petitioner himself has given a statement before the authorities, agreeing to pay the said amount and gave two cheques towards payment of legal dues. This contention is seriously disputed by the learned counsel for the petitioner.

7.The issue to be decided is, whether the cheque was given voluntarily by the petitioner towards legally enforceable demand? or whether the cheques were obtained by the respondent forcibly in respect of an illegal demand?.

8. The learned counsel for the petitioner would contend that the respondent Department has issued circulars instructing the officials not to insist upon the issuance of cheque even at the time of inspection and despite the instructions, the authorities have illegally snatched the cheque from the petitioner, and therefore, it must be ordered to be returned to the petitioner.

9. It is relevant to point out that the petitioner has issued notice by registered post, when the authorities demanded that the amount of Rs. 7,00,000/- has to be arranged to be paid through Bank. It is specifically stated in the notice that the cheque was obtained forcibly, which is against the Circular as well as the orders passed by the High Court. The authorities have not chosen to repudiate the allegation made that the cheques were obtained forcibly.

9.1. It is relevant to quote the Circular No.7 of 2014 dated 03.02.2014, where under, collection of cheques during the course of inspection/VAT Audit had been deprecated and the same reads as under:

> "f. <u>Collection of Cheques during the course of Inspection/VAT Audit:</u>
>
> 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 express 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 per the provisions of the Act."

9.2. If there had been no practice/occurrence of the officers collecting cheques at the time of inspection, the department is unlikely to have issued such a circular.

9.3. Under such circumstances, the respondents are directed to return the cheques collected by them to the petitioner.

10. There is no proof to show that there was an initial demand in writing and towards payment of the demand for tax, the cheque was issued by the petitioner. Even assuming that the petitioner is liable to pay any amount towards tax, the 2nd respondent being the Assessing Officer is entitled to proceed under the provisions of Tamilnadu Value Added Tax Act for the collection of the tax demanded. Therefore, the

method adopted in collecting the cheque is not valid.

11. The notice demanding tax shall be treated as show cause notice and the petitioner shall be given reasonable opportunity and personal hearing and thereafter, the tax payable shall be decided by the respondent.

12. To the extent indicated, the writ petition is allowed. In other aspects, the writ petition stands disposed of subject to the condition imposed. No costs. Consequently, W.M.P(MD)No.16976 of 2016 is closed.

02.12.2016

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To

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S.VIMALA, J.

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