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

WRIT PETITION No.32734 of 2015

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

The proceedings, under challenge in this Writ Petition, are the two orders, both dated 01.07.2015, levying interest and penalty on the petitioner for delayed payment of tax, under Section 4 (7) (d) of the Andhra Pradesh Value Added Tax Act, 2005 (for brevity, 'the Act').

These orders are subjected to challenge on the following two grounds, firstly that the petitioner cannot be faulted for any delay in remittance of tax by the Sub-Registrar to the Commercial Tax Department; and, Secondly that, while the show cause notice issued by the first respondent dated 16.06.2015 was served on 25.06.2015, the impugned order was passed on 01.07.2015 though the petitioner had time till 02.07.2015 to submit their reply to the show cause notice.

The second contention necessitates rejection as a copy of the show cause notice, filed along with the counter-affidavit, discloses that it was served on the dealer on 20.06.2015 itself; the one week time, stipulated therein, expired on 27.06.2015; and it is only thereafter that the impugned orders were passed on 01.07.2015.

Rule 17 (4) (i) of the un-amended Rules required the VAT dealer to pay 1% of the total consideration received or receivable, or the market value fixed for the purpose of stamp duty, whichever is higher; that payment should be made by way of demand draft obtained in favour of the Commercial Tax Officer/Assistant Commissioner concerned; the instrument should be presented at the time of registration of the property, to the Sub-Registrar who is registering the property, duly furnishing the postal address of the Commercial Tax Officer/Assistant Commissioner concerned on the reverse of the demand draft; and the Sub-Registrar is required to send the same to the Commercial Tax Officer/Assistant Commissioner concerned every week.

Section 17 (4) (i) of the Act only requires the dealer to pay 1% of the consideration as VAT by way of a demand draft drawn in favour of the Commercial Tax Officer/Assistant Commissioner; and to hand over the demand draft to the Sub-Registrar. It is the petitioner's case that they have complied with this requirement; and any delay on the part of the Sub-Registrar, in remitting the amount to the Commercial Tax Department, cannot result in the petitioner being called upon to pay interest and penalty for the delayed payment of tax.

If the contention urged by Sri S.Suri Babu, learned counsel for the petitioner, is true, then, any delay on the part of the Sub-Registrar, in handing over the demand drafts to the Commercial Tax Authorities, may necessitate action being taken against him. That would, however, not justify action being taken against the dealer, as they would be in no position to ensure that the Sub-Registrar hands over the demand drafts to the Commercial Tax Authorities within time.

The question whether payment of VAT, at the time of registration to the Sub-Registrar, is reflected in the returns filed by them may, however, necessitate examination by the assessing authority. As the petitioner has not placed these facts before the assessing authority, and as we are satisfied that if these contentions are true, then interest and penalty cannot be levied on the assessee, we consider it appropriate to give the petitioner another opportunity to file their objections to the show cause notice.

The impugned orders, levying interest and penalty, are set aside. The petitioner is permitted to file their objections to the show cause notice, proposing to levy interest and penalty, within ten days from today. In case the objections are filed within the time stipulated hereinabove, the first respondent shall consider these objections, and pass orders afresh in accordance with law. It is made clear that, in case the petitioner fails to avail this opportunity and do not submit their objections within the time aforestipulated, it is open to the first respondent to then proceed and pass orders afresh without awaiting receipt of the objections from the petitioner thereafter.

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

RAMESH RANGANATHAN, J

M. SATYANARAYANA MURTHY, J

17th December, 2015
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