THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

<u>WRIT PETITION No.21188 of 2016</u>

<u>ORDER</u>: (per Hon'ble Sri Justice Ramesh Ranganathan)

Heard Sri S.Dwarakanath, learned counsel for the petitioner, and Sri Shaik Jeelani Basha, learned Special Standing Counsel for Commercial Taxes (A.P) for the respondents, and, with their consent, the writ petition is disposed of at the stage of admission.

The penalty order in Form VAT 203 dated 28.04.2016 is subjected to challenge in this writ petition on two grounds. Firstly, that the petitioner was not afforded an opportunity of a personal hearing; and, secondly, that the respondents lacked jurisdiction to levy penalty at 100%, as the show cause notice does not satisfy the ingredients of Section 53 (3) of the A.P. VAT Act, 2005 (for short 'the Act').

While the petitioner had claimed to have submitted their reply to the show cause notice, and that a copy thereof was delivered in the Office of the Commercial Tax Officer on 19.04.2016, the impugned order of penalty records that the petitioner had failed to file any written objections.

Sri Shaik Jeelani Basha, learned Special Standing Counsel for Commercial Taxes (A.P.), on instructions, would fairly state that the written objections filed in the Office was not brought to the notice of the assessing authority; in the said written objections, the petitioner had sought a personal hearing; and as the assessing authority was unaware of the written objections having been filed on 19.04.2016, the impugned order came to be passed.

As it is now admitted that the petitioner herein had filed their written objections to the show cause notice on 19.04.2016, and the impugned order came to be passed thereafter on 28.04.2016, the impugned penalty order, in Form VAT 203 dated 28.04.2016, is set aside. The respondents shall, after affording the petitioner an opportunity of a personal hearing, pass an order of penalty afresh in accordance with law. Needless to state that it is open to the petitioner to raise all such objections as are available to them in law, including that the ingredients of Section 53 (3) of the Act are not satisfied, during the course of personal hearing.

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

JUSTICE RAMESH RANGANATHAN

JUSTICE M. SATYANARAYANA MURTHY

Date:11.07.2016

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