THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

WRIT PETITION NO.23936 OF 2016

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

Heard Sri K.Jagadhsiwar Reddy, 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 action of the respondents, in detaining the goods and the vehicle on the ground that the vehicle did not stop at the check post, is questioned in this Writ Petition as being illegal and arbitrary.

During the course of transportation of the subject goods from Jeedimetla, Hyderabad in the State of Telangana to Maddiledu Post, Srikalahasthi in the State of Andhra Pradesh, the vehicle, carrying the subject goods, was required to stop at Dhachepalli Check Post. On the ground that the vehicle did not stop thereat, and the way bill being carried in the vehicle could not be verified at the check post, the respondent authorities chased and, thereafter, detained the vehicle and the goods. The petitioner was called upon to pay Rs.1,00,000/- towards compounding fee under Section 61(1)(iii) of the Andhra Pradesh Value Added Tax Act, 2005 ("the Act" for brevity) for the offence punishable under Section 59 of the Act.

The amended Section 59 of the Act reads as under:

> *"Any dealer who obstructs the authority prescribed in the performance of his duties under the Act or the driver or any person in-charge of the goods vehicle or vessel who fails to stop the vehicle or vessel when so required by any officer prescribed shall on conviction be punishable with imprisonment for a term which shall not be less than one month but which may extend to six months and with fine."*

The said provision enables the authorities to prosecute the dealer who obstructs the authority in the performance of his duties, or the driver or person in charge of the goods vehicle who fails to stop the vehicle; and, on conviction, the punishment which can be imposed is imprisonment for a term which shall not be less than one month but which may extend to six months and with fine. The said provision does not empower the respondent-authorities to detain the vehicle or the goods therein if all the documents, required to be carried in the said vehicle, are so carried.

Sri K.Jagadishwar Reddy, learned counsel for the petitioner, would question the power of the authorities to detain the goods and the vehicle.

Today Sri S.Suri Babu, learned Special Standing Counsel for Commercial Taxes, on instructions, would submit that, while all the documents were being carried in the vehicle, the driver had failed to stop the vehicle at the check post and to get the documents stamped thereat; and it is only on the vehicle being intercepted, after it had crossed the check post, that the vehicle was stopped by the driver.

It is only if power is conferred under the Act to detain the vehicle and the goods, for violation of the provisions of the Act and the Rules, can it be exercised by the officials concerned. While failure on the part of the driver of the vehicle to carry all the documents, required to be carried in the vehicle, would enable the authorities to detain the goods till tax is paid on the value of the goods and two times tax as security is furnished, once it is found that all the documents, required to be carried in the vehicle, are being so carried, the only power conferred on the authorities, for failure of the driver to stop the vehicle, is to launch prosecution against him under Section 59 of the Act.

Section 61(1)(iii)(aa) of the Act enables transporters, who commit an offence under Section 59 of the Act, to compound the offence on payment of a sum not exceeding Rs.1,00,000/-. Compounding of an offence is on the volition of the person who has committed the offence, and no person can be forced to compound any offence under Section 61 of the Act. Refusal to compound the offence would only enable the competent authority to launch prosecution against the person concerned under Section 59 of the Act.

Leaving it open to them to initiate proceedings under Section 59 of the Act, the Writ Petition is disposed of directing the respondents to release the vehicle and the goods forthwith. There shall be no order as to costs. Miscellaneous petitions, if any, pending shall stand closed.

(RAMESH RANGANATHAN, J)

(U.DURGA PRASAD RAO, J)

21st July 2016

Note: Issue CC by tomorrow
B/O
RRB