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

WRIT PETITION NO.40957 OF 2015

ORDER:

While the goods were being transported from the State of Karnataka to Adoni in the State of Andhra Pradesh, the vehicle and the goods were seized at Pudikonda checkpost in Anantapur District. The goods, being carried in the vehicle, were 5005 Set Top Boxes. These goods were detained under detention notice issued on 07.12.2015 on the ground that the documents, furnished by the driver of the goods vehicle, did not include the CST E-Way Bills for the goods being transported to Adoni. A tax show-cause notice dated 04.12.2015 was issued, directing the petitioner to furnish security for an amount equal to two times of the amount of tax in the form of Cash, or in the shape of Bank guarantee by a Bank under the Banking Regulation (Companies) Act, 1949.

The submission of Sri G. Narendra Chetty, Learned Counsel for the petitioner, is that the petitioner is merely an agent of the Karnataka Dealer who is carrying on business in the sale of Set Top Boxes; as it is merely a stock transfer, it is not liable to tax either under the CST Act or under the AP Vat Act; and the detention notice is illegal.

Section 45(7)(a) of the A.P. Vat 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 afore-said provision that, if all the documents required to be carried in the vehicle, are not so carried, then the vehicle, and the goods therein, can only be released on payment of the tax or furnishing security for twice the amount of tax. The power to impose penalty is only after notice is issued to the person in this regard, and he is given an opportunity of being heard.

Ends of justice would be met if the respondents are directed to release the goods forthwith on payment of tax, by the petitioner, on the invoice value of the goods. It is made clear that this order shall not preclude the respondents from initiating penalty proceedings in accordance with law. The Writ Petition is, accordingly, disposed of. The miscellaneous petitions pending, if any, shall also stand disposed of. No costs.

RAMESH RANGANATHAN, J

M. SATYANARAYANA MURTHY, J

Date: 17.12.2015.

Note: Issue copy by 18.12.2015.
B/o
MRKR