(2012) 03 MAD CK 0004

In the Madras High Court

Case No : Writ Petition No''s. 8166 and 8167 of 2012

Sri Balaji Auto Spares — APPELLANT

Vs

Assistant Commissioner (CT), Annadhanapatty Circle and Another
Gowtham Traders Vs Assistant Commissioner (CT), Vellor (South) Assessment Circle and Another — RESPONDENT

Date of Decision : 29-03-2012

Acts Referred:

Constitution of India, 1950 — Article 226
Tamil Nadu Value Added Tax Act, 2006 — Section 64(4)

Citation : (2013) 60 VST 191

Hon'ble Judges : M. Jaichandren, J

Bench : Single Bench

Advocate : R. Hemalatha, for the Appellant; S. Kanmani Annamalai, Government Advocate (Taxes), for the Respondent

Judgement

M. Jaichandren, J.—Heard the learned counsel appearing for the petitioner and the learned counsel appearing on behalf of the respondents.

It has been stated that the petitioner is a dealer, registered as an assessee on the files of the Assistant Commissioner (CI), Annadhanapatty Circle,

Salem, the first respondent herein, under the Tamil Nadu Value Added Tax Act, 2006, and the Central Sales Tax Act, 1956.

2. It has been further stated that, on October 19, 2011, the second respondent, along with his officials, had conducted a spot inspection at the

petitioner''s business premises and had verified the various records maintained by the petitioner, in the course of its business. Based on the letter

issued by the Joint Commissioner (CT), Salem, the officials attached to the office of the second respondent had conducted an audit, in terms of

section 64(4) of the Tamil Nadu Value Added Tax Act, 2006.

3. It had been further stated that, at the time of the inspection, it had been pointed out that there was an omission on the part of the petitioner to

pay tax, in respect of the assessment years 2007-08 to 2009-10, as per the provisions of the Tamil Nadu Value Added Tax Act, 2006. In spite of

the explanation submitted by the petitioner, the officials from the office of the second respondent had forcibly collected three cheques, drawn on

the UCO Bank, Salem, bearing Cheque Nos. 493793, 493794 and 493795, dated October 19, 2011, for a total sum of Rs. 5,35,386.

4. It had been further stated that the powers conferred, u/s 64(4) of the Tamil Nadu Value Added Tax Act 2006, does not provide the power or

the authority to the respondents to collect the tax, said to be payable by the petitioner. The enforcement wing officials had no jurisdiction to collect

tax at the time of the inspection, without verification of the monthly returns, before the completion of the assessment. In such circumstances, the

petitioner has preferred the present writ petition before this court, under article 226 of the Constitution of India, praying for a writ of mandamus,

directing the first respondent to refund an amount of Rs. 5,35,386, forcibly collected from the petitioner, vide cheque Nos. 493793, 493794 and

493795, dated October 19, 2011.

5. The learned counsel appearing on behalf of the respondents had not refuted the averments made on behalf of the petitioner. In view of the

above, the first respondent is directed to return the cheques, bearing Nos. 493793, 493794 and 493795, dated October 19, 2011, to the

petitioner, within a period of ten days from the date of receipt of a copy of this order, as the respondents and their officials do not have any power

or authority to collect the cheques at the time of the inspection of the premises of an assessee. However, it is made clear that it would be open to

the first respondent to pass appropriate assessment orders, in respect of the assessment years 2007-08, 2008-09 and 2009-10, as per the

relevant provisions of law, within a period of four weeks from the date of receipt of a copy of this order. The writ petition is ordered accordingly.

No costs.