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

Writ Petition No.2589 of 2016

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

Heard Sri S.Krishna Murthy, 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 proceedings under challenge in this writ petition is the notice detaining the goods at the Check Post under Rule 56(1)(a) of the A.P.Value Added Tax Rules, 2005 dated 16.01.2016. The goods were detained on the ground that the way bills produced by the driver of the vehicle showed the value of the goods as Rs.23,02,834/-, whereas the invoice value of the goods was shown as Rs.12,17,064/-; while the invoice was dated 31.12.2015, and the way bill was issued on 04.01.2016, the vehicle was intercepted on 16.06.2016 and, hence, there was a mismatch. The notice also records that the way bills do not contain the vehicle number; the transporter had failed to issue declaration in Form-650; the goods were transported in an auto, and the driver had stated that he had lifted the goods from the petitioner, and not through the transporter; and it was clear that the consignee of the goods was transporting the goods without any documents.

The way bill dated 04.01.2016 contains particulars of several items. While the value of spare parts, in terms of invoice No.475 dated 31.12.2015, is shown as Rs.12,17,064/-, and the total value recorded on various items under different invoices in the way bill as Rs.23,02,834/-, what was being transported was only the spare parts, in terms of invoice No.475 dated 31.12.2015, for a sum of Rs.12,17,064/-. To this extent, the notice of detention of goods is illegal. It is not in dispute that the vehicle was accompanied by the invoice and the way bill. Section 45(7)(a) of the A.P.Value Added Tax Act, 2005 reads thus:

> *"Where goods are carried without paying tax, if any, payable or goods are carried without being properly accounted for in the documents referred to in clause (b) of sub-section (2), the said officer shall collect the tax payable on the goods so carried and in additional levy a penalty not exceeding two times the amount of tax payable on such goods after giving a reasonable opportunity to the person likely to be effected, against the proposed penalty."*

In terms of the above said provision, if the documents required to be accompanied with the vehicle are not found, then the authorities of the Check Post are empowered to release the goods on payment of VAT on the invoice value of the goods. While the said provision confers power to impose penalty, such a power can only be exercised, if the dealer is given an opportunity of being heard.

Sri Shaik Jeelani Basha, learned Special Standing Counsel for Commercial Taxes, would submit that the petitioner is not a registered dealer in the State of Andhra Pradesh and, as such, it would be difficult for them to enforce any order of penalty, even if passed later.

Ends of justice would, therefore, be met, if the 2nd respondent is directed to release the goods on the petitioner furnishing proof of payment of VAT on the invoice value of Rs.12,17,064/-, and on their furnishing a bank guarantee, for twice the amount of tax, as penalty. Respondents 1 and 2 shall, if they so choose, initiate and complete penalty proceedings within three months from the date of receipt of a copy of this order, failing which the bank guarantee furnished by the petitioner shall be returned to him.

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: 05.02.2016

JSU

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

Writ Petition No.2589 of 2016

-

-

-

Date: 05.02.2016

JSU