THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN
And

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

WRIT PETITION No.8349 of 2016

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

Heard Sri V.M.M.Chary, 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 proceedings under challenge in this Writ Petition is the detention notice dated 04.03.2016 in Form-610, and the consequential show cause notice dated 08.03.2016. By the detention notice dated 04.03.2016, the petitioner was informed that, on inspection of the vehicle, it was found that the e-waybill contained the vehicle number in handwriting though it should have been generated electronically. Pursuant thereto, a show cause notice dated 08.03.2016 was issued calling upon the petitioner to pay tax or to furnish bank guarantee equivalent to two times the tax for releasing the vehicle along with the goods. The petitioner was called upon to pay Rs.1,14,470/- at 14.5% on the value of the goods of Rs.7,89,453/- under the provisions of Section 45 (7) (a) of the Andhra Pradesh Value Added Tax Act, 2005 (for brevity, 'the Act').

The goods, detained at the check post, is transformer oil supplied by BHEL, Chennai to the Andhra Pradesh Power Generation Corporation. While the former is a Government of India undertaking, the latter is a Government of Andhra Pradesh Corporation.

Section 45 (7) (a) of the Act enables detention of goods, being carried in a vehicle, if the documents referred to in Section 45 (2) (b) of the Act are not to be found therein. The said provision also confers power on the officer to collect the tax payable on the goods so carried; and to 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 affected thereby. The power to impose penalty is only after giving the person affected an opportunity of being heard and the authority has, in the present case, rightly chosen not to impose penalty, and has called upon the petitioner to pay tax under the Act on the value of the goods.

Sri V.M.M.Chary, learned counsel for the petitioner, would draw attention of this Court to Entry-116 of Schedule-IV in support of his submission that, since the subject goods are lubricants, they are required to be taxed only at 5% and not at 14.5%. The power conferred on the authority at the check post is to collect the tax payable on the goods so carried. As the question, whether the subject goods fall within the ambit of Schedule-IV or not, can only be examined *prima facie* by the check post authorities and shall, in any event, be subject to the assessment to be made thereafter on the A.P.Genco, we consider it appropriate to direct the petitioner to pay tax on the value of the goods, as determined by the check post authorities, on behalf of the third respondent who is a registered dealer within the State of Andhra Pradesh. On proof of payment of tax, as aforementioned, being furnished the vehicle, and the goods being carried therein, shall be released forthwith. It is made clear that this order shall not preclude the third respondent from claiming refund, of the tax so paid, in accordance with law, in case it is found later that they are not liable to pay the tax collected by the check post authorities. It is also made clear that the respondents are not precluded from initiating penalty proceedings 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 MURTHY, J

16th March, 2016.

Tsy