

**THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN**

**AND**

**THE HON'BLE SRI JUSTICE A.SHANKAR NARAYANA**

WRIT PETITION NO.16904 OF 2016

**ORDER:** {Per the Hon'ble Sri Justice Ramesh Ranganathan}

Heard Sri P.Vijay Hindu, learned counsel appearing on behalf of 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 dated 24.03.2016 whereby 100% penalty was imposed on the petitioner under Section 53(3) of the Andhra Pradesh Value Added Tax Act, 2005 ("the Act" for brevity). Pursuant to a show cause notice issued by the first respondent on 09.03.2016, the petitioner vide letter dated 16.03.2016, a copy of which was received by the first respondent on 22.03.2016, sought twenty (20) days time to file their reply to the show cause notice. The first respondent, however, rejected their request to grant time on the ground that sufficient opportunity was given to the assessee during the course of assessment proceedings.

While penalty proceedings are, no doubt passed consequent upon an assessment order being passed, the proviso to Section 53(3) of the Act itself stipulates that, before levying penalty under Section 53(3) of the Act, a reasonable opportunity of being heard should to be afforded. The opportunity afforded to the petitioner of being heard, during the course of assessment proceedings, would not suffice. The impugned order is, therefore, set aside. The first respondent shall, after giving the petitioner an opportunity of being heard and, if he so requests, a personal hearing, pass penalty order afresh, in accordance with law at the earliest and in any event not later than three (3) months

from the date of receipt of a copy of this order.

The Writ Petition stands disposed of accordingly. There shall be no order as to costs. Miscellaneous petitions, if any, pending shall stand closed.

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**(RAMESH RANGANATHAN, J)**

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**(A.SHANKAR NARAYANA, J)**

25<sup>th</sup> July 2016

RRB