THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

-

W.P.No.37464 of 2015

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

Heard Sri P. Balaji Varma, learned counsel for the petitioner, and Sri S.Suri Babu, learned Special Standing Counsel for Commercial Taxes, and, with their consent, the writ petition is being disposed of at the stage of admission.

The action of the respondents in issuing a notice in Form 610 of the A.P.Value Added Tax Act, 2005 (for short "the Act") detaining the goods, which was consigned to the petitioner, along with the vehicle bearing No.TN 52 F 7141 while moving from Kerala to Visakhapatnam is the subject matter of challenge in this writ petition.

It would be wholly inappropriate for us, without having the benefit of a counter affidavit from the respondents, to examine the contentions urged, on behalf of the petitioner, on merits. Suffice it observe that, in term of Section 45(7)(a) of the Act, even 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 affected against the proposed penalty.

While Sri B.Balaji Varma, learned counsel for the petitioner, would submit that the petitioner, a registered VAT dealer in Visakhapatnam, would pay VAT, payable on the goods so carried, to the regular Assessing Authority. Section 45(7)(a)of the Act requires the officer at the check post to collect the tax payable on the goods. The penalty, which can be imposed on the petitioner, i.e. for a sum not exceeding two times the amount of tax, is only after the person, likely to be affected, is given a reasonable opportunity of being heard against the proposed penalty.

Ends of justice would be met if the respondents are directed to release the goods on the petitioner paying the VAT payable on the value of the goods referred to in the detention notice. It is made clear that this order shall not preclude the respondents, if they so choose, from initiating penalty proceedings against the petitioner in accordance with law.

The writ petition stands 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.SEETHARAMA MURTI, J

Date:19.11.2015.

Note: Issue C.C. tomorrow.

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