HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
HON'BLE Ms JUSTICE J.UMA DEVI

Writ Petition No.36001 of 2016

Order: (per V.Ramasubramanian, J.)

Aggrieved by the levy of tax and penalty, while releasing the goods seized by the 2nd respondent, the petitioner has come up with the present writ petition.

2. Heard Mr. Balaji Varma, learned counsel for the petitioner and Mr. Shaik Jeelani Basha, learned Special Standing Counsel for the Department.

3. It appears that the petitioner transported paper from Hyderabad, where they purchased it, to their head office at Vijayawada. At a point where they were unloading the goods at the midnight of 17-7-2016, the officers of the 2nd respondent office inspected the premises and seized the goods on the ground that a way bill was not produced. The petitioner issued two cheques one towards tax to the tune of Rs.46,292/- and another to the tune of Rs.92,584/- towards penalty at two times the tax.

4. However, the petitioner issued instructions to the Bank to stop payment of the 2nd cheque relating to the amount of penalty and raised a protest on 25-7-2016. But the 2nd respondent issued a notice dated 23-8-2016 threatening proceedings under Section 138 of the Negotiable Instruments Act, 1881, forcing the dealer to come up with the present writ petition.

5. The specific contention of the petitioner is that the paper was purchased at Hyderabad (Telangana) and transported to their head office at Vijayawada in Andhra Pradesh and that all documents accompanied the goods. But since the preparations for Krishna Pushkaram were on, the petitioner was not permitted to take the goods to the road in which their head office was located. Hence they had to unload the goods at their branch office, which is also in Vijayawada. The petitioner contends that the absence of a way bill, mentioning the name of the branch office cannot be put against them in such circumstances.

6. Though the learned Special Standing Counsel contends that the petitioner after having accepted the levy of tax and penalty, cannot challenge the same, we are of the view that the taxing statutes do not admit of any assessment or levy by way of concession by the assessee. If there is no liability to pay, the mere payment when goods were seized by the respondents, would not impose a liability upon the petitioner.

7. The contention that the petitioner was not permitted to take the goods through the road leading to their head office, on account of the preparations going on for Krishna Pushkaram, is not refuted by the respondents. Therefore, the respondents cannot stick on to the levy of penalty, without a proper proceeding for the levy of penalty. Admittedly, there was no order of adjudication relating to penalty. Therefore,

the demand for penalty without adjudication cannot stand scrutiny.

8. Hence, the writ petition is allowed and the impugned demand for penalty alone stands set aside, however with liberty to the respondents to initiate proceedings if permitted by law. The miscellaneous petitions, if any, pending in this writ petition shall stand closed. No costs.

V.RAMASUBRAMANIAN, J.

J.UMA DEVI, J.

23rd January, 2017.
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HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
HON'BLE Ms JUSTICE J.UMA DEVI

Writ Petition No.36001 of 2016
(per VRS, J.)

23rd January, 2017.
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