THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN
AND
THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

WRIT PETITION No.40672 of 2015

ORDER: (per Hon'ble Sri Justice Ramesh Ranganathan)

The petitioner-company transported eight Ashok Leyland trucks from Hosur in the State of Tamilnadu to Kurnool in the State of Andhra Pradesh. The goods and the vehicles were detained at Kodikonda Check Post in Ananthapur District. The show cause notice dated 09.12.2015, for payment of tax, records that the dealer was transporting the goods in the goods vehicle without CST

E-way bill; there was no statutory document such as Form-JJ as prescribed in the TIN along with the goods; and the driver of the vehicle did not produce the log book or goods vehicle record or trip sheet as required under Section 48 of the Andhra Pradesh Value Added Tax Act, 2005 (for brevity, 'the Act') to establish the movement of the goods.

Section 45 (7) (a) of the Act reads as under:

> "Where goods are carried without paying tax, if any, payable or goods are carried without being properly accounted for in the documents referred to in clause (b) of sub-Section (2), the said officer shall collect the tax payable on the goods so carried and in addition levy a penalty not exceeding two times the amount of tax payable on such goods after giving a reasonable opportunity to the person likely to be effected, against the proposed penalty".

It is evident from the aforesaid provision that failure to carry the required documents in the vehicle would enable goods to be detained, and the goods can be released on payment of VAT or on furnishing twice the amount of tax as security.

Sri Ch.Sudhakar Babu, learned counsel for the petitioner, would submit that insistence by the respondents, that the petitioner furnishes security for twice the tax amount, is illegal; and the petitioner is ready to pay the tax on the invoice value of the goods for its release.

While Sri S.Suri Babu, learned Special Standing Counsel for Commercial Tax, would submit that it is open to the authorities to also initiate penalty proceedings, it is evident from the aforesaid provision itself that an order of penalty can only be passed after giving an opportunity to show cause against the proposed penalty.

Ends of justice would be met if the respondents are directed to forthwith release the goods and the vehicle, on the petitioner furnishing proof of payment of tax under the Act on the invoice value of the goods. It is made clear that this order shall not preclude the respondents from initiating penalty proceedings, if they so chose, in accordance with law.

The Writ Petition is, accordingly, disposed of. Miscellaneous petitions, if any, pending shall also stand disposed of. There shall be no order as to costs.

RAMESH RANGANATHAN, J

M. SATYANARAYANA MURTHY, J

18th December, 2015

Note:
Furnish C.C. of the order by 19.12.2015.
B/o
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