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

Writ Petition No.5775 of 2016

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

Heard both Sri M.V.J.K.Kumar, learned counsel for the petitioner, and Sri S.Suri Babu, learned Special Standing Counsel for Commercial Taxes, and, with their consent, the writ petition is disposed of at the stage of admission. The proceedings under challenge in this writ petition, is the order of penalty issued under Sections 53(1) and 53(3) of the A.P.Value Added Tax Act, 2005 (for short "the Act") levying penalty of Rs.6,05,813/- on the petitioner.

Aggrieved by the assessment order, for the tax period 2013-2014 to 2015-16, the petitioner carried the matter in appeal to the Appellate Deputy Commissioner who, by his order dated 28.01.2016, partly allowed the appeal remanding the matter to the Assessing Authority, and partly dismissed the appeal. In so far as denial of ITC on the purchase of pulses and dhalls, restriction of ITC under Rule 20 the A.P.Value Added Tax Rules, 2005 (for short "the Rules"), and contingent purchase tax under Section 4(4) of the Act are concerned, the Appellate Authority set aside the assessment order and remanded the matter to the Assessing Authority. However, in so far as tax on variation of stocks is concerned, the appeal preferred by the petitioner was dismissed.

When the appeal was pending before the Appellate Deputy Commissioner, the Assessing Authority issued penalty show cause notice dated 23.10.2015 and, thereafter, passed an order of penalty for Rs.6,05,813/-. While penalty, under Section 53(1) of the Act, i.e for 10% of the tax, on purchase of goods under Section 4(4) of the Act, was imposed, penalty under Section 53(3) of the Act was imposed for the other items. As the assessment order itself has been set aside, and the matter was remanded to the Assessing Authority in so far three out of the four items detailed hereinabove are concerned, the consequential order of penalty must be and is, accordingly, set aside. It is made clear that this order shall not preclude the Assessing Authority, after passing an assessment order afresh, from initiating penalty proceedings, if he so chooses, in accordance with law.

However, in so far as the penalty of Rs.54,432/-, imposed on stock variations noticed on 28.05.2015, is concerned, penalty was levied on the petitioner under Section 53(3) of the Act. Section 53(3) of the Act is attracted where a dealer has under-declared tax and where it is established that fraud or wilful neglect has been committed by him. Mere under-declaration of turnover would not suffice to attract the ingredients of Section 53(3) of the Act and, in addition thereto, it must be established that fraud or wilful neglect has been committed by the dealer. Neither the show cause notice nor the order of penalty satisfy the ingredients of Section 53(3) of the Act nor is there any reference therein to the jurisdictional facts necessary to make out a case of fraud or wilful neglect attracting the ingredients of Section 53(3) of the Act.

In the absence of the conditions stipulated in Section 53(3) of the Act being satisfied, the impugned order of penalty must be and is, accordingly, set aside. It is made clear that this order shall not preclude the Assessing Authority, if he so chooses, from initiating penalty proceedings afresh, on this turnover also, in accordance with law.

The writ petition is disposed of accordingly.

The 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

Date: 01.03.2016

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THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

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