THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN
AND
THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

WRIT PETITION NO.18374 OF 2016

ORDER: *(Per Hon'ble Sri Justice Ramesh Ranganathan)*

The petitioners who are the owner of the goods, and the transporter who transported the goods in their vehicles, have invoked the jurisdiction of this Court questioning the notice whereby they were called upon to show cause why action should not be taken against them under Section 59 of the Andhra Pradesh Value Added Tax Act, 2005, and the offence not be compounded on payment of Rs.1,00,000/-.

Sri K. Durga Prasad, learned counsel for the petitioner, does not press for the claim for damages, and would submit that it would suffice if the respondents are directed to forthwith release the vehicle and the goods being carried therein.

The allegation levelled against the petitioner is that the vehicle, in which the goods were being transported, had failed to stop as required by the authorities at the border check post. It is not as if the documents, which were required to be carried in the vehicle transporting the goods, were not found in the vehicle or that there was any other statutory violation on the part of the petitioners herein. As the show cause notice dated 25.05.2016 did not specify any other violation on the part of the petitioner, we asked Sri Shaik Jeelani Basha, learned Special Standing Counsel for Commercial Taxes (Andhra Pradesh) to ascertain whether all the documents, required to be carried in the vehicle, were so carried. Sri Shaik Jeelani Basha, learned Special Standing Counsel for Commercial Taxes (Andhra Pradesh), on instructions, would submit that, while the documents required to be carried in the vehicle were carried by the transporter, the driver of the vehicle had failed to stop the vehicle when he was asked to do so; and he had thereby violated Section 59 of the Andhra Pradesh Value Added Tax Act, 2005 justifying the offence being compounded under Section 61 thereof.

Even if it were to be presumed that Section 59 is attracted, the said provision merely empowers the respondents to launch prosecution either against the dealer or the transporter or the driver of the vehicle, and it is only on their being convicted by a competent Criminal Court can they be punished either with imprisonment or with imprisonment and fine.

Section 61 of the AP VAT Act, which relates to compounding of offences, is on the volition of the dealer. No dealer can be compelled to compound an offence under Section 61 of the Act. Detention of the goods and the vehicle by the third respondent is, therefore, contrary to law and is illegal. The third respondent shall forthwith release the vehicle and the goods. It is made clear that this order shall not preclude the third respondent from exercising the powers conferred under Section 59 of the Act, and launch prosecution proceedings against the petitioners in accordance with law.

The Writ petition is disposed of accordingly. No order as to costs. Consequently, miscellaneous petitions, if any, pending in this Writ Petition shall stand closed.

JUSTICE RAMESH RANGANATHAN

JUSTICE M.SATYANARAYANA MURTHY

14.04.2016.
SP

Note: cc tomorrow
b/o
sp