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

WRIT PETITION No.4268 of 2016

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

The proceedings under challenge in this Writ Petition is the detention notice dated 23.01.2016 whereby the subject vehicle, carrying 933 kgs of plastic covers, was detained on the ground that it was not covered by any records. The subject vehicle was carrying plastic covers covered by two invoices of 1000 kgs each. However on the quantity of plastic covers, being carried in the vehicle, being verified, it came to light that, in addition to the 2000 kgs of plastic bags, an excess quantity of 933.70 kgs was being transported without any records.

Mrs. S.Nanda, learned counsel for the petitioner, would submit that, in so far as the excess quantity of 933.70 kgs of plastic carry bags are concerned and as they are not covered by any documents, the respondents cannot be faulted in initiating confiscation proceedings; and the petitioner would only be required to submit his reply thereto. She would, however, contend that the remaining quantity of 2000 kgs of plastic bags were detained without authority of law though the vehicle, wherein this quantity of 2000 kgs were being carried, was supported by all necessary documents.

Even with regards the quantity of 2000 bags which were supported by documents, the case of the respondents, as it appears from a bare perusal of the detention notice, is that the goods were under-valued and, while the value shown in the invoice was Rs.40/- per kg, the actual value of the goods was Rs.60/- per kg.

As the show cause notice made no reference to the basis on which the Deputy Commercial Tax Officer arrived at the figure of Rs.60/- per kg, we directed him to appear in Court along with the entire records today. A perusal of the records placed before us shows that the Deputy Commercial Tax Officer obtained statements from the Proprietors of SriKanakadurga

Traders, Tirupathi and Lakshminarayana Stores, Tirupathi to the effect that plastic covers were of three types, the best quality was for Rs.110/- per kg, the second quality was Rs.60/- per kg, and the third quality was Rs.35/- per kg; and the value of the goods, being carried, was Rs.60/- per kg. Both the statements are claimed to have been recorded on 02.02.2016 more than ten days after the goods were detained, and a day before the show cause notice was issued on 03.02.2016 for confiscation of the goods. If these two statements were indeed genuine, nothing prevented the Deputy Commercial Tax Officer from making available copies thereof to the petitioner along with the show cause notice, or atleast to make a reference thereto in the said show cause notice. Except for a vague statement that further local enquiry showed that the value was Rs.60/- per kg, the show cause notice makes no reference to either of these two statements.

While we were initially inclined to direct the Commissioner, Commercial Taxes to examine whether disciplinary proceedings should be initiated against the Deputy Commercial Tax officer, as it does appear to be a case of abuse of office, we refrain from doing so as the officer, who is present in Court today, has expressed regret and submits that he would be more careful in future.

As the petitioner is a registered dealer in the State of Andhra Pradesh, ends of justice would be met if the respondents are directed to release the 2000 kgs of plastic covers on the petitioner furnishing proof of payment of tax on the invoice value of the goods. The respondents are entitled to retain the remaining quantity of 933.70 kgs of plastic bags till confiscation proceedings are completed. Detention of 933.70 kgs of plastic bags shall be subject to the outcome of the confiscation proceedings initiated against the petitioner. The petitioner shall be entitled to claim credit, during assessment, on the tax paid by them on the invoice value of the goods. In so far as the alleged under-valuation is concerned, it is made clear that this order shall not preclude the respondents from putting the petitioner on notice; furnishing them all the documents concerned; and, thereafter, to take action in accordance with law.

The Writ Petition stands disposed of accordingly. 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

18th February, 2016.
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