THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

W.P.No. 38010 OF 2015

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

Heard Sri P.Girish Kumar, learned counsel for the petitioners, Sri Sk.J.Basha, learned standing counsel for Commercial Taxes (A.P.), and Sri P.L.Narasimha Rao, learned Assistant Government Pleader for Mines and Geology (A.P.), and, with their consent, the Writ Petition is disposed of at the stage of admission.

The 1st petitioner claims to be constructing a house, and to have transported granite slabs through the vehicle belonging to the 2nd petitioner bearing registration No. KA 56 0346. The said vehicle was intercepted at Narasaraopet, Guntur District on the ground that the driver had failed to produce proof of payment of royalty on the raw-material. The 3rd respondent is said to have demanded the driver to pay penalty for non-production of the royalty slips. Consequently, the vehicle was detained in the Narasaraopet Police Station on 11-10-2015. Thereafter, the 2nd respondent visited the police station, and issued a notice of detention in Form No. 610 under Section 45 (6) of the Andhra Pradesh Value Added Tax Act, 2005 ('the Act' for short).

Sri P.Girish Kumar, learned counsel for the petitioners, would submit that the 3rd respondent lacks jurisdiction to detain the vehicle; since the goods were being transported for construction of the 1st petitioner's house, no tax can be imposed on the petitioners for release of the goods; and the action of the 2nd respondent, in issuing a notice of detention in Form No. 610 dated 11-10-2015, is arbitrary and illegal.

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 be effected, against the proposed penalty. While the question whether the 1st petitioner was carrying the goods for his own use or not are matters which the assessing authority is required to determine while passing an order of assessment, the pre-condition for release of goods, under Section 45 (7) (a) of the Act, is payment of tax. The power to impose penalty, not exceeding twice the amount of tax, can be exercised only after the 1st petitioner is given a reasonable opportunity to show cause against the proposed penalty.

The Assistant Director of Mines and Geology, by letter dated 11-10-2015, informed the Station House Officer that the material was being transported in the vehicle without payment of royalty and, as such, penalty was liable to be imposed on the vehicle in terms of Section 21 (4) of M & M (D&R) Act, 1957, and Rules 9, 10 (b) and 26 of A.P.M.M.C. Rules, 1966. The said proceedings of the Assistant Director of Mines and Geology is questioned on the ground that the subject vehicle was carrying polished granite, which is a finished product in terms of the circular memo dated 30-09-2013 issued by the Director of Mines and Geology; the finished product of granite cannot be seized; and the authorities are only empowered to inspect the source of the finished products in the factory, where the raw material is processed, to enquire as to whether mineral revenue has been paid on such raw material. The circular dated 30-09-2013 was issued following the judgment of this Court in ***M/s. Siva Sai Granites, Guntur, Vs. Government of A.P. and others*** which, in turn, followed the earlier judgment of this Court in ***Novel Granites Limited and others Vs. Government of A.P. and others***.

Ends of justice would be met if the 2nd respondent is directed to release the vehicle, and the goods, on payment of VAT, on the value of the goods, by the 1st petitioner herein. This order shall not preclude the 2nd respondent from initiating penalty proceedings, if they so chose, in accordance with law. As the vehicle was admittedly carrying finished granite slabs, the 3rd respondent lacks jurisdiction to detain the said vehicle. The 3rd respondent shall forthwith release the said vehicle. It is made clear that release of the vehicle shall not preclude the authorities, from inspecting the source of the finished granite material, to ascertain whether such raw material was subjected to payment of revenue.

The Writ Petition stands disposed of accordingly. Pending miscellaneous petitions, if any, in this Writ Petition shall stand closed in consequence. No order as to costs.

RAMESH RANGANATHAN, J.

M.SATYANARAYANA MURTHY, J.

Date: 25th November, 2015.

JSK

Note: Issue C.C. by tomorrow

B/O

JSK