THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

Writ Petition Nos.40978 and 41009 of 2016

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

The proceedings, under challenge in these writ petitions, are the orders passed by the Commercial Tax Officer dated 2.8.2016 and 30.8.2016 levying penalty on the petitioner under Section 53(3) of the Andhra Pradesh Value Added Tax Act, 2005 (for short 'the Act') at 100% of the tax due. Pursuant to show cause notice issued to them on 29.6.2016, the petitioner filed letter dated 8.7.2016 seeking time. Thereafter, they filed another letter dated 22.7.2016 stating that they were preferring an appeal before the Appellate Deputy Commissioner and, therefore, penalty proceedings should be kept in abeyance. However, to the other show cause notice dated 25.4.2016, they did not file any objections.

Sri S. Dwarakanath, learned counsel for the petitioner, would submit that the show cause notices for penalty merely mention that the petitioner had not only paid lower rate of tax at 5% on Ammonium Nitrate instead of 14.5% but had also suppressed 9.5% tax on the sale turn over of Ammonium Nitrate, and this was wilful evasion and penalty at 100% should be paid; the show cause notices do not contain the jurisdictional facts necessary to show that the petitioner had either committed fraud or had under declared tax because of wilful neglect; it is only in such circumstances can penalty proceedings, under Section 53(3) of the Act, be initiated; the dispute, in the present cases, relate to the rate of tax which is applicable; the petitioner had specifically stated, in their reply to the assessment show cause notice, that their assessment was completed upto November, 2011 and the Commercial Tax Department had accepted the rate of tax at 5% on Ammonium Nitrate sold by them; it is for the first time, by the assessment order passed prior to the order of penalty were they sought to be taxed at the higher rate; and the dispute regarding the applicable rate of tax would not fall within the ambit of Section 53(3) of the Act.

While the petitioner may not have been justified in expecting the respondent to await the result of the appeal preferred by them before initiating penalty proceedings, or that they should have been granted time on this ground, it is evident, from their reply to the assessment show cause notice, that, prior to November, 2011, the petitioner's returns, on payment of VAT at 5%, were accepted. Instead of examining the petitioners contention that the impugned penalty orders, and the show cause notices preceding thereto, did fall within the ambit of Section 53(3) of the Act, we consider it appropriate to grant the petitioner another opportunity of filing their objections to the show cause notices, as it does appear that, for the period prior to November, 2011, their monthly returns, filed along with VAT at 5% on Ammonium Nitrate, were accepted by the Department. The impugned orders of penalty are, accordingly, set aside. The petitioner shall, within fifteen days from today, file their reply to the show cause notices; and the 1st respondent shall, within two months from the date of receipt of the petitioner's objections to the show cause notices, pass orders of penalty afresh and in accordance with law.

The writ petitions shall stand 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)

(A. SHANKAR NARAYANA, J)

28th November, 2016

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THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN

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THE HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

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Date: 28.11.2016

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