THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

WRIT PETITION NO.21467 OF 2016

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

Heard Sri M.V.J.K.Kumar, learned counsel for the petitioner and Sri T.Vinod Kumar, 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 penalty order dated 09.03.2016 confirming the proposed penalty of Rs.9,10,824/-. The respondent had earlier issued a notice for penalty in Form 203A dated 28.10.2015 recording that the petitioner had failed to pay VAT of Rs.9,10,824/- as shown in Form VAT 200; and it was proposed to levy penalty at 100% of the tax due.

Section 53(3) of the Telangana Value Added Tax Act ("the Act" for brevity) stipulates that any dealer who has under declared tax, and where it is established that fraud or wilful neglect has been committed, he shall be liable to pay penalty equal to the tax under declared besides being liable for prosecution. Under the proviso thereto, before levying penalty under this Section, the authority prescribed shall give the dealer a reasonable opportunity of being heard.

Penalty under Section 53(3) of the Act can be imposed only if the assessing authority records a *prima facie* finding of fact that the petitioner had under-declared tax, and had also committed fraud or wilful neglect. It is only if these judisdictional facts are discernable from the show cause notice, can the penalty order be justified.

In the present case, the show cause notice neither refers to Section 53(3) of the Act nor are its ingredients mentioned therein. There is no allegation of fraud or wilful neglect in the show cause notice. 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, if they so choose, from putting the petitioner on notice afresh and, thereafter, passing a penalty order in accordance with law.

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)

5th July 2016
RRB