
(2013) 04 MAD CK 0331

In the Madras High Court

Case No : Writ Petition No: 6672 of 2013

M/s. Astek Electricals and Controls

APPELLANT

Vs

The Assistant Commissioner (CT), The Commercial Tax
Officer Enforcement and The Branch Manager Canara Bank

RESPONDENT

Date of Decision : 18-04-2013

Acts Referred:

Tamil Nadu Value Added Tax Act, 2006 — Section 45, 65

Citation : (2014) 67 VST 321

Hon'ble Judges : V. Dhanapalan, J

Bench : Single Bench

**Advocate : R. Hemalatha, for the Appellant; Manoharan Sundaram, Govt.
Advocate (Taxes) for Respondents 1 and 2, for the Respondent**

Judgement

V. Dhanapalan, J.—Petitioner has challenged a notice issued in Form U (Notice for recovery of money) dated 27.02.2013 to the Branch Manager, Canara Bank, Vellore Main Branch, Vellore 632 004, the 3rd respondent attaching the Bank Account of the petitioner, quash the same and further direct the 1st respondent herein to lift the attachment of the Bank Account of the petitioner. Petitioner is a dealer in electrical components and an assessee on the files of the Assistant Commissioner (CT), Ranipet, Vellore District, the 1st respondent herein, under the Tamil Nadu Value Added Tax Act 2006, hereinafter referred to as VAT Act, in TIN No.: 22914283402 and the Central Sales Tax Act, 1956, hereinafter referred to as the C.S.T. Act. On 02.08.2012, the 2nd respondent, along with his officials, conducted a spot inspection at the petitioner's business premises, presumably in terms of Section 65 of the VAT Act, 2006 and verified various records maintained by the petitioner in the course of business. At the time of inspection, the officials have verified day book, ledger, computerized sale invoices and purchase invoices relating to the assessment year 2012-2013 and alleged that the petitioner has claimed ITC wrongly due to E1 sales not proved; stock variation and stocks were kept in the un-registered godown. As many as 8 defects were framed at the time of inspection and a cheque for Rs. 3,75,699/- was forcibly collected from the

petitioner towards tax due on the alleged defects. The 2nd respondent Enforcement Wing officials have compounded the offence and collected a sum of Rs. 2,000/- on the date of inspection. The 2nd respondent has no jurisdiction to direct any payment of taxes without even an order of assessment or demand thereof by the 1st respondent, who is the jurisdictional assessing authority. It is the petitioner's case that the inspecting officials have forcibly collected the taxes from the petitioner and appropriated the same towards taxes without even finalization of the said assessment. Petitioner made a representation wherein all the defects noticed had been explained and the 1st respondent had been requested to withhold the cheque amount of Rs. 3,75,699/- which was forcibly collected by the inspecting officials at the time of inspection viz. on 02.08.2012. While the 2nd respondent had forcibly collected a cheque for Rs. 3,75,699/- from the petitioner, after realization of Rs. 1,01,249/- the 1st respondent has issued Form U notice to the 3rd respondent bank for the balance recovery of Rs. 2,74,450/- which is impugned herein.

2. The above notice has been challenged by the petitioner on the ground that the enforcement wing officials have no jurisdiction to collect the tax even before the assessment order is passed by the 1st respondent and therefore, the action of the 2nd respondent is highly arbitrary and illegal. According to the petitioner, the action of the first respondent in attaching the bank account pending assessment for the respective years is totally unwarranted. It is also stated that the power to conduct an inspection has been postulated u/s 65 of the T.N.V.A.T. Act, 2006 which clearly defines the power to order production of accounts, power of entry, inspection, etc. and in the Section, it is nowhere stated that the inspecting officials have powers to forcibly collect the cheques from the petitioner at the time of inspection.

3. The respondents have filed their written instructions in Proceedings in TIN No.: 33914283402/2012-13 dated 26.03.2013, which is as follows:-

In continuation of this office reference 1st cited I am to inform that the Commercial Tax Officer (Enforcement), Group I, Ranipet, in his letter dated 24.08.2012 has informed that Surprise Inspection was conducted by the Enforcement Officers on 02.08.2012 at Tvl. Astek Electricals & amp; Controls, Ranipet. He has further informed that for the suppressions detected at the time of inspection, the following tax amounts have been collected by way of cheque.

Sl. No.

Cheque No. & Date

Name of Bank

Amount

1)

133520/Dt. 02.08.12

Canara Bank, Ranipet

Rs. 2,74,450/-

2)

144694/Dt.06.08.12

Tamil Nadu Mercantile Bank Ltd. Ranipet

Rs. 1,01,249/-

When presenting the above cheques into State Bank of India, Walaja Branch, cheque for Rs. 1,01,249/- has been realized and Rs. 2,74,450/- has been returned by the bank unrealised.

4. Heard the learned counsel appearing for the petitioner and the learned Government Advocate (Taxes) appearing for the respondents 1 & 2.

5. The learned counsel appearing for the petitioner mainly pleaded that though the authority has got powers u/s 65 of the T.N.V.A.T. Act to inspect the books, accounts and other records, any action can be taken only after following the due procedure laid down under the provisions of the Act viz. after assessment, and then only there can be any demand for tax. It is also his submission that in the present case, without due assessment the authorities had straight away written to the bank attaching petitioner's bank account which, under no stretch of imagination, can be sustained and this action of the respondents is in complete violation of the principles of natural justice.

6. On the other hand, the learned Government Advocate (Taxes) would contend that on inspection by the Enforcement Wing of the department and on the surprise check conducted by the officials, at the time of inspection, an amount has been collected from the petitioner. However, only a part of the amount has been realised and the remaining amount had not been realised. Learned Government Advocate (Taxes) fairly submitted that as per law, after the inspection, assessment had to be completed, demand raised and then only the unpaid tax can be recovered.

7. From the facts pleaded, it is seen that the petitioner is a dealer in electrical components and an assessee on the files of the Assistant Commissioner (CT), Ranipet, Vellore District, in TIN No.: 22914283402 and the C.S.T. Act. On 02.08.2012, the 2nd respondent, along with his officials, conducted a spot inspection at the petitioner's business premises, presumably in terms of Section 65 of the VAT Act, 2006 and verified various records maintained by the petitioner in the course of business. At the time of inspection, the officials have verified the day book, ledger, computerized sale invoices and purchase invoices relating to the assessment year 2012-2013 and alleged that the petitioner has claimed ITC wrongly due to E1 sales not proved; stock variation and stocks were kept in the un-registered godown. As many as 8 defects were framed at the time of inspection and a cheque for Rs. 3,75,699/- was forcibly collected from the

petitioner towards tax due on the alleged defects. The 2nd respondent Enforcement Wing officials have compounded the offence and collected a sum of Rs. 2,000/- on the date of inspection. The 2nd respondent has no jurisdiction to direct any payment of taxes without even an order of assessment or demand thereof by the 1st respondent, who is the jurisdictional assessing authority. It is the petitioner's case that the inspecting officials have forcibly collected the taxes from the petitioner and appropriated the same towards taxes without even finalization of the said assessment. Petitioner made a representation wherein all the defects noticed had been explained and the 1st respondent had been requested to withhold the cheque amount of Rs. 3,75,699/- which was forcibly collected by the inspecting officials at the time of inspection viz. on 02.08.2012. While the 2nd respondent had forcibly collected a cheque for Rs. 3,75,699/- from the petitioner, after realization of Rs. 1,01,249/- the 1st respondent has issued Form U notice to the 3rd respondent bank for the balance recovery of Rs. 2,74,450/- which is impugned herein. The aforesaid notice has been challenged by the petitioner on the ground that the enforcement wing officials have no jurisdiction to collect the tax even before the assessment order is passed by the 1st respondent and therefore, the action of the 2nd respondent is highly arbitrary and illegal. According to the petitioner, the action of the first respondent in attaching the bank account pending assessment for the respective years is totally unwarranted. It is also stated that the power to conduct an inspection has been postulated u/s 65 of the T.N.V.A.T. Act, 2006 which clearly defines the power to order production of accounts, power of entry, inspection, etc. and in the section it is nowhere stated that the inspecting officials have powers to forcibly collect the cheques from the petitioner at the time of inspection.

8. Section 65 of the Tamil Nadu Value Added Tax Act, 2006 reads as follows:

65. Powers to order production of accounts and powers of entry, inspection, etc.-

(1) Any officer prescribed by the Government in this behalf may, for the purposes of this Act, require any dealer to produce before him the accounts, registers, records and other documents, and to furnish any other information relating to his business.

(2)...

(3) If any such officer has reason to suspect that any dealer is attempting to evade the payment of any tax, fee or other amount due from him under this Act, he may, for reasons to be recorded in writing, seize such accounts, registers, records or other documents of the dealer as he may consider necessary, and shall give the dealer a receipt for the same. The accounts, registers, records and documents so seized shall be retained by such officer only for so long as may be necessary for their examination and for any inquiry or proceeding under this Act.

9. Section 45 of the Act contemplates the mode of recovery of tax, which is as follows:

45, Further mode of recovery:- (1) The assessing authority may, at any time or from time to time, by notice in writing a copy of which shall be forwarded to the dealer at his last address known to the assessing authority require -

(a) any person from whom money is due or may become due to the dealer, or to any person who has become liable to pay any amount due under this Act; or

(b) any person who holds or may subsequently hold money for, or on account of the dealer or other person who has become liable to pay any amount due under this Act,

(2)...

(3)...

(4)...

(5)...

(6) Any amount which a person required to pay to the assessing authority or for which he is personally liable to the assessing authority under this Section shall, if it remains unpaid, be a charge on the properties of the said person and may be recovered as if it were an arrear of land revenue.

Explanation:- For the purposes of this Section, the amount due to a dealer or money held for or on account of a dealer by any person shall be computed after taking into account such claims, if any, as may have fallen due for payment of such dealer to such person and as may be lawfully subsisting.

10. A combined reading of both the provisions makes it crystal clear that though the authorities are vested with ample powers to take action for the recovery of the tax due, such action must be preceded by issuance of a notice demanding such tax following a due assessment. The assessment and demand must be done in accordance with law namely, after giving an opportunity to the assessee to put forth their defence/explanation for the queries raised, more particularly, in a case of surprise inspection/search. In the present case, a spot inspection had been conducted by the 2nd respondent and his officials on 02.08.2012 and on the same day, a cheque for a sum of Rs. 3,75,699/- was collected from the assessee other than a sum of Rs. 2,000/- collected towards compounding fee. In fact, the 1st respondent is the original assessing authority. Though, it is the 2nd respondent who had conducted the spot inspection, after noticing the discrepancies in the books of accounts, etc., the 2nd respondent ought to have either issued a notice to the petitioner pointing out all the discrepancies or he should have intimated the discrepancies to the 1st respondent for further course of action. On the alleged discrepancies, either the 2nd respondent or the 1st respondent, should have heard the assessee and then pass an order demanding whatever be the tax due therefrom. Even after such a demand, if the assessee had not paid the tax due thereon, by all means, the authorities are empowered to take any action. But, in this case, a notice pointing out the discrepancies had

not been issued to the assessee; no opportunity was afforded to the assessee to put forth its defence and no notice of demand of tax due was served on the assessee. Instead of doing all these things, the 1st respondent has cast a Notice in Form U (Notice for recovery of money) to the Branch Manager, Canara Bank, Vellore Main Branch, Vellore, straight away, attaching the bank account of the assessee, which is per se illegal and unsustainable and in violation of the principles of natural justice. For the foregoing reasons, the impugned notice is set aside. The writ petition is allowed. Connected miscellaneous petition is closed. On the alleged discrepancies pointed out by the 2nd respondent, subsequent to the spot inspection conducted on 02.08.2012, the 1st respondent is at liberty to issue notice to the assessee, afford an opportunity of hearing and then pass appropriate orders in the manner known to law. The said exercise shall be completed within a period of eight weeks from the date of receipt of a copy of this order. There shall be no orders as to the costs.