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THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

And

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

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WRIT PETITION No.3632 of 2016

ORDER: (per Hon'ble Sri Justice Ramesh Ranganathan)

Heard Sri T.C.Krishnan, learned counsel for the petitioner, and Sri Sk.Jeelani Basha, learned Special Standing Counsel for Commercial Tax, and, with their consent, this Writ Petition is being disposed of at the stage of admission.

The proceedings under challenge in this Writ Petition is the detention notice issued in Form-610 dated 02.02.2016 detaining the goods on the ground that, while the CST waybill shows the commodity as 'Refrigerators', what was being transported was only 'Air Conditioners'.

Sri T.C.Krishnan, learned counsel for the petitioner, would draw attention of this Court to the waybill dated 01.02.2016 issued by the Commercial Tax Department of the Government of Telangana wherein the goods are mentioned as 'Air Conditioners', to submit that it was a clerical error which resulted in the goods being mentioned as 'Refrigerators' in the waybill issued by the Commercial Tax Department of the Government of Andhra Pradesh.

Section 45 (7) (a) of the Andhra Pradesh Value Added Tax Act, 2005 reads as under:

> "Where goods are carried without paying tax, if any, payable or goods are carried without being properly accounted for in the documents referred to in clause (b) of sub-Section (2), the said officer shall collect the tax payable on the goods so carried and in addition levy a penalty not exceeding two times the amount of tax payable on such goods after giving a reasonable opportunity to the person likely to be effected, against the proposed penalty".

In view of the aforesaid provision where all the documents, required to be carried with the vehicle, are not so carried, the authorities at the check post are empowered to levy VAT on the invoice value of the goods, and twice the tax as penalty. Before imposing penalty, the person concerned is required to be given an opportunity of being heard. The petitioner is a registered dealer in the State of Andhra Pradesh.

We consider it appropriate, therefore, to direct the respondents to release the goods and the vehicle forthwith on the petitioner furnishing proof of payment of VAT on the invoice value of the goods. The tax so paid shall be subject to the assessment order to be passed by the authorities in accordance with law. It is made clear that this order shall not preclude the respondents, if they so chose, from initiating penalty proceedings in accordance with law.

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

RAMESH RANGANATHAN, J

M.SATYANARAYANA MURTHY, J

05th February, 2016.

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