THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

W.P.No. 4806 OF 2016

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

The proceedings under challenge in this Writ Petition is the detention notice issued by the Deputy Commercial Tax Officer – II, Ongole, dated 10-02-2016. The reasons for detaining the goods, as referred to in the said notice, is that, on physical verification, the quantity of polished granite found in the subject vehicle was 7,000 square feet whereas the quantity reflected in the invoice was only 6,000 square feet.

Sri S.Suri Babu, learned Special Standing Counsel for Commercial Taxes (A.P.), on instructions, would submit that, on physical verification of the goods, in the presence of both the check post authorities and the department of Mines and Geology, it is now determined that the detained vehicle was carrying 6,300 square feet of polished granite, and not 7,000 square feet as stated in the notice of detention. It is evident, therefore, that, to an extent of 300 square feet of polished granite, no documents were being carried in the vehicle.

While the petitioner asserts, in the affidavit filed in support of the Writ Petition, that the department of Mines and Geology had not even issued a notice to them, learned Government Pleader would submit, on instructions, that, while the Writ Petition was filed on 12-02-2016, a notice was issued to the petitioner even prior thereto on 10-02-2016; and it is only because the petitioner had failed to furnish details, of the source from which the material was procured, did the department of Mines and Geology not grant permission to transport the vehicle and the goods therein.

Section 45 (7) (a) of the Andhra Pradesh Value Added Tax Act, 2005 ("the Act" for short), stipulates that, where the 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 addition, levy 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.

It is not necessary for us to consider the question whether, for 300 square feet of polished granite which was not reflected in the invoice, Section 45 (3) (b) (ii) and Section 45 (7) (a) of the Act is attracted, or whether Section 45 (7) (b) of the Act is attracted as both Sri P.Girish Kumar, learned counsel for the petitioner, and Sri S.Suri Babu, learned Special Standing Counsel for Commercial Taxes (A.P.), would agree that, on the petitioner furnishing proof of payment of tax on the value of the 300 square feet of polished granite, and on their furnishing a bank guarantee for twice the said amount towards penalty, the subject goods could be released.

Ends of justice would, therefore, be met if the check post authorities are directed to release the goods on the petitioner furnishing (1) proof of payment of value added tax on the 300 square feet of polished granite which is not covered by the invoice; (2) an unconditional bank guarantee, valid for a period of six months, for twice the tax amount as penalty; and (3) permission from the department of Mines and Geology. The Department of Mines and Geology shall, on the petitioner furnishing satisfactory proof of the source from which they had procured the polished granite, accord permission for release of the goods from the check post.

The authorities concerned shall pass an assessment order at the earliest, and in any event not later than one month from the date of receipt of a copy of this order. It is also open to them to initiate penalty proceedings, if they so chose, thereafter in accordance with law. In case the respondents do not initiate penalty proceedings within two months from the date on which the assessment order is passed, the bank guarantee furnished by the petitioner shall be returned to them.

The Writ Petition stands disposed of accordingly. Pending miscellaneous petitions, if any, in this Writ Petition shall stand closed in consequence. No order as to costs.

RAMESH RANGANATHAN, J.

M.SATYANARAYANA MURTHY, J.

Date: 16^{th} February, 2015.

Note: Issue C.C. tomorrow.

B/O

JSK