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

WRIT PETITION No.5817 of 2016

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

Heard Sri V.Bhaskar Reddy, learned counsel for the petitioner, and Sri Sk.Jeelani Basha, learned Special Standing Counsel for Commercial Taxes and, with their consent, this Writ Petition is being disposed of at the stage of admission. The proceedings under challenge in this Writ Petition is the notice of detention of goods at the check post in Form-610 dated 05.02.2016 detaining the goods on the ground that the consignee had not generated the CST e-waybill.

Sri V.Bhaskar Reddy, learned counsel for the petitioner, would draw attention of this Court to the proviso to Rule 55 (1) of the Andhra Pradesh Value Added Tax Rules (for brevity, 'the Rules') in support of his submission that, as the goods being carried in the subject vehicle were seeds, the vehicle was not required to be accompanied by any waybill. Learned counsel would fairly state that, in as much as an order confirming the detention was passed subsequently on 15.02.2016 and the petitioner was directed to pay tax of Rs.3,28,266/- under Section 45 (7) (a) of the Andhra Pradesh Value Added Tax Act, 2005 (for brevity, 'the Act'), it would suffice if the respondents are directed to release the goods on payment of the aforesaid sum of Rs.3,28,266/-; and the petitioner would avail the statutory remedy of an appeal against the said order.

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".

It is evident from the aforesaid provision that, where the goods being carried in the vehicle are not accompanied by all the documents, the authorities at the check post are empowered to release the goods on payment of tax on the invoice value of the goods. The power of the respondents to impose penalty is only after the person concerned is afforded an opportunity of being heard.

In the present case, a show cause notice is said to have been issued on 15.02.2016 proposing to impose penalty on the subject goods. While the proviso to Rule 55 (1) of the Rules does show that issue of a waybill is not necessary in respect of transport of the goods in Schedule-I, and seeds are listed at Entry-44 of the First Schedule, Sri Sk.Jeelani Basha, learned Special Standing Counsel for Commercial Taxes, would submit that, in view of the subsequent insertion of Rule 55 (2) of the Rules by G.O.Ms.No.26 dated 05.02.2015, even such goods are required to be accompanied by a waybill. The fact, however, remains that the proviso to Rule 55 (1) of the Rules has not been deleted even after the amended Rule 55 (2) of the Rules was inserted. It is, however, unnecessary for us to dwell on this aspect any further as
Sri V.Bhaskar Reddy, learned counsel for the petitioner, would agree that the goods could be released on payment of tax on the value of the goods as reflected in the detention notice.

Ends of justice would be met if the respondents are directed to release the goods, and the vehicle in which it is carried, on the petitioner furnishing proof of payment of tax of Rs.3,28,266/-. The tax so paid shall be subject to the appeal, which the petitioner may file against order dated 15.02.2016. It is also made clear that this order shall not preclude the respondents from continuing the penalty proceedings already initiated by them.

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.

<u>Note:</u>

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