HON'BLE SRI JUSTICE RAMESH RANGANATHAN

AND

HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

WRIT PETITION No.41275 OF 2015

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

The subject vehicle was detained, and a notice for detention of the goods in Form-610 was issued to the petitioner, on 15.12.2015 wherein, it was stated that, on inspection of the vehicle, the following irregularities were identified: 1) at the time of check, the goods vehicle in charge driver did not produce any proof of documents bill or way bill; and 2) under Section 48 of the A.P. VAT Act, 2005, the goods vehicle in charge driver did not produce log book. The petitioner was informed that the goods mentioned therein were detained under Section 45(6) of the A.P. VAT Act read with Rule 56 of the AP VAT Rules 2005, and he should give a reply to the notice arranging to discharge tax and other amount due under the provisions of the Act.

While the inability of the driver of the vehicle to understand the language is stated to be the reason for failure to produce the documents, and it is contended that the documents were produced on the next day, the respondents in their counter-affidavit stated that, when the vehicle was stopped at Ravipadu Road, Narasaraopet, it was noticed that the vehicle was carrying Granite Slabs, and the driver of the vehicle was not carrying log book as required under Rule 48 of the AP VAT Act. It was also stated that though a detention notice dated 15.12.2015 was issued to the driver, and the driver of the vehicle had given a statement on 15.12.2015 to the respondent that all the goods were being transported from Martur to Rajasthan without any way bill, the value of the goods was more than Rs.2,00,000/-, and though the driver of the vehicle was asked to reply to the notice for arranging discharge of tax and other amount due, neither the petitioner nor the buyer has filed any explanation to the detention notice. It is further stated that, on verification of the Commercial Tax Department's website on 16.12.2015, it was found that the petitioner had carried on business by downloading CST e-way bills during the period July, 2015 to October, 2015 reporting turnovers under the CST Act to a tune of Rs.2,66,72,218/- though he had actually utilized e-way bills to a tune of Rs.4,30,46,275/- without reporting a turnover of Rs.1,68,74,507/-; and this unreported turnover was liable to tax @ 14.5% which comes to Rs.24,46,803/- payable to the Department by the petitioner.

While the respondents are, no doubt, entitled to assess the petitioner to tax for the suppressed turnover, it would be wholly inappropriate for this Court, in proceedings under Section 226 of the Constitution of India, to examine the truth or otherwise of the statements, in the affidavit and counter-affidavit, to decide whether the petitioner or the respondents are stating the truth. Suffice it to observe that, from the Detention Notice, it does appear that no documents were produced, and the vehicle was detained.

The jurisdiction, which this Court exercises, under Article 226 of the Constitution, is discretionary and if this Court is satisfied that the petitioner has invoked its jurisdiction with unclean hands, it could then refrain from interfering with the impugned proceedings. Serious allegations, of suppression of turnover by the petitioner, in the counter affidavit filed by the respondents may justify exercise of restraint by this Court in proceedings under Article 226 of the Constitution of India.

Smt. P. Vijaya Lakshmi, learned counsel for the petitioner, would submit that, in any event, the respondents cannot detain the vehicle; and it would suffice if, pending assessment of tax and penalty by the respondents, the vehicle is directed to be released after detaining the goods in question. As the provisions of the A.P. VAT Act do not enable the respondents to detain the vehicle, we consider it appropriate to direct them to release the vehicle forthwith, after detaining the goods which shall be subject to assessment or penalty proceedings, if any, instituted by the respondents herein.

The Writ Petition is, accordingly, disposed of. In consequence, miscellaneous petitions, if any, pending in this writ petition, shall stand closed.

RAMESH RANGANATHAN, J

M. SATYANARAYANA MURTHY, J

Date: 28-12-2015.

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HON'BLE SRI JUSTICE RAMESH RANGANATHAN

AND

HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

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WRIT PETITION No.41275 2015

(Order of the Division Bench delivered by

Hon'ble Sri Justice Ramesh Ranganathan)

Date. 28-12-2015

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