THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

AND

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

WRIT PETITION No. 32154 OF 2015

DATED 30TH OCTOBER, 2017

Between:

M/s. Afreen Organics & Proteins,
Plot No. 70, Industrial Park,
Venkatachalam, Nellore,
Rep. by its Authorized Representative
Mohd. Abdul Razzak … Petitioner

AND

The Assistant Commercial Tax Officer,
Border Check Post, Pondugula,
Guntur – II Division, Guntur and others … Respondents

Counsel for the petitioner : Sri K.Raji Reddy

Counsel for the respondents : Sri Shaik Jeelani Basha

THE COURT MADE THE FOLLOWING

ORDER: (*Per Hon'ble Sri Justice C.V.Nagarjuna Reddy*)

This Writ Petition is filed for issue of *certiorari* for quashing order dated 25-09-2015 in O.R…..No. in TIN No. 37187389034/2015-16, whereby tax and penalty of Rs.1,30,500/- were levied. The petitioner sought for a consequential direction to release vehicle bearing registration No. AP 25 W 9527 along with goods worth Rs.3,00,000/-.

2. We have heard Sri K.Raji Reddy, learned counsel for the petitioner, and Sri Shaik Jeelani Basha, learned Special Standing Counsel for Commercial Taxes (A.P.).

3. The petitioner is a registered dealer under the Andhra Pradesh Value Added Tax Act, 2005 (for short, 'the Act'), on the rolls of respondent No. 2. It is engaged in the manufacture and sale of organic manure. It is the pleaded case of the petitioner that after purchasing hoofs and horns from vendors and butchers, it crushes the same into pieces and sells the same as organic manure and that as there is no physical or chemical change in the end product, the same is not liable for tax. The petitioner further pleaded that when animal hoofs and horns, purchased from the unregistered dealers in Biloli of Maharashtra State, were being transported through a lorry, respondent No. 1 stopped the vehicle at Border Check Post,

Pondugala, Guntur, on 22-09-2015 at 10 p.m., detained the goods along with the lorry and issued notice in Form No. 610 on the ground that the vehicle is not covered by bill or waybill and also by transport declaration and that therefore the petitioner violated the Andhra Pradesh Value Added Tax Rules, 2005 (for short, 'the Rules'). By order dated 01-10-2015, this Court, while ordering notice before admission, directed release of the goods of the petitioner subject to its depositing the tax amount.

4. At the hearing, it is stated by learned counsel for the petitioner that in pursuance of the *interim* order, the petitioner has paid only the tax component of Rs.43,500/- excluding the penalty of Rs.87,000/- and got the goods released. However, learned counsel for the petitioner submitted that the seized goods are not liable for tax for the reason that they are in the nature of organic manure exempted from tax under Entry 26 of I Schedule of the Act. Learned Special Standing Counsel for Commercial Taxes (A.P.) has seriously disputed this submission by stating that whether the goods being transported by the petitioner are organic manure or not has to be determined by the assessing authority who is respondent No. 2. He has however admitted that the impugned proceedings dated 25-09-2015 were issued by respondent No. 1, whereunder apart from assessment of

tax of Rs.43,500/-, 200% penalty was imposed, even before objections were received from the petitioner.

5. A perusal of the impugned proceedings shows that a notice was issued on 22-09-2015 and served on the driver of the petitioner and that the impugned order was passed by respondent No. 1 on 25-09-2015. Learned Special Standing Counsel has not disputed that under Section 45 of the Act read with Rule 56 of the Rules, an officer not below the rank of Deputy Commercial Tax Officer is competent to levy tax and that respondent No. 1 is below the rank of the Deputy Commercial Tax Officer. Therefore, not only that proper opportunity was denied to the petitioner but also the authority competent to levy and demand tax has not issued the impugned order. Hence, the impugned order is set aside. The petitioner is permitted to submit objections to the proposed levy of tax and penalty to respondent No. 2 within three weeks from the date of receipt of a copy of this order. If objections are received, respondent No. 2 shall issue notice of personal hearing to the petitioner and thereafter pass a fresh assessment order. If no objections are received from the petitioner within the above stipulated time, respondent No. 2 need not hold personal hearing before passing assessment order. Deposit of the tax, demanded under the

impugned proceedings, by the petitioner in pursuance of the *interim* order of this Court shall be subject to the assessment order that may be passed by respondent No. 2.

6. The Writ Petition is accordingly allowed.

7. As a sequel to disposal of the Writ Petition, W.P.M.P.No. 41550 of 2015 shall stand closed as infructuous.

C.V.NAGARJUNA REDDY, J.

CHALLA KODANDA RAM, J.

Date: 30th October, 2017.
JSK