THE HON'BLE SRI JUSTICE R. SUBHASH REDDY
AND
THE HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

WRIT PETITION No.4935 OF 2015

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ORDER: (Per Hon'ble Sri Justice R. Subhash Reddy)

This Writ Petition is filed questioning the show cause notice for seizure-cum-confiscation, dated 23.02.2015, issued vide proceedings G.C.No:15/2014-15 by respondent No.2.

It is the case of the petitioner that he is an agriculturist having agricultural land at Kogili Village, Chittamuru Mandal, SPSR Nellore District, and while he was transporting his own agricultural produce of paddy from Naidupeta to Bangarupet, respondent No.2 has seized the vehicle along with paddy on the ground that under the guise of said transportation, he is undertaking trading without paying necessary tax under the provisions of Andhra Pradesh Value Added Tax Act, 2005 (for short, 'APVAT Act'), and issued the impugned show cause notice for seizure-cum-confiscation, dated 23.02.2015, in exercise of powers conferred under Section 45 (7) (b) of APVAT Act, calling for explanation, in addition to ordering for release of paddy confiscated on furnishing bank guarantee for an amount of Rs.2,85,000/- i.e., equivalent to the value of the paddy confiscated.

Heard learned counsel appearing for the petitioner and learned Government Pleader appearing for the respondents.

In this Writ Petition, it is submitted by the learned counsel for petitioner that the paddy transported was the agricultural produce of the petitioner himself and the same was being transported to Bangarupet by paying the requisite market fee, as there was no restriction for transporting paddy.

On the other hand, it is submitted by the learned Government Pleader for respondents that claiming to be an agriculturist, petitioner was selling paddy illegally and was undertaking trading, and hence, the paddy seized is liable for confiscation.

Under Section 45 (7) (a) of APVAT Act, if goods are carried without paying requisite tax, the authorities are empowered to collect tax payable on such goods, in addition to levying penalty not exceeding two times the amount of tax. Apart from the same, in view of the provision under Section 45 (7) (b) of APVAT Act, the authorities are also empowered to confiscate the goods, if the same are carried in the vehicle without valid documents.

Prima facie, petitioner is an agriculturist and in proof of the same, he has filed Pattadar Pass Book. But, in view of the pendency of proceedings before respondent No.2, it is not desirable for this Court to record any finding whether the seized paddy is the agricultural produce of petitioner or not, which is a matter to be enquired into by respondent No.2. Therefore, having regard to the material placed before this Court, as it is not in dispute that even if tax is payable on the paddy seized, it would be at the rate of 5% and further, under Section 45 (7) (a) of the Act, the authorities are empowered to collect penalty equivalent to two times of the tax payable on the goods seized, we deem it appropriate to dispose of the Writ Petition with a direction to the respondents to release the paddy seized, which is the subject matter of show-cause notice, dated 23.02.2015, on condition of petitioner furnishing bank guarantee for an amount of Rs.1,00,000/-, instead of Rs.2,85,000/- as directed in the impugned notice, dated 23.02.2015, and giving an undertaking to the effect that he will make good the value of the entire seized stock. It is made clear that bank guarantee and undertaking shall be subject to final orders to be passed by respondent No.2. Further, respondent No.2 shall dispose of the matter as expeditiously as possible, preferably within a period of two (2) months from the date of receipt of a copy of this order.

Subject to the above, the Writ Petition is disposed of. Miscellaneous Petitions, if any, pending in this Writ Petition shall stand closed. No costs.

R. SUBHASH REDDY, J

A. SHANKAR NARAYANA, J

March 02, 2015

Note: Issue C.C. by tomorrow.
B/o.MD