(1997) 12 AP CK 0008

In the Andhra Pradesh High Court

Case No : Writ Petition No''s. 30939, 31054, 32044, 32045, 32046, 32051, 32204 and 33396 of 1997

Priyanka Wines — APPELLANT

Vs

Assistant Commissioner (C.T.) (Intelligence), Abids Division — RESPONDENT

Date of Decision : 17-12-1997

Acts Referred:
Constitution of India, 1950 — Article 226

Citation : (1998) 110 STC 73

Hon'ble Judges : P. Venkatarama Reddi, Acting C.J.;A.S. Bhate, J

Bench : Division Bench

Advocate : M.V.K. Murthy, Durgaprasad, Dammalapati Srinivas and I. Gopal Reddy, for the Appellant; Special Government Pleader, for the Respondent

Judgement

P. Venkatarama Reddi, AG. C.J.

1. In these writ petitions, the action of the officials of the Vigilance and Enforcement Department or the officers of Intelligence Wing of the Commercial Tax Department in inspecting the business premises of the petitioners and collecting post-dated cheques towards tax, which according to the respondents, ought to have been paid by the petitioners along with the monthly returns is under challenge.

2. It is the contention of the petitioners that without making any assessment or raising the demand after following the due procedure, the cheques should not have been collected. It is alleged that the taxes were collected under pressure or coercion. On the other hand, it is the contention of the respondents that on inspection, suppression of turnovers were found and when it was pointed out to the petitioners, they voluntarily gave the statement admitting the concealment and also gave the post-dated cheques voluntarily. It is submitted that the cheques together with the statement recorded from the petitioners were sent to the regular assessing authority. It is also pointed out that notices proposing to reject the returns and to make provisional assessment have since been issued for

several months and in some cases provisional assessment orders were also passed. It is, therefore, contended by the learned Government Pleader that direction need not be issued for return of the cheques. If the version of the respondents that the petitioners gave the cheques voluntarily in order to wriggle out of the possible consequences of suppression of turnover inspires confidence, we would have seriously considered whether to interfere in these matters under article 226 of the Constitution, although the collection of tax is not preceded by the observance of the procedure sanctioned by law. But we have our own doubts in believing the version of the respondents that the cheques were given voluntarily. 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.

3. At the time of admission of the writ petitions, we granted interim directions not to encash the cheques. In view of the observations made by us, the post dated cheques will have to be returned to the petitioners. 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.

4. With these directions/observations, the writ petitions are disposed of.

5. Writ petition disposed of accordingly.

