(2001) 09 AP CK 0094

In the Andhra Pradesh High Court

Case No : Writ Petition No''s. 15319, 15323 and 15325 of 2001

Venkateswara Enterprises APPELLANT

Vs

Assistant Commissioner Officer (CT) (Int.), O/o. Deputy Commissioner, Eluru and Others RESPONDENT

Date of Decision : 24-09-2001

Acts Referred:
Andhra Pradesh General Sales Tax Act, 1957 — Section 14(4)
Constitution of India, 1950 — Article 14

Citation : (2002) 1 ALD 757

Hon'ble Judges : S.R. Nayak, J;S. Ananda Reddy, J

Bench : Division Bench

Advocate : S. Krishna Murthy, for the Appellant; Special Government Pleader for Taxes and Deepak Bhattachargee, for the Respondent

Final Decision : Allowed

Judgement

S.R. Nayak, J.—These writ petitions are finally heard with the consent of Sri S. Krishna Murthy, learned Counsel for the petitioners and the learned Special Government Pleader for Taxes and they are being disposed of by this common order.

2. In all these writ petitions, the petitioners have sought for a writ or order or direction particularly one in the nature of writ of mandamus directing the Assistant Commissioner Officer (CT) (Int)., the 1st respondent herein to return forthwith the post-dated cheques collected from them towards the alleged tax liabilities arising out of the contemplated revision of the assessments already framed.

3. In these writ petitions the complaint, to put in brief, is that the respondent authorities of the Commercial Tax Department without any authority of law forcibly obtained cheques for certain sums of money from the petitioners, as set out in the writ petition towards the alleged tax liability of the petitioners under the provisions of the APGST Act in contemplation of revision of the assessments

already framed. It cannot be gainsaid that the APGST Act and the Rules framed thereunder do not arm the respondent -Commercial Tax Department authorities to take any coercive steps or otherwise to demand and collect the sales tax before framing or revising the assessment as envisaged under the Act.

4. Admittedly in the instant cases, the assessments are not yet revised. In contemplation of revision of assessments as provided u/s 14(4) of the APGST Act, the respondent authorities cannot legally demand sales tax much less forcibly and collect the same by way of cheques from the petitioners. The plea of the respondents that the petitioners paid the tax by way of cheques voluntarily is highly incredible and self-serving statement of the respondents. Even assuming that the petitioners came forward to give cheques voluntarily as claimed by the respondents, the respondents are not entitled to receive the same without revising the assessments and determining higher tax liability of the petitioners. Therefore, the impugned action of the respondents should be held to be ultra vires of the statute as well as totally arbitrary and violative of Article 14 of the Constitution. It is too primary to state that a power exercised by a statutory authority, in order to be valid, should be traceable to an authority granted by taw thereby meaning either by the Constitution or by the Statute or by Common law. The 1st respondent or for that matter any other authority in the Commercial Tax Department of the State is not armed with necessary power to demand and collect sales tax in contemplation of the revision of the assessments already framed. Since the action of the respondents-Commercial Tax Department authorities is one without authority of law, the same is required to be condemned as arbitrary and unreasonable. On that short ground alone, these writ petitions are entitled to be allowed.

5. In the result, we allow these writ petitions. A direction shall issue to the concerned respondent authorities either to return the cheques or to refund the money, if any cheque or cheques is/are realised. All other contentions and counter contentions raised in the pleadings of the parties are left open to be agitated at the appropriate stage. No costs.

