

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

MONDAY, THE SIXTH DAY OF JULY
TWO THOUSAND AND FIFTEEN

PRESENT

**THE HONOURABLE SRI JUSTICE G.CHANDRAIAH
AND
THE HONOURABLE SRI JUSTICE CHALLA KODANDA RAM**

W.P. No.18420 of 2015

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Between:

Venkata Padmavathi General Stores

... Petitioner

And

State of Andhra Pradesh,
Rep. by its Principal Secretary,
Department of Revenue,
Secretariat, Hyderabad and others.

... Respondents

**THE HONOURABLE SRI JUSTICE G.CHANDRAIAH
AND
THE HONOURABLE SRI JUSTICE CHALLA KODANDA RAM**

W.P. No.18420 of 2015

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ORDER: (Per the Hon'ble Sri CKR, J)

The petitioner is a dealer, who is found to be transporting Coriander seeds, which is a taxable commodity, without any statutorily prescribed documents. By intercepting the vehicle, carrying the goods, the goods were seized. Thereafter, seizure cum confiscation notice was issued and pending passing of the orders on confiscation proceedings opportunity was provided to the petitioner for release of the goods on furnishing bank guarantee for the value of the goods, which was arrived at Rs.2,25,000/-. Thereafter, the petitioner furnished a bank guarantee for Rs.2,25,000/- and obtained release of the goods. Release orders were made on 10.03.2015. Finally, assessment proceedings were taken up. Pursuant to the show cause notice, petitioner submitted his explanation and final orders came to be passed on 11.06.2015. Assistant Commercial Tax Officer-III, also passed orders dated 11.06.2015 in exercise of the powers under Section 45(7)(b) of the Andhra Pradesh Value Added Tax Act, 2005 (for short 'the Act') confiscating the goods in favour of the State.

The petitioner submits that challenging the orders dated 11.06.2015, he filed an appeal before the Appellate Deputy Commissioner, Kurnool and the same is pending. The petitioner also paid the tax on the goods at the rate of 5% as per applicable Schedule. The 2nd respondent, while making the orders dated 11.06.2015, had invoked bank guarantee by addressing a letter dated 12.06.2015 to the bank to make over the money of Rs.2,25,000/- to the department. The petitioner questions the order dated 11.06.2015 and 12.06.2015 so far as the 2nd respondent invoking the bank guarantee.

It is simple case of the petitioner that the appeal filed with the Appellate Deputy Commissioner is pending and as such, invocation of bank guarantee, at this point of time, is arbitrary and illegal.

Having considered the rival submissions and facts in the present case, considering the fact that an appeal is provided under the Act with respect to confiscation order dated 11.06.2015 and as a matter of fact, appeal filed by the petitioner is pending is just and necessary that the petitioner be provided with an opportunity to avail remedy of an appeal. This order would be just for the reason that the petitioner is sought to be deprived of the property itself on the ground that the statutorily prescribed documents are not accompanying with the vehicle carrying the goods. In the present case, various aspects with respect to the scope of penalty and the proportionality of the penalty are the issues for adjudication by the appellate authority.

In that view of the matter, there shall be a direction to the respondent authorities not to encash the bank guarantee and such decision with respect to the invocation of bank guarantee or otherwise determination of the penalty amount, if any, that is required to be paid by the petitioner shall be subject to outcome of the appellate order that may be passed by the Appellate Deputy Commissioner.

With the above direction, the writ petition is disposed of.
There shall be no order as to costs.

As a sequel, miscellaneous petitions, if any, stands closed.

JUSTICE G.CHANDRAIAH

JUSTICE CHALLA KODANDA RAM

Date: 06.07.2015

LSK