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(1999) 08 AP CK 0051

In the Andhra Pradesh High Court

Case No : Writ Petition No. 16361 of 1999

K. Digamber APPELLANT

Vs

Commercial Tax Officer and Another RESPONDENT

Date of Decision : 05-08-1999

Acts Referred:

Andhra Pradesh General Sales Tax Act, 1957 — Section 17, 17B

Citation : (2000) 118 STC 104

Hon'ble Judges : P. Venkatarama Reddi, J;B. Prakash Rao, J

Bench : Division Bench

Advocate : G. Narendra Chetty, for the Appellant; Special Govt. Pleader for Taxes, for the Respondent

Final Decision : Allowed

Judgement

P. Venkatarama Reddi, J.—Heard both the counsel at the stage of admission.

2. The petitioner, who is a registered dealer doing business in jaggery, etc., questions the action of the first respondent in issuing notices dated June 30, 1999 and July 17, 1999 to the second respondent-bank to stop the transactions in the account held by the petitioner and to hold up the money of Goutham Traders of which the petitioner is the proprietor till the final assessment proceedings are issued.

3. In the first communication, the first respondent stated that on inspection of the business premises on the same day, certain incriminating material showing prima facie tax evasion were seized and therefore, "on good interest of Government revenue", the transactions in the Account No. 1927 shall be stopped till further proceedings are issued by him. To say the least, this is an extraordinary order. The respondent assumed to himself powers which the Act or the Rules under which he is functioning does not confer on him. The respondent clearly arrogated to himself the powers not confided to him under any provision of law by issuing such a notice.

4. Coming to the second notice dated July 26, 1999, there is a little bit of improvement. By that time, the proceedings for assessment were initiated, though not finalised. He informed the second respondent-bank that notice was issued in exercise of power u/s 17 of the Andhra Pradesh General Sales Tax Act. He requested the second respondent to hold up the money lying to the credit of Goutham Traders till final orders are communicated to the bank. Even this notice is beyond the scope of powers conferred on the first respondent. Section 17 which authorises the assessing authority to issue a notice in the nature of a garnishee notice contemplates that certain amount is due by the dealer "in respect of arrears of tax, penalty or fee". Undisputedly and indisputably, the assessment has not been finalised and no demand has been raised. After the demand is raised, the petitioner will normally have twenty-one days time for making payment and moreover he will have remedy of appeal. The resort to Section 17 in anticipation of an assessment visiting the petitioner with tax liability is not contemplated by Section 17 and such a notice is clearly in excess of the jurisdiction vested in the first respondent. If at all, the amount lying in the bank can only be attached by resorting to Section 17-B. But, for doing that, the prior approval of the Commissioner is required. As seen from the communication dated July 26, 1999 the power has not been exercised u/s 17-B, with the permission of the Commissioner. The impugned notices cannot therefore be sustained in law and they are examples of arbitrary and unreasonable exercise of power. In fact, a division Bench of this Court in D. Pitchaiah Vs. Assistant Commercial Tax Officer, Rajahmundry and Others, as long back as in 1987 held that the assessing authority in order to recover the tax to be levied has no jurisdiction to restrain a third party from making the payments to the dealer, before making an assessment--provisional or final. The impugned notices are, therefore, quashed and the writ petition is allowed.

5. That rule nisi has been made absolute as above.

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