THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

WRIT PETITION NO.23504 OF 2016

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

Heard Smt. S.Nanda, 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 petitioner was carrying an excavator from the State of Karnataka into the State of Andhra Pradesh. On the ground that these goods were not accompanied by an e-waybill and a tin number, the subject goods were detained on 07.07.2016 and a notice in Form VAT 610 was issued. Thereafter, notice dated 10.07.2016 was issued calling upon the petitioner to show cause, and pay the tax, twice the amount of tax as penalty, and also the compounding fee. The petitioner has invoked the jurisdiction of this Court questioning the action of the respondents in detaining the goods and the vehicle.

Section 45(3)(b) of the Act, as amended by the Andhra Pradesh Act 4 of 2016, provides that, upon examination and inspection of the vehicle, if it appears that the sale and purchase of the goods being carried has, for the purpose of payment of tax, not been properly accounted for in the documents, referred to in Section 45(2)(b) of the Act, the goods may be detained and thereafter released on payment of tax and furnishing security for an amount equal to two times the amount of tax payable. Section 45(2)(b) of the Act enables the check post authorities to detain the goods where the goods being carried have not been property accounted for in such documents as may be prescribed. The amended Rule 55 of the Andhra Pradesh Value Added Tax Rules requires such documents to include an advance e-waybill.

To the extent that the check post authorities had directed payment of tax and furnish security equivalent to twice the tax amount, for failure of the petitioner to submit an advance e-waybill, their action cannot be faulted. Exercise of power to impose the compounding fee is, however, illegal as Section 61, which relates to compounding of an offence, enables an offence to be compounded on the volition of the defaulter, and not otherwise. We consider it appropriate, in such circumstances, to dispose of the Writ Petition directing the respondents to release the subject goods and the vehicle forthwith on the petitioner furnishing proof of payment of tax on the value of the goods and twice the said amount as security. The amount so paid by the petitioner shall be subject to the final orders which the authority may pass pursuant to the show cause notice issued to the petitioner earlier on 10.07.2016.

The Writ Petition stands 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)

18th July 2016

Note: Issue CC by tomorrow
B/O
RRB