THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

WRIT PETITION NO.27153 OF 2016

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

Heard Sri Karan Talwar, learned counsel for the petitioner and Sri S.Suri Babu, learned Special Standing Counsel for Commercial Taxes and, with their consent, the Writ Petition is disposed of at the stage of admission. The short ground, on which the impugned order of penalty is subjected to challenge in this Writ Petition, is that the show cause notice issued earlier does not contain any allegation that the petitioner had under-declared tax having committed fraud or wilful neglect.

Sri S.Suri Babu, learned Special Standing Counsel for Commercial Taxes, referred to the show cause notice wherein it is recorded that the petitioner, being a dealer liable to be registered under the provisions of the Andhra Pradesh Value Added Tax Act, 2005 ("the Act" for brevity), had failed to do so; and hence they were liable for penalty under Section 49 of the Act, to submit that this itself indicates wilful neglect and fraud on the part of the petitioner. We must express out inability to agree. While Section 49 of the Act confers power on the authorities to levy penalty for the failure of a VAT dealer to apply for registration, it is necessary to note that the action initiated against the petitioner is not under Section 49 of the Act but under Section 53(3) of the Act. All that the aforesaid portion of the show cause notice alleges is that the petitioner was liable to be registered under the Act but had failed to do so. It is not even alleged therein that under-declaration of tax by them is because of wilful neglect or that they had committed fraud thereby.

The impugned order is set aside as the jurisdictional facts necessary for invoking Section 53(3) of the Act is not stated in the show cause notice issued prior to the impugned order. Needless to state that this order shall not preclude the respondents, if they so choose, from taking action in accordance with law.

The Writ Petition stands disposed of accordingly. There shall be no order as to costs. Miscellaneous petitions, if any, pending shall stand closed.

(RAMESH RANGANATHAN, ACJ)

(M.SATYANARAYANA MURTHY, J)

24th August 2016
RRB