HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN
AND
HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

WRIT PETITION No.33848 OF 2016

ORDER: (Per Hon'ble The Acting Chief Justice Ramesh Ranganathan)

Heard Smt. Shravya Desai, learned counsel for the petitioner, and Sri 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 order in Form VAT 203 dated 05.02.2016 subjecting the petitioner to penalty, under Section 53(3) of the A.P. Value Added Tax Act, 2005 (for short 'VAT Act'), of Rs.10,71,861/-.

Smt. Shravya Desai, learned counsel for the petitioner, would draw our attention to the notice of penalty, in Form VAT 203-A dated 30.03.2015, to contend that the show cause notice makes no allegation of either fraud or willful neglect; and as the jurisdictional facts, necessary to establish that the petitioner had either committed fraud or willful neglect, have not been stated in the show cause notice, the impugned order of penalty is vitiated for violation of principles of natural justice as the petitioner was denied an opportunity of submitting an effective reply to the show cause notice.

The facts necessary to confer jurisdiction on the assessing authority, to levy penalty under Section 53(3) of the VAT Act, are those which would establish that the assessee had either committed fraud or willful neglect in declaring the tax due and payable by them. It is only if fraud or willful neglect is established can 100% penalty, under Section 53(3) of the VAT Act, be imposed. The show cause notice merely extracts Section 53(3) of the VAT Act, and contains no allegation of the petitioner having either committed fraud or willful neglect. As the show cause notice contains no allegation attracting the ingredients of Section 53(3) of the VAT Act, it is evident that the petitioner has been denied the opportunity of submitting an effective reply thereto. The impugned order of penalty must therefore be, and is accordingly, set aside. It is made clear that this order shall not preclude the respondents from issuing a notice afresh in Form VAT 203-A, and to thereafter take action against the petitioner in accordance with law.

The Writ Petition stands disposed of accordingly. No costs.

As a sequel thereto, Miscellaneous Petitions, if any pending in the writ petition stand disposed of.

RAMESH RANGANATHAN, ACJ

A. SHANKAR NARAYANA, J

October 19, 2016.

PV/Mgr