THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLR SRI JUSTICE M.SATYANARAYANA MURTHY

WRIT PETITION NO.43142 OF 2015

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

Heard Sri K.Srinivasa Rao, 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 notice of detention of goods at the check post dated 28.12.2015 is under challenge in this Writ Petition. It is the petitioner's case that medical equipment, worth 26,67,300/-, was being transported in the said vehicle from Philips India Limited, Chennai to the petitioner's branch at Vijayawada; the petitioner is a dealer registered under the Andhra Pradesh Value Added Tax Act, 2005; and merely on the ground that the CST waybill did not contain the vehicle number, the goods were detained.

The notice of detention dated 28.12.2015 records that, on inspection, goods were found to have been transported from Chennai to Vijayawada; they were covered by CST waybill, wherein the vehicle number was not mentioned; and, hence, the goods were being detained.

Section 45(7)(a) of the Act 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 in cases where all the documents, required to be carried in the vehicle, are not so carried, the goods can be released on payment of tax on the invoice value of the goods. The power to impose penalty, equivalent to twice the tax, can be exercised only after the dealer is given an opportunity of being heard.

As the petitioner is admittedly a registered dealer within the State of Andhra Pradesh, ends of justice would be met if the goods and the vehicle are directed to be released forthwith on the petitioner furnishing proof of payment of VAT on the invoice value of the goods. Needless to state that the tax so paid by the petitioner shall be subject the to assessment order to be passed by the concerned authorities later. It is also made clear that this order shall not preclude the respondents from initiating penalty proceedings, if they so chooses, in accordance with law.

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

(RAMESH RANGANATHAN, J)

(M.SATYANARAYANA MURTHY, J)

4th January 2016

Note:- Issue CC today
B/O
RRB