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

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W.P.No.5014 of 2016

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

Heard Sri B.Srinivas, 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.

A notice of detention of goods at the check post was issued on 26.01.2016 stating that the e-way bill contained an incorrect vehicle number. The petitioner was called upon to pay tax and penalty. Sri B.Srinivas, learned counsel for the petitioner, would draw attention of this Court to the statement of estimate of expenditure in support of his submission that the vehicle, whose number is mentioned in the e-way bill, broke down near Aurangabad necessitating the goods being shifted to another vehicle; and since the e-way bill had been generated earlier, and the vehicle number shown therein belonged to the vehicle which broke down, the petitioner was in no position to have the e-way bill corrected. Learned counsel would submit that, though the petitioner's liability to tax is only at the point of sale, they were willing to have the goods related on payment of tax on the value of the goods, as reflected in the detention notice; and, as they are registered dealers within the State of Andhra Pradesh, there is no justification for the respondents to insist that penalty also be paid, more so as the requirement, under Section 45(7)(a) of the A.P.Value Added Tax Act, 2005 (for short "the Act"), is only for payment of either tax or to furnish two times the said amount as security.

Section 45(7)(a) of the Act 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."

While failure to carry all the documents in the vehicle, through which the goods are transported, would enable the respondents not to release the goods till tax thereon is paid, penalty can only be imposed after giving the person concerned an opportunity of being heard. As the petitioner is a registered dealer within the State of Andhra Pradesh, we consider it appropriate to dispose of the writ petition directing the respondents to release the subject goods on the petitioner furnishing proof of payment of tax on the value of the goods as stated in the notice of detention. It is made clear that this order shall not preclude the respondents, if they so choose, from initiating penalty proceedings against the petitioner in accordance with law. Needless to state that the tax so paid shall be given credit to at the time of assessment.

The writ petition is disposed of accordingly. The miscellaneous petitions pending, if any, shall also stand disposed of. There shall be no order as to costs.

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RAMESH RANGANATHAN, J

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M. SATYANARAYANA MURTHY, J

Date: 17.02.2016

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THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

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