THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

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Writ Petition No.39285 of 2015

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

The proceedings, under challenge in this writ petition, is the notice of detention of goods dated 24.11.2015. While the goods were accompanied by an e-way bill and the tax invoice, wherein the name of the consignee and the TIN number is reflected, they were detained on the ground that the e-way bill did not contain the vehicle number; and the electronically generated FORM 650, which is a declaration by the owner of the vehicle under Section 48(a) of the A.P.Value Added Tax Act, 2005 (for short "the Act"), was not found when the vehicle was detained.

Reliance is placed, in support of the order of detention, on the Circular issued by the Commissioner, Commercial Tax Department dated 22.05.2015, whereby the driver or in-charge of the goods is required to carry the electronically generated e-way bill containing all particulars including the vehicle number correctly. The Circular stipulates that, if the e-way bill is generated without the vehicle number or incorrect vehicle number, such way bill shall be treated as an invalid way bill, and action shall be taken for levying tax, penalty etc as per the provisions of the Act. The Circular further provides that disciplinary action will be taken against the officers of the check posts for violation of these instructions.

Sri V.Bhaskar Reddy, learned counsel for the petitioner, would submit that the Circular of the Commissioner is not supported by any statutory provision requiring the electronically generated e-way bill to contain the vehicle number; as the consignee is a registered dealer under the Act, nothing prevents the Revenue from ascertaining, from the consignee, whether these goods were consigned to him or not; in the absence of any statutory requirement, the consignor cannot be penalised on the basis of the Circular which is not supported by any authority in law; and, even if the vehicle was carrying goods without being supported by the necessary documents, the only authority conferred on the officials of the check post is to levy VAT on the goods under Section 45(7)(a) of the Act.

On the other hand Sri S.Suri Babu, learned Special Standing Counsel for Commercial Taxes, would justify the Circular of the Commissioner contending that such instructions were required to be issued to prevent misuse of the e-way bills. Learned counsel would refer to certain instances of such misuse. It is wholly unnecessary for us to delve on this aspect any further, as Section 45(7)(a) of the Act stipulates that, 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.

The power to impose penalty under Section 45(7)(a) of the Act can be exercised only after a reasonable opportunity is given to the person who is likely to be effected against the proposed penalty. In the light of Section 45(7)(a) of the Act, the authority, at the check post, cannot detain the goods once tax is paid on the invoice value of the goods.

We consider it appropriate, in such circumstances, to direct the respondents to forthwith release the vehicle and the goods, on the petitioner submitting proof of payment of VAT on the invoice value of the detained goods. It is made clear that this order shall not preclude the respondents, if they so choose, from initiating penalty proceedings in accordance with law.

The writ petition is disposed of accordingly. The miscellaneous petitions pending, if any, shall also stand disposed of. There shall be no order as to costs.

RAMESH RANGANATHAN, J

M. SATYANARAYANA MURTHY, J

Date: 03.12.2015

Note: Issue C.C. tomorrow.

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<u>THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN</u>

AND

<u>THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY</u>

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