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

Review WPMP.(SR) Nos.140314 and 140313 of 2014
in
WRIT PETITION Nos.21929 and 26374 of 2013 and CONTEMPT CASI No.1601 of 2014

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

Heard Sri Vedula Srinivas and Sri M.V.J.K.Kumar, Learned Counsel for the petitioners, and Sri D.Srinivas, Learned Special Standing Counsel for Commercial Taxes and, with their consent, the Contempt Case and the review WPMPs are disposed of by this common order.

W.P.Nos.26345, 26374 and 21929 of 2013 were filed by three different dealers questioning the action of the respondents in collecting tax and two times penalty at the time of seizure of the goods and the vehicles. All the three petitioners are registered VAT dealers under the Tamil Nadu Value Added Tax Act, 2006 and, pursuant to an offer made by TTD, they participated in the auction and purchased human hair of different quantities. While these goods were being transported from Tirupati to the State of Tamil Nadu, the vehicles were intercepted by the Deputy Commercial Tax Officer – III, Tirupathi – II Circle. On the ground that the petitioners were transporting these goods, without possessing the required documents, the goods and vehicles were seized. The petitioners paid the tax and two times penalty, and sought release of the goods and the vehicles. Thereafter they invoked the jurisdiction of this Court by way of the aforesaid Writ Petitions.

A Division Bench of this Court, by order dated 09.06.2014, held that the inspecting authorities were not entitled to make on the spot collection of tax or penalty or collect compounding fee without making assessment. The respondents were directed to refund the tax collected, along with penalty, to the petitioners forthwith. Aggrieved thereby, the respondents invoked the jurisdiction of the Supreme Court and, thereafter, sought leave of the Supreme Court to file the present review petitions.

Chapter VII of the Andhra Pradesh Value Added Tax Act, 2005 (for short 'the Act') relates to Establishment of Check Posts. Under Section 45(7)(a) of the Act, where goods are carried without paying tax, if any, payable or the goods are carried without being properly accounted for in the documents referred to in Section 45(2)(b), the Check post officer is entitled to collect the tax payable on the goods so carried and, in addition, levy 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 by the proposed penalty. Section 45(2)(b) of the Act stipulates that the driver, or any other person in charge of goods vehicle, must carry certain documents including documents to show whether the sale or purchase of the goods carried has, for the purpose of payment of tax, been properly accounted for in the bills of sale or delivery notes or such other documents as may be prescribed.

Section 45(7)(a) of the Act only enables the check post officer to forthwith collect the tax payable on the goods, for contravention of the requirements of Section 45(2)(b). The power to levy penalty, not exceeding two times the tax on such goods, can be exercised is only after giving the person affected a reasonable opportunity to show cause against the proposed penalty. In the present case, the respondents in the Writ Petitions have levied tax, and two times penalty, soon after the vehicles and goods were seized. The petitioners were not afforded an opportunity of being heard before penalty was imposed on them. While the order, directing refund of the amount collected towards penalty along with interest at 6% per annum, cannot be faulted, the authorities are entitled, in law, to seize the goods and direct its release only on payment of the tax due. To this limited extent the order, in W.P.No.21929 of 2013 and batch, necessitates review.

As the amount paid by the petitioners, towards the tax due, is also subject to assessment of the dealers, and as penalty can be imposed only after the petitioners are given an opportunity of being heard, ends of justice would be met if the respondents are directed to complete the assessment in accordance with the provisions of the Act and the Rules within six weeks from the date of receipt of a copy of this order. The amount collected by the respondents towards penalty shall be refunded to the petitioners forthwith as the power to impose penalty can only be exercised after they are given an opportunity of being heard. The amount collected towards penalty shall be refunded with interest at 6% p.a, as directed by the Division Bench, within a period of two weeks from today. In case the assessment is not completed within the aforesaid period of six weeks, the petitioners shall be entitled for refund of the said amount also. It is made clear that this order shall not preclude the respondents from initiating penalty proceedings against the petitioners and, after giving them an opportunity of being heard, to pass orders in accordance with law.

Review WPMPs are allowed in part, and the order in W.P.Nos.26345, 26374 and 21929 of 2013 dated 09.06.2014 is modified accordingly. In view of the orders now passed, the contempt case is closed. Miscellaneous Petition pending, if any, shall also stand dismissed.

RAMESH RANGANATHAN,J

M.SATYANARAYANA MURTHY,J

Date:27.01.2015
Note:CC three days
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