THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLR SRI JUSTICE M.SATYANARAYANA MURTHY

WRIT PETITION NO.38205, 38208, 38216 and 38217 OF 2015

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

In all these Writ Petitions, the action of the first respondent in issuing notice in Form 610 calling upon the petitioners to pay tax and penalty, is questioned as being arbitrary, illegal and without jurisdiction. A consequential direction is sought to direct the first respondent to forthwith release the vehicles, along with entire stock of goods, without demanding any tax and penalty.

The case of the petitioners is that they had purchased pulses from dealers in Akola, Maharashtra State against valid invoices; they had booked the pulses for transport from Akola, Maharashtra to Hyderabad through different lorries; the vehicles were accompanied by all documents prescribed under law; while the goods were in inter-state movement, the first respondent had stopped and detained the vehicles at Sangareddy under Section 45(6) of the Telangana VAT Act read with Rule 56 of the Rules, on the alleged ground that no advance way bills were enclosed as required under the VAT Act; the place where the goods vehicles were stopped and checked was not a Check Post; the pulses are exempt from tax in the State of Maharashtra; as such the petitioners were under the *bona fide* belief that no advance way bills were required for the purpose of transporting pulses; and the petitioners had filed all valid documents.

Sri K.Raji Reddy, learned counsel for the petitioners, would submit that, while the vehicles were not accompanied by an advance way bill, failure of the petitioners to produce the advance way bill would not confer power on the detaining authority to detain both the goods and the vehicles; the petitioners are ready to pay tax on value of the goods; all of them are registered dealers under the Telangana VAT Act; and they are ready and willing to produce tin numbers which are valid as on date.

Sri J.Anil Kumar, learned Special Standing Counsel for Commercial Taxes, would submit that, as the vehicles were not accompanied by advance way bills, the respondents were justified in detaining the goods; and the petitioners are liable to pay tax and two times penalty for release of such goods.

Under Section 45 (7) (a) of the VAT Act, where goods are carried, without being properly accounted for in the documents, the officer shall collect the tax payable on the goods so carried; and, in addition, levy penalty not exceeding two times the amount of tax payable on such goods, after giving a reasonable opportunity to the person likely to be effected, against the proposed penalty. While the Deputy Commercial Tax Officer at the Check Post is empowered to collect tax under the VAT Act, his power to impose twice the said amount as penalty is only after giving the petitioners a reasonable opportunity of being heard.

As Sri K.Raji Reddy, learned counsel for the petitioners, submits that all the petitioners are registered VAT dealers having valid tin numbers, we consider it appropriate to dispose of all these Writ Petitions directing the first respondent to release the goods, and the vehicles, on the petitioners furnishing proof of being registered VAT dealers in the State of Telangana as on date, with valid tin numbers. On such information being furnished, and on payment of VAT, the goods and the vehicles shall be released forthwith. It is made clear that this order shall not preclude the respondents from initiating penalty proceedings, against the petitioners, in accordance with law.

All the Writ Petitions are, accordingly, disposed of. There shall be no order as to costs. Miscellaneous petitions, if any, pending shall stand closed.

(RAMESH RANGANATHAN, J)

(M.SATYANARAYANA MURTHY, J)

30th November 2015

Note: Issue CC by tomorrow

B/O

RRB