THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLR SRI JUSTICE M.SATYANARAYANA MURTHY

WRIT PETITION NOs.39967 AND 39970 OF 2015

COMMON ORDER: {Per the Hon'ble Sri Justice Ramesh Ranganathan}

The proceedings under challenge in these Writ Petitions is a detention notice issued in Form 610 dated 28.11.2015. However, a seizure-cum-confiscation seizure notice dated 03.12.2015 was issued to the petitioner informing them that except for the e-way bill , invoice and the mines permit, no other records were produced; the driver failed to produce the GVR/Log book/Trip sheet as warranted under Section 48(b) of the Andhra Pradesh Value Added Tax Act, 2005; he had also not produced transit pass in Form 616 in support of transportation of goods from Telangana to Tamilnadu through the State of Andhra Pradesh warranted under Section 47 read with Rule 55 of the A.P. VAT Act and Rules, 2005; and, on examination of the documents, it was observed that none of it was got checked from any of the Commercial Taxes border check posts situated in both the States. It is further observed in the said notice that the vehicles were got weighed in Gundlapalle, Maddipadu, Prakasam District, Andhra Pradesh, which mirrors that the said rough granite was not loaded from Telangana but from Andhra Pradesh, since there was no occasion to go for weighment at the said place; no documentary proof, in support of movement of blocks from the State of Telangana, was filed; suspecting the genuineness of the transaction, the volume of all rough granite blocks was measured and found that the volume of the blocks were at variance; the actual measurement did not tally with the gross measurement shown in the documents; these facts clearly indicated that the goods did not originate from the place mentioned in the records; and it was presumed to have originated from Andhra Pradesh. The petitioner was asked to file objections against the proposal to confiscate the goods within seven days, and was given the option to get the goods released, at the earliest and pending finalisation of the case, on furnishing bank guarantee equivalent to the value of the goods.

Sri M.V.J.K.Kumar, learned counsel for the petitioner, would draw our attention to the various documents annexed to the Writ Petition in support of his submission that the goods were transported from Warangal in the State of Telangana to Hosoor in the State of Tamilnadu; the mere fact that the goods passed through the State of Andhra Pradesh did not justify detention of the goods; the certificates issued by the Department of Mines and Geology, and the permit issued by the Assistant Director of Mines and Geology dated 15.12.2015, prove the fact that the goods were purchased in the State of Telangana, and not in the State of Andhra Pradesh; and the confiscation notice has been issued only to prevent the petitioner from seeking relief from this Court in a Writ Petition challenging the detention notice. On the other hand, Mr. Shaik Jeelani Basha, learned Special Standing Counsel for Commercial Taxes, would refer to the averments in the counter affidavit to contend that the transactions are not genuine.

As the proceedings dated 03.12.2015 is only a notice asking the petitioner to show cause why the subject goods should not be confiscated, it would be wholly inappropriate for us to express any opinion on the submission of Sri M.V.J.K.Kumar, learned counsel for the petitioner, as these are all matters which the third respondent is required to consider. As the goods and the vehicles have been detained at the border check post, it is necessary that the third respondent passed an order within a specified time frame. Ends of justice would be met if the petitioner is directed to submit their objections, to the confiscation notice, on or before 05.01.2016. The third respondent shall afford the petitioner an opportunity of personal hearing at 11 am on 08.01.2016, and thereafter, pass the assessment order on or before 20.01.2016. As the petitioner is willing to furnish an unconditional bank guarantee for invoice value of the goods, the goods and the vehicles shall be released forthwith on the petitioner furnishing a bank guarantee, to the third respondent, for the invoice value of the goods.

Both the Writ Petitions are disposed of, accordingly. There shall be no order as to costs. Miscellaneous petitions, if any, pending in both the Writ Petitions shall stand closed.

(RAMESH RANGANATHAN, J)

(M.SATYANARAYANA MURTHY, J)

29th December 2015

Note: Issue CC by tomorrow
B/O
RRB