THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

WRIT PETITION NO.22286 OF 2016

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

Heard Sri A.Srinath, 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 petitioner's vehicle and the goods therein were detained on the ground that the driver did not stop the vehicle at the border check post, Kurnool; and his failure to do so was an offence under Section 59 and the amended Section 61 of the Andhra Pradesh Value Added Tax Act ("the Act" for brevity).

Sri A.Srinath, learned counsel for the petitioner, would submit that, while the petitioner was ready to pay tax on the value of the goods, and twice the said amount as security, pending finalisation of the assessment, the respondents were calling upon them to pay, in addition thereto, Rs.1,00,000/- for not stopping the vehicle at the check post.

Section 59 of the Act stipulates that any dealer who obstructs the authority prescribed in the performance of his duties under the Act shall, on conviction, be punishable with imprisonment for a term which shall not be less than one month but which may extend to six months and with fine. The power to impose the punishment of imprisonment is conferred, under Section 59 of the Act on the competent criminal Court, that too on conviction of the dealer. The amended Section 61 of the Act includes a transporter, and relates to compounding of offences. By virtue of the amended clause (aa) to Section 61, the offence can be compounded on the transporter paying a sum not exceeding Rs.1,00,000/-. Even after the amendment, it is only a competent criminal Court which can impose the punishment, prescribed under

Section 59 of the Act, on the transporter. The check post authorities cannot insist that the transporter pay Rs.1,00,000/- for having the offence compounded except on his volition. Whether or not the offence should be compounded by payment of fine of Rs.1,00,000/- is at the volition of the transporter, and cannot be imposed on him by the authorities at the check post.

Sri Shaik Jeelani Basha, learned Special Standing Counsel for Commercial Taxes, on instructions, would submit that, in case the petitioner furnishes proof of payment of tax on the value of the goods and twice the said amount as security, the detained goods shall be released; and the officials of the border check post would independently initiate proceedings under Section 59 of the Act against the petitioner-transporter.

As the petitioner is the transporter of the goods, we consider it appropriate to dispose of the Writ Petition directing the respondents herein to release the vehicle and the goods on the petitioner furnishing proof of payment of VAT on the value of the goods detained, and twice the said amount as security. Needless to state that the amount so paid shall be subject to the assessment to be finalised in respect of the person at whose behest the goods are being transported, and who is said to be a registered dealer in Kadapa. It is made clear that this order shall not preclude the respondents from initiating proceedings against the transporter under Section 59 of the Act.

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

(RAMESH RANGANATHAN, J)

(M.SATYANARAYANA MURTHY, J)

12th July 2016

NOTE: Issue CC by tomorrow

B/O

RRB