THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN
And
THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTI

WRIT PETITION No.5744 of 2016

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

Heard Sri G.Narendra Chetty, learned counsel for the petitioner, and Sri S.Suri Babu, learned Special Standing Counsel for Commercial Taxes and, with their consent, this Writ Petition is being disposed of at the stage of admission. The order under challenge in this Writ Petition is the notice of detention of goods at the check post in Form-610 dated 10.02.2016. While the notice of detention records that the vehicle was not accompanied by a tax invoice and a waybill, the show cause notice issued on 11.02.2016 records that tax invoice number 2545 dated 10.02.2016 was carried in the vehicle. It does appear that the vehicle was not accompanied only by an e-waybill.

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

> "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".

The aforesaid provision enables the authorities at the check post, in case the vehicle is not accompanied by all the prescribed documents, to release the goods on payment of tax on the invoice value of the goods or on the dealer furnishing security for twice the said amount. While the said provision also confers power on the authorities to levy penalty, such a power is circumscribed by the requirement of giving the person an opportunity of being heard. The petitioner is a registered dealer within the State of Andhra Pradesh.

Sri G.Narendra Chetty, learned counsel for the petitioner, would submit that the goods were detained in exercise of the powers conferred under Rule 45 (6) of the Andhra Pradesh Value Added Tax Rules, 2005 and, consequently, the notice is illegal; and the respondents should be directed to release the goods on payment of tax on the invoice value of the goods.

The authorities have been conferred the power under the Act to detain the goods. The mere fact that the notice quotes a wrong provision is of no consequence. If power to do an act, or to pass an order, can be traced to a statutory provision then, even if that provision is not specifically referred to, the act or order shall be deemed to have been done or made under the said provision (**Pine Chemicals Ltd. v. Assessing Authority**[1]). The power to detain the vehicle, where it is not accompanied by all the documents, is referable to Section 45 (7) (a) of the Act, and consequently the action of the respondents in detaining the goods cannot be said to be illegal.

We consider it appropriate to dispose of the Writ Petition directing the respondents to release the goods, and the vehicle in which the goods were carried, on the petitioner furnishing proof of payment of tax on the value of the goods stated in the notice of detention. As the petitioner is a registered dealer, on the rolls of the second respondent within the State of Andhra Pradesh, the tax so paid shall be subject to the assessment to be made later. It is made clear that this order shall also not preclude the respondents, if they so choose, from initiating penalty proceedings against the petitioner in accordance with law.

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

RAMESH RANGANATHAN, J

M.SATYANARAYANA MURTI, J

23rd February, 2016.

Note:

Furnish C.C. of the order
by 24.02.2012.
B/o
Tsy

[1] (1992) 2 SCC 683