(2000) 04 AP CK 0004

In the Andhra Pradesh High Court

Case No : Writ Petition No. 25247 of 1999

Life Line Devices APPELLANT

Vs

Commercial Tax Officer and Another RESPONDENT

Date of Decision : 11-04-2000

Acts Referred:

Andhra Pradesh General Sales Tax Act, 1957 — Section 28(4)

Citation : (2000) 119 STC 52

Hon'ble Judges : V. Eswaraiah, J;P. Venkatarama Reddi, J

Bench : Division Bench

Advocate : P. Srinivasa Reddy, for the Appellant; The Additional Advocate-General and Special Government Pleader, for the Respondent

Judgement

P. Venkatarama Reddi, J.—The petitioner prays for a writ to declare the action of the second respondent (impleaded by order dated February 16, 2000 in W.P.M.P. No. 2233 of 2000) in collecting the cheques for a sum of Rs. 13,12,563 towards the tax and compounding fee on the spot without making an assessment or demand as illegal and contrary to the provisions of the A.P. General Sales Tax Act, 1957 and Article 265 of the Constitution and seeks a direction to the respondents not to present the cheques for Rs. 2,50,000 each and also to direct refund of Rs. 3,12,563 already encashed against cheque Nos. 601241 and 601245. The petitioner claims to be a registered dealer. They are dealing in life saving cardiology equipment. The petitioner has a branch at Calcutta. There was a surprise inspection by the staff of Regional Vigilance and Enforcement Office on October 22,1999. On that day, a statement was recorded from the managing partner of the petitioner-firm in which he stated that at the time of inspection there were loose papers and note books showing the business transactions apart from the files and registers. The books of accounts were stated to be with the auditor. The managing partner gave the particulars of stock found in the premises. On November 2, 1999, a further statement was recorded according to which the petitioner-firm effected supplies of high value stents and balloons to various corporate hospitals to avail of the sales tax exemption benefit available in

West Bengal. It is stated that the goods were first taken delivery by his staff for certain reasons in Hyderabad and then supplied to various hospitals as per their requirements. Then, the managing partner has stated as follows :

"Since these goods are handled by our local office staff and payments of the suppliers are credited into our local bank account, you have demanded payment under the Andhra Pradesh General Sales Tax Act treating them as first sales at our hand by local office.

....

However, you have insisted for payment of tax at 10 per cent on all the inter-State sales effected from Calcutta. I am agreeing to pay tax on our Calcutta sales under protest."

Then followed the calculations of turnover, tax paid and tax due. The tax due was arrived at Rs. 8,02,257. The managing partner then stated that he was agreeable to get the offences compounded in a sum of Rs. 10,000. The statement further records that the cheques were being issued towards the tax of Rs. 13,02,563 and compounding fee of Rs. 10,000. Two cheques bear the date of October 30, 1999 and they were for a sum of Rs. 3,02,563 and Rs. 10,000 respectively. The other four cheques each of the value of Rs. 2,50,000 are postdated cheques bearing dates in November, December, 1999 and January and February, 2000. The Regional Vigilance and Enforcement Officer, Hyderabad City then sent a communication to the assessing authority, viz., first respondent informing him that the petitioner has been doing business without disclosing the turnover and that the dealer is claiming, exemption on the ground that the goods were supplied from Calcutta branch. Thereafter, the present writ petition was filed.

2. There can be no doubt that the second respondent and the Regional Vigilance and Enforcement Officer acted high-handedly and in utter disregard of law by which they are bound. Undisputedly and indisputably, the Andhra Pradesh General Sales Tax Act within the realm of which the second respondent and his superiors are supposed to discharge the functions, does not authorize the on-the-spot collection of tax by coercion. The Act provides for assessment--provisional or final and a procedure therefore. The very fact that the petitioner''s representative was made to part with post-dated cheques under protest would unequivocally indicate that the payment was not made voluntarily. The second respondent and the Regional Vigilance and Enforcement officials topsy-turvy the procedure by first collecting the tax--by hook or crook and then addressing a letter to the assessing officer while furnishing the material gathered as a result of inspection and requesting him to take necessary action. In a more or less same situation, a Division Bench of this Court to which one of us (PVR, J.) was a member, in Priyanka Wines v. Assistant Commissioner (C.T.) (Intelligence), Abids Division [1998] 110 STC 73 expressed its displeasure and condemned the practice of the Vigilance and Enforcement Officials pressurising the assessees to

give the cheques on the spot towards the alleged tax due. It was observed therein :

"The fact that the post-dated cheques were collected is suggestive of some pressure tactics exerted on the petitioners. It may be that the respondents, who are connected with the Intelligence or Vigilance Department, can inspect the premises and record statements, but without following the procedure for assessment, it is not open to them to demand collection of tax on the alleged suppressed turnover then and there. The proper course would have been to send the statements to the assessing officer and to request him to initiate necessary steps for making the provisional or final assessments as the case may be, or to take such other steps as are open to the assessing authority to safeguard the interests of revenue pending such assessments. But, this procedure has been given a go-bye despite the deprecation of such practices by a division Bench of this Court in Annam Jewellers v. Deputy Commercial Tax Officer [1996] 102 STC 506."

While directing the return of the post-dated cheques to the petitioners therein, this Court further observed :

"At the same time, we shall not be understood to have approved or condoned the action of the writ petitioners in suppressing the turnovers and not paying the tax due to the State, if that allegation be true. At this stage, we can only observe that there is a prima facie basis for concluding that a part of the turnover was suppressed. It is perfectly open to the respondents to take steps for assessment by issuing notice and calling for accounts. If the petitioners fail to respond to the notice by failing to appear on the date fixed by the concerned assessing officer, it is open to the assessing officer to make ex parte assessments and raise the demands. It is also open to the respondents to initiate proceedings for levy of penalties if the circumstances of the case justify. Wherever the demands are raised, the petitioners will pay tax demanded subject to right of appeal available to them."

3. Despite the disapproval of the action of the Vigilance and Enforcement officials in language as clear as it could be, the said officials have not learnt to obey the rule of law and the impact of the judgment of this Court has not been felt at all. The illegal and arbitrary action of collecting the post-dated cheques under pressure is persisting. We have to again condemn this action and further warn the concerned officials of the Vigilance and Enforcement Department or the Intelligence Wing that they should forthwith stop collecting the post-dated cheques or money towards the tax--estimated or even admitted to be due and leave it to the competent assessing officer to do this part of the job after giving opportunity to the assessee before passing an order in conformity with the provisions of the Andhra Pradesh General Sales Tax Act and the Rules. Otherwise, they will be liable to be dealt with under the Contempt of Courts Act.

4. We reiterate the directions given and observations made in the passages

extracted above. We direct the post-dated cheques to be returned to the petitioner forthwith. We further direct that the amount already realised by way of encashment of cheques shall be adjusted towards the tax if any due, against the final assessment. We direct the first respondent to take up the final assessment proceedings and pass orders expeditiously.

5. Accordingly the writ petition is disposed of without costs.

6. We may mention that the learned Additional Advocate-General who appeared on court notice stated that he will address the Government to issue suitable instructions to ensure the compliance with law and the judgments of this Court cited supra.