

THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN
AND
THE HON'BLE SRI JUSTICE A.SHANKAR NARAYANA

Writ Petition No.46484 OF 2016

ORDER: (Per the Hon'ble The Acting Chief Justice Ramesh Ranganathan)

Heard Sri I.Koti Reddy, learned counsel for the petitioner, and Sri Shiak 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 proceedings under challenge in this writ petition is the order dated 31.10.2016 passed in Form VAT 203 levying penalty at the rate of 100% under Section 53(3) of the Andhra Pradesh Value Added Tax Act, 2005 (for short "the Act"). While Section 53(1) of the Act enables penalty to be levied at 10%/25% for under-declaration of tax, Section 53(3) of the Act enables levy of penalty, equal to the tax under-declared, where it is established that the dealer had committed fraud or wilful neglect.

While use of the words fraud or wilful neglect in the order is not conclusive, it should be clear, from a reading of the order, that the petitioner has committed fraud or wilful neglect. Except to state that the dealer did not produce any material evidence in support of their claim for exemption, and did not produce the agreements which they had entered into with the farmers for purchase of paddy, there is no other finding recorded in the impugned order in this regard. The impugned order does not satisfy the ingredients of Section 53(3) of the Act.

We consider it appropriate, in such circumstances, to set aside the impugned order of penalty, and remand the matter to the assessing authority to pass an order afresh in accordance with

law, after affording the petitioner an opportunity of a personal hearing.

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

(RAMESH RANGANATHAN, ACJ)

(A.SHANKAR NARAYANA, J)

04th January, 2017
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