THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

And

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

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Writ Petition No.35444 of 2015

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

The proceedings under challenge in this writ petition are the detention notice dated 17.10.2015 and the assessment order dated 23.10.2015.

The notice of detention was issued on 17.10.2015 informing the petitioner that, on inspection the vehicle, it was found that the goods therein were not covered by e-way bills. The petitioner's case is that the way bills were subsequently obtained and produced before the authority. The assessing authority, vide proceedings dated 23.10.2015, assessed the petitioner to tax for a sum of Rs.72,200/-. A show cause notice was also issued on 23.10.2015 informing the petitioner that it was proposed to impose a penalty on them of Rs.1,44,400/-, equivalent to two times the tax due, under Section 45(7)(a) of APVAT Act, 2005 (for short "the Act") .

Section 45(7)(a) of the Act stipulates that, where the goods are carried without paying tax, if any, payable or goods are carried without being properly accounted for in the documents, the 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.

Under Section 45(3) of the Act if, on examination and inspection of the vehicle, it appears that the tax, if any payable in respect of the sale or purchase of the goods carried, has not been paid or that the sale or purchase of the goods carried has, for the purpose of payment of tax not been properly accounted for in the documents, the competent officer is permitted to detain the goods, and to direct the driver or any other person in charge of the goods vehicle to pay such tax, or to furnish security for an amount equal to two times the amount of tax payable in such form, and in such manner and to such authority, as may be prescribed. Section 45(4) of the Act stipulates that, if the tax is paid or the security is furnished, then the goods so detained shall be released forthwith.

In view of the aforesaid provisions, the owner of the vehicle is entitled to seek release of the vehicle, and the goods therein, on payment of tax or on furnishing security for an amount equal to two times the tax payable. The power to impose penalty is conferred under Section 45(7) of the Act, whereunder a penalty can be levied, 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. The respondent has issued a notice asking the petitioner to show cause why penalty should not be imposed on them. It is only after the petitioner submits their reply thereto, can the respondent consider whether or not penalty should be imposed.

In the light of Section 45(4) read with Section 45(3) of the Act, we consider it appropriate to direct the respondents to release the vehicle, and the goods therein, forthwith, on the petitioner furnishing proof of payment of tax of Rs.72,200/-.

The Writ Petition is disposed of accordingly. 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

06th November 2015.

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THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

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Date: 06.11.2015

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