THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLR SRI JUSTICE M.SATYANARAYANA MURTHY

WRIT PETITION NO.41778 OF 2015

ORDER: {Per the Hon'ble Sri Justice Ramesh Ranganathan}

Heard Smt. P.Vijaya Lakshmi, learned counsel for the petitioner and Sri S.Suri Babu, learned Special Standing Counsel for Commercial Taxes. With their consent, the Writ Petition is disposed of at the stage of admission.

The subject goods were detained by the fourth respondent on 20.12.2015 and a notice of detaining the goods, in the check post in Form 610 dated 20.12.2015, was issued stating that on inspection of the vehicle, the following were detected.

> "Transporting 3260 Square Feet of Granite goods worth Rs.1,66,260/- with CST e-way bill No.371512187921485 dated 18.12.2015 from Narasaraopet to Nashik, Maharashtra State, verified the Vatis package there is no Branch or Godown at Narasaraopet. The dealer not mentioned Purchase details from Narasaraopet and also not filed Measurement Slip at the time of checking the documents of the Transporting Goods, it is purely trading Company. As per the provisions of the A.P. VAT Act, 2005 the Vehicle is detained."

Smt. P.Vijaya Lakshmi, learned counsel for the petitioner, would submit that the very fact that the Assistant Commercial Tax Officer had, thereafter, issued a notice on 23.12.2015 referring to the invoice number as 265 dated 18.12.2015 itself shows that the vehicle was accompanied by invoice; the petitioner has already paid 2% CST on the invoice value of the goods; and they ought not to be mulcted with any further liability.

On the other hand, Sri S.Suri Babu, learned Special Standing Counsel for Commercial Taxes, would refer to Section 48 of the Andhra Pradesh Value Added Tax Act, 2005 ("the Act" for brevity), and Rule 55 of the Rules, to submit that the statutorily required documents were not found in the vehicle and, in view of Section 45(7)(a) of the

Act, the dealer is required to pay tax on the value of the goods and a penalty not exceeding two times the amount of tax payable on such goods. The power to impose two times penalty, under Section 45(7)(a) of the Act, can be exercised only after the person affected is given an opportunity of being heard.

It is not in dispute that the petitioner is a registered dealer in the State of Andhra Pradesh. Any penalty proceedings which the fourth respondent may choose to initiate can only be after the petitioner is served with a notice in this regard and is given an opportunity of being heard. For failure to carry the prescribed documents in the vehicle, Section 45(7)(a) of the Act enables the authorities to detain the goods carried in the vehicle. The question whether the petitioner has paid 2% CST can only be ascertained after a counter affidavit is filed by the respondents.

Smt. P.Vijaya Lakshmi, learned counsel for the petitioner, would submit that, as the vehicle has been detained from 20.12.2015 onwards, any further delay would cause irreparable injury to the petitioner herein; it would suffice if the vehicle and the goods were released on petitioner producing proof of payment of tax on the invoice value of the goods; and the Commercial Tax Officer concerned is directed to pass an assessment order within a specific time frame.

Ends of justice would be met if the fourth respondent is directed to release the goods and the vehicle on the petitioner furnishing proof of payment of VAT on the invoice value of the goods. Any tax paid by the petitioner in this regard shall be subject to the assessment proceedings initiated by the competent authority who shall pass an assessment order at the earliest.

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)

(M.SATYANARAYANA MURTHY, J)

29th December 2015

RRB