THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE SRI JUSTICE S.RAVI KUMAR

<u>WRIT PETITION NO.34800 OF 2015</u>

<u>ORDER:</u> {Per the Hon'ble Sri Justice Ramesh Ranganathan}

Heard Smt. P.Vijaya Lakshmi, learned counsel for the petitioner and Mr. Shaik Jeelani Basha, learned Special Standing Counsel for Commercial Taxes and, with their consent, the Writ Petition is disposed of at the stage of admission.

The petitioner, a proprietary concern carrying on business in granite slabs, is a registered dealer in the State of Telangana. They have invoked the jurisdiction of this Court on the ground that the first respondent has illegally detained the granite slabs, being transported in two vehicles, at Narasaraopet in Guntur District. It is the petitioner's case that these granite blocks waste material were purchased at Martur, Prakasam District, Andhra Pradesh; they were converted into slabs, and were sold to two firms, one at Pune and the other at Mumbai in the State of Maharashtra; two vehicles i.e., vehicles bearing Nos.AP-27-TW-3659 and MP-09-HG-4717 were hired to transport the goods to Pune and Mumbai respectively; they were loaded into the trucks on 09.10.2015, and invoices were raised on the same day; as the petitioner's business place is at Miryalaguda, Nalgonda District, the invoices contain the said address; while the goods were being transported from Martur, Prakasam District to Maharashtra, the goods were detained at Narasaraopet, Guntur District; and despite waybills, lorry receipts and log books being produced, the goods were detained. When the matter came up earlier this Court, by order dated 19.10.2015, permitted the petitioner to file a representation along with the documents by 20.10.2015; and directed the first respondent to examine the same and pass appropriate orders by 21.10.2015. Thereafter, by order dated 28.10.2015, the respondent-authorities were directed to release the goods, along with the vehicles, on condition that the petitioner provided bank guarantee for the value of goods as assessed by the respondent-authorities.

On the ground of their inability to furnish a bank guarantee, the petitioners have now filed an application in WP.MP.No.50273 of 2015 to modify the earlier order dated 28.10.2015 and to release the goods along with both the vehicles. Mr. Shaik Jeelani Basha, learned Special Standing Counsel for Commercial Taxes, would point out that two separate orders were passed for detention of the goods on 09.10.2015; the petitioner had conveniently produced only one of them; the value of goods, reflected in the detention notice, is Rs.2,50,000/- and Rs.2,48,200/- respectively; and, as the petitioner is not a registered dealer within the State of Andhra Pradesh, the respondents would not be able to recover the penalty, if the vehicles and the goods were to be released unconditionally.

Section 45(7)(a) of the Andhra Pradesh Value Added Tax Act, 2005 stipulates that, where the goods are carried without being properly accounted for in the documents referred to in Section 45(2)(b), 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 of being heard to the person on whom penalty is proposed to be imposed.

As the petitioner is not a registered dealer within the State of Andhra Pradesh, it may be difficult for the respondents to initiate penalty proceedings and recover the penalty, if any, imposed. We consider it appropriate, in such circumstances, to direct the respondents to release the goods and vehicles on the petitioner forthwith on their furnishing proof of payment of tax on the value of the goods reflected in the detention notices; and on deposit, of twice the tax due, towards penalty. On proof being furnished of payment of tax, and of deposit of twice the tax due as penalty, the first respondent shall forthwith release the goods along with the vehicles. It is open to the respondents to initiate penalty proceedings, and in case the petitioner fails to avail the opportunity of being heard, to then proceed and impose penalty and adjust the penalty imposed against the amount deposited by the petitioner towards penalty.

The Writ Petition is disposed of, accordingly. There shall be no order as to costs. Miscellaneous petitions, if any, pending shall stand closed.

(RAMESH RANGANATHAN, J)

(S.RAVI KUMAR, J)

7th December 2015

RRB