HON'BLE SRI JUSTICE RAMESH RANGANATHAN
AND
HON'BLE SRI JUSTICE SURESH KUMAR KAIT

WRIT PETITION No.12120 of 2016

ORDER : (*Per Hon'ble Sri Justice Ramesh Ranganathan*)

Heard Sri P.Karthik Ramana, learned counsel for the petitioner, and Sri Shaik Jeelani Basha, learned Special Standing Counsel for Commercial Taxes, and with their consent, the writ petition is disposed of at the stage of admission.

The order of penalty dated 24.03.2016 passed by the 1st respondent in Form VAT 203 for the period 30.06.2013 to 30.06.2015 imposing penalty of Rs.3,40,942/-, under Section 53 (3) of the AP VAT Act (for short 'the Act') is questioned in this writ petition as an order passed without jurisdiction.

A show cause notice in Form VAT 203A dated 12.02.2016 was issued calling upon the petitioner to show cause why 100% penalty under Section 53 (iii) of the Act should not be imposed upon them. On the ground that the petitioner failed to submit a reply thereto, the impugned order of penalty came to be passed. Aggrieved thereby the petitioner has invoked the jurisdiction of this Court.

Section 53 (3) of the Act stipulates that any dealer who has under declared tax, and where it is established that fraud or willful neglect has been committed, he shall be liable to pay penalty equal to the tax under declared, besides being liable for prosecution. To attract Section 53 (3) of the Act, not only should the dealer have under declared tax, but it must also be established that fraud or willful neglect has been committed by him. Mere under declaration of tax would not suffice and, in addition thereto, not only should the respondents have alleged that the dealer had committed fraud or willful neglect, but must also establish the same.

In the present case, the show cause notice does not even allege fraud or willful neglect. In **M/s. VPL Projects Private Limited vs. Commercial Tax Officer** (order in W.P.No.214 of 2016 dated 23.02.2016), a Division Bench of this Court, following its earlier order in **Viceroy Hotels Limited vs. Commercial Tax Officer**[1]**,** observed that a distinction between Section 53 (1) and Section 53 (3) of the Act was that the ingredients of the latter are attracted where fraud or commission of neglect has been established in under declaration of tax; and, in cases where the show cause notice does not even refer to the jurisdictional facts necessary for imposing penalty under Section 53 (3) of the Act, the order levying penalty under Section 53 (3) of the Act must be set aside.

Following the said judgment, and in terms thereof, the impugned order of penalty is set aside. It is made clear that this order shall not preclude the respondents, if they so choose, from initiating penalty proceedings afresh in accordance with law.

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

RAMESH RANGANATHAN, J

SURESH KUMAR KAIT, J

19.04.2016
v v

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[1] (2011) 43 VST 424 (AP)