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

WRIT PETITION No.428 of 2016

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

Heard Sri S.Krishna Murthy, learned counsel for the petitioner, and Sri Sk.Jeelani Basha, learned Special Standing Counsel for Commercial Tax, and, with their consent, this Writ Petition is being disposed of at the stage of admission.

The notice of detention of goods at the check post in Form-610 dated 21.12.2015 is subjected to challenge in this Writ Petition on the ground that the same is vague and, while referring to the fact that the goods were being transported from M.Palem to Dhuliya, Maharashtra under waybill and invoice, the respondents allege that it was without supporting documents. The contention of the learned counsel for the petitioner is that no details of the so-called supporting documents are furnished in the notice of detention. It is wholly unnecessary for us to delve on this aspect.

Section 45 (7) (a) of the Andhra Pradesh Value Added Tax Act, 2005 reads as under:

> "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 addition 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 view of the aforesaid provision, where all the documents, required to be carried with the vehicle are not so carried, the authorities at the check post are empowered to levy VAT on the invoice value of the goods, and twice the tax as penalty. Before imposing penalty, the person concerned is required to be given an opportunity of being heard. The petitioner is a registered dealer in the State of Andhra Pradesh.

We consider it appropriate, therefore, to direct the respondents to release the goods and the vehicle forthwith on the petitioner furnishing proof of payment of VAT on the invoice value of the goods. The tax so paid shall be subject to the assessment order to be passed by the authorities in accordance with law. It is made clear that this order shall not preclude the respondents, if they so chose, from initiating penalty proceedings 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

06th January, 2016.
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