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

WRIT PETITION No.41392 2015

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

The petitioner has invoked the jurisdiction of this Court aggrieved by the action of the fourth respondent in issuing notice dated 09.12.2015 detaining the goods along with the vehicle bearing Registration No.AP27 TX 8599, though the consignment is claimed to be covered by all the relevant documents.

A perusal of the detention notice dated 09.12.2015 shows that 24 tonnes of Black Pearl Granite from Kotappakonda was being transported to Gujarat without a bill or a way-bill.

Sri Sk.Jeelani Basha, learned Special Standing Counsel for Commercial Tax, would submit that no documents, relating to the goods, were found in the vehicle; it is not even known as to who was transporting the goods, and to whom; and it is in such circumstances, that the goods were detained on 09.12.2015.

Section 45 (7) (a) of the Andhra Pradesh Value Added Tax Act, 2005 reads thus:

> "Where goods are carried without paying tax, if any, payable or goods are carried without being properly accounted for in the documents referred to in clause (b) of sub-Section (2), the said officer shall collect the tax payable on the goods so carried and in addition levy a 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 failure to carry all the prescribed documents, along with the vehicle, would justify imposition of tax on the value of the goods, or to direct twice the said amount being furnished as security, the penalty, which the authorities are entitled to impose (of twice the tax amount), is only after the petitioner is given an opportunity of being heard. The fact, however, remains that the petitioner is not even a registered dealer within the State of Andhra Pradesh and it would, therefore, be difficult for the authorities to initiate penalty proceedings against him or to recover the penalty amount, if any, imposed on him later.

Ends of justice would be met if the respondents are directed to release the goods forthwith, on the petitioner paying tax on the value of the goods reflected in the detention notice, and on his depositing twice the tax amount as penalty. The respondents may, if they so chose, issue penalty proceedings against the petitioner at the address mentioned in the cause title of the Writ Petition and, thereafter, pass an order of penalty in accordance with law. The amount so deposited by the petitioner towards penalty shall be adjusted towards penalty, if any, imposed by the authorities; and the balance, if any, shall be refunded to the petitioner. The entire exercise of assessment and penalty shall be completed within a period of three months from the date of receipt of a copy of this order. On furnishing proof of payment of tax, and proof of deposit of twice the tax amount and penalty, the respondents shall forthwith release the goods and the vehicle.

The Writ Petition is, 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

22nd December, 2015
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