THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

WRIT PETITION No.26968 OF 2016

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

Heard Mrs. Shravya Desai, learned counsel for the petitioner and Sri Shaik Jeelani Basha, learned Special Standing Counsel for Commercial Taxes and, with their consent, the writ petition is disposed of at the stage of admission.

The proceeding under challenge in this writ petition is the penalty order passed by the Deputy Commercial Tax Officer, Steel Plant Circle, Visakhapatnam dated 25.6.2016 recording that the dealer did not file any objections to the show cause notice dated 2.6.2016; and, therefore, penalty of 100% under Section 53(3) of the A.P. VAT Act, 2005 (for short 'the Act') for Rs. 26,89,061/- was being imposed. The petitioner's case, however, is that a letter was addressed to the Deputy Commercial Tax Officer and was served on her on 22.6.2016 requesting for grant of thirty (30) days time to submit his objections, as he was suffering from ill-health.

Sri Shaik Jeelani Basha, learned Special Standing Counsel for Commercial Taxes, on instructions, would submit that, while the letter was no doubt addressed to the Deputy Commercial Tax Officer, the said letter was handed over in the Office of the Commercial Tax Officer on 22.6.2016; and the said letter was not sent to the Deputy Commercial Tax Officer by the time the order came to be passed on 25.6.2016.

While Mrs. Shravya Desai, learned counsel for the petitioner, would contend that the seal of the Commercial Tax Officer is used even by the Office of the Deputy Commercial Tax Officer and the letter was, in fact, handed over in the Office of the Deputy Commercial Tax Officer on 22.6.2016 itself, it is wholly unnecessary for us to delve on this aspect, as it is not in dispute that the petitioner had submitted the letter dated 22.6.2016 seeking adjournment of 30 days on grounds of ill-health, and the said letter was received by the Commercial Tax Department on the same day i.e., on 22.6.2016, three days before the impugned order came to be passed on 25.6.2016. Even if the said letter, as is now contended before us by Sri Shaik Jeelani Basha, was handed over to the Office of the Commercial Tax Officer on 22.6.2016, the delay on his part in forwarding it to the Deputy Commercial Tax Officer should not result in prejudice being caused to the dealer by imposition of 100% penalty under Section 53(3) of the Act.

We consider it appropriate, in such circumstances, to set aside the order of penalty. The petitioner shall, within two weeks from today, submit his reply to the show cause notice and, if he seeks a personal hearing, the 1st respondent shall, after affording him an opportunity of personal hearing, pass a fresh order of penalty in accordance with law. The entire exercise, culminating in a fresh order being passed, shall be completed within a period of two months from the date of receipt of a copy of this order.

The writ petition stands disposed of accordingly. The miscellaneous petitions pending, if any, shall also stand disposed of. There shall be no order as to costs.

(RAMESH RANGANATHAN, ACJ)

(U.DURGA PRASAD RAO, J)

22nd August 2016

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Date: 22.08.2016

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