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

Writ Petition No.2204 of 2016

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

Heard Sri P.Balaji Varma, Learned Counsel for the petitioner, and Sri S.Suri Babu, Learned Special Standing Counsel for Commercial Taxes (AP) and, with their consent, this Writ Petition is being disposed of at the stage of admission.

The petitioner is a registered dealer in the State of Andhra Pradesh. The subject vehicle was carrying plywood from the State of Kerala to Visakhapatnam where the petitioner is carrying on business. The said vehicle was detained at ICP Naraharipet check post in Chittoor District. The detention notice records that, on verification, the dealer had produced an invalid e-way bill; and the details mentioned in the e-way bill did not match with the invoice and the documents. Thereafter a show-cause notice dated 22.01.2016 was issued asking the petitioner to show-cause why tax at 14½% on the value of the goods of Rs.6,74,040/- i.e. a tax of Rs.97,736/- not be imposed. The show-cause notice also records that a penalty notice would be issued separately.

Section 45(7)(a) of the A.P. VAT 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;"

It is evident from the aforesaid provision that, while failure to carry all the necessary documents in the detained vehicle, would justify action being taken under Section 45(7)(a), the power of the authority at the check post is only to impose VAT on the value of the goods being transported. The power to impose twice the amount of tax as penalty can be exercised only after the dealer is given an opportunity of being heard.

As the petitioner is a registered dealer in the State of Andhra Pradesh, we consider it appropriate to direct the respondents to release the subject goods, along with the vehicle, on the petitioner furnishing proof of payment of Rs.97,736/- towards VAT on the value of the goods as referred to in the show cause notice. Needless to state that the tax so paid by the petitioner shall be subject to the assessment order to be passed later by the prescribed authority. It is made clear that this order shall not preclude the respondents, if they so choose, from initiating penalty proceedings under the provisions of the AP VAT Act.

As the show-cause notice was issued on 22.01.2016, calling upon the petitioner to furnish their explanation within three days, and as the said period of three days has since expired, the respondents shall receive the objections to the show-cause notice, if any filed by the petitioner on or before 05.02.2016; and, thereafter, pass an assessment order in accordance with law.

The Writ Petition is, accordingly, disposed of. The miscellaneous petitions pending, if any, shall also disposed of. No costs.

RAMESH RANGANATHAN, J

M. SATYANARAYANA MURTHY, J

Date:27.01.2016.

Note:
Issue C.C. by 28.01.2016.
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