(2017) 06 MAD CK 0084

In the Madras High Court

Case No : 13641 of 2017

M/s. G.V.Tex, Rep.by its Proprietor, Mr. N. Gopalakrishnan — APPELLANT

Vs

The Assistant Commissioner (CT), Lakshmi Nagar Assessment Circle, Tiruppur, & Ors. — RESPONDENT

Date of Decision : 02-06-2017

Acts Referred:

Citation : (2017) 06 MAD CK 0084

Hon'ble Judges : K.Ravichandrabaabu

Bench : SINGLE BENCH

Advocate : K.Ravichandrabaabu

Final Decision : Allowed

Judgement

1. Mr.K.Venkatesh, learned Government Advocate, takes notice for the respondents. By consent of the parties, the main writ petition itself is taken up for final disposal at the admission stage itself.

2. The petitioner is aggrieved against the action of the respondents in collecting four cheques at the time of inspecting the premises of the petitioner. Therefore, the petitioner seeks for a mandamus directing the respondents to return the four cheques bearing Nos. 000801, 000802, 000803 and 000805.

3. The grievance of the petitioner is that the respondents are not entitled to collect the tax, that too, by force, at the time of conducting inspection. Therefore, the subject matter four cheques, collected during such inspection at the petitioner business place are liable to be returned. In support of such contention, the learned counsel for the petitioner invited this Court''s attention to the order passed in W.P.No.38393/2016 dated 04.11.2016, wherein at paragraph Nos.3 and 4, it has been observed as follows:-

"3. The law on the issue has been settled by this court in several decisions and the first of being in the case of HOTEL BLUE NILE V. STATE OF TAMIL NADU AND OTHERS [(1992) 87 STC 513], wherein it has been held that it was not open to the authorities to by pass the procedure prescribed under the Act, and the collection of compounding fee and tax were without authority of law, and liable to be refunded. Furthermore, it was held that the Inspecting Authorities are not entitled to collect cheques from the dealer, as if it is an advance tax. This view has been consistently followed by this court in several decisions. Therefore, the action of the respondents in collecting cheques from the petitioner at the time of inspection is held to be without jurisdiction.

4. Accordingly, the respondents are directed to return the cheques which have been collected from the petitioner on 01.09.2016, within a period of two weeks from the date of receipt of a copy of this order."

4. Accordingly, the respondents are liable to return the cheques which have been collected from the petitioner, since those cheques were collected even before making an order of assessment.

5. The learned Government Advocate is not disputing the fact that the issue involved in this case is covered by the above said order passed by this Court in W.P.No.38393/2016 dated 04.11.2016.

6. Accordingly, this writ petition is allowed and the respondents are directed to return the cheques which have been collected from the petitioner within a period of two weeks from the date of receipt of a copy of this order. However, it is open to the respondents to proceed against the petitioner in accordance with law. No costs.

