BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 26.11.2020

CORAM

THE HON'BLE MR.JUSTICE ABDUL QUDDHOSE

W.P.(MD) No. 10576 of 2017 and
WMP(MD).Nos.8059 and 8060 of 2017

M/s. Sri Ganesh Lubricants,
rep. by Properietor – P. Surendrakumar,
No.5/521/11, Tanga Nagar,
Dhanalakshmi Towers,
Musiri Privu Road,
Thuraiyur – 621 010.
Tiruchirappalli. : Petitioner

Vs.

1. Commercial Tax Officer,
Thuraiyur Assessment Circle,
Thuraiyur,
Tiruchirappalli District.

2.Inspection Officer,
Commercial Tax Officer,
Group No.IV,
Enforcement Wing,
Tiruchirappalli,
Tiruchirappalli District. : Respondents

Prayer: This Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorari calling for the records on the file of the first respondent in its impugned proceedings made in RC.No.640/2016/A3, dated 17.04.2017 and quash the same.

For Petitioner : Mr.S. Rajasekar

For respondents : Mrs. J. Padmavathi Devi
Special Government Pleader

ORDER

(This Petition was heard through Video Conferencing)

This Writ Petition has been filed challenging the impugned demand of the first respondent, dated 17.04.2017 calling upon the petitioner to pay a sum of Rs.21,33,005/- towards dishonored cheques totally amounting to Rs.21,33,005/-, which was issued by the petitioner in favour of the first respondent, on the date of inspection, at their premises, by the Enforcement Wing Officials of the Second respondent.

2. Heard Mr. S. Rajasekar, learned counsel appearing for the petitioner and Mrs. J. Padmavathi Devi, learned Special Government Pleader appearing for the respondents.

3. The primary ground for challenge is that the spot collection of taxes is wholly illegal and unwarranted, when the assessment for the respective year is still pending.

4. According to the petitioner, the impugned notice of the demand is bereft of the legal sanctity. Further, coercive steps taken by the respondents for recovering the alleged tax due from the petitioner is illegal. According to him, without any assessment order, the same cannot be recovered from him. In such circumstances, this Writ Petition has been filed.

5. A counter affidavit has been filed by the first respondent. Wherein, they have stated that the petitioner has admitted the tax amount and only thereafter, issued the cheques which were dishonored. Hence, according to them, they are entitled for recovery of the dishonored cheques amounting to Rs.21,33,005/-. Therefore, according to them, the impugned demand is valid and not illegal as contended by the petitioner.

6. The learned counsel appearing for the petitioner at the outset submits that without an assessment order, the impugned demand

made by the first respondent is illegal despite the fact that the cheques issued by the petitioner at the time of inspection, by the second respondent has got dishonored. According to him, the cheques collected by the respondent was towards payment of tax to the respondents and not compounding fees as claimed in the impugned demand.

7. The learned Special Government Pleader appearing on behalf of the respondents, on instructions, would also admit that till date no assessment order has been passed against the petitioner which is the subject matter of this Writ Petition.

8. It is settled law that recovery of tax in advance by inspecting officials (Enforcement Wing) is illegal. In the counter affidavit filed by the first respondent, in paragraph No.3, the first respondent has admitted that four cheques given by the petitioner on the date of inspection was only towards the payment of tax even though in the impugned demand, they have mentioned that it is towards compounding fees. Since the collection of cheques from the petitioner is admittedly, towards payment of tax, as per the settled law, the said collection by the second respondent on the date of inspection from the petitioner is illegal without

there being any assessment order. It is also admitted fact that no assessment order has been passed pursuant to the impugned notice of demand, dated 17.04.2017.

9. The learned counsel appearing for the petitioner also referred to a decision of the learned Single Judge of this Court, dated 05.11.1993 in the case of (***M/s. Kumar Commercial Agencies rep. by its Proprietrix P. Manonmani Vs. Deputy Commerical Tax Officer, Enforcement Wing (BFRS), Coimbatore – 18)*** reported in ***1993(4) MTCR 563*** in support of his submission.

10. This Court, after having heard the rival submissions as well as after pursuing the impugned notice of demand as well as the Judgment cited by the learned counsel for the petitioner, is of the considered view that the impugned demand made by the respondent is illegal without there being an assessment order.

11. For the foregoing reasons, the impugned demand, dated 17.04.2017 issued by the first respondent is hereby quashed and the Writ Petition is allowed. However, liberty is granted to the respondents to

complete the assessment against the petitioner in accordance with law and if it is found that the petitioner is liable to pay tax or penalty or other charges, the same shall be recovered from him after completion of assessment proceedings in accordance with law. No costs. Consequently, connected Miscellaneous Petitions are closed.

26.11.2020

Index : Yes/No
Internet : Yes/No
trp

To

1. Commercial Tax Officer,
Thuraiyur Assessment Circle,
Thuraiyur,
Tiruchirappalli District.

2.Inspection Officer,
Commercial Tax Officer,
Group No.IV,
Enforcement Wing,
Tiruchirappalli,
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ABDUL QUDDHOSE, J.,

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