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

Writ Petition No.43033 of 2016

ORDER: (*per Hon'ble Sri Justice V. Ramasubramanian*)

Aggrieved by a show cause notice for confiscation issued under Section 45(7)(b) of the A.P. VAT Act (for short 'the Act'), a dealer has come up with the present writ petition.

2. Heard Sri M.V.J.K. Kumar, learned counsel for the petitioner and Sri S. Suri Babu, learned Special Standing Counsel for Commercial Taxes (AP).

3. The 2nd respondent herein inspected the goods in the vehicle bearing No.AP 28 TB 9208, pertaining to the 4th respondent herein while they were transporting taxable goods from Vijayawada to Tirupati. The 2nd respondent thereafter issued a show cause notice dated 21.10.2016 under Section 45(7)(b) of the Act, calling upon the petitioner to show cause as to why the goods should not be confiscated unless the petitioner furnishes the security equivalent to the value of the goods at Rs.6,25,000/-. After giving an objection in writing to the 2nd respondent, the petitioner has come up with the present writ petition.

4. According to the learned special standing counsel, the petitioner has already sent a reply to the show cause notice and a date of hearing was also fixed. Therefore in the normal course, the 2nd respondent should be allowed to pass orders. Additionally it is contended by the learned special standing counsel that the question of release of the goods when a confiscation notice is issued, does not arise.

5. We have carefully considered the above submissions. Even as per the impugned show cause notice, the 2nd respondent is prepared to release the goods upon the petitioner furnishing security equivalent to the value of the goods in the form of bank guarantee. But if the goods are to be released, the petitioner may have to pay a tax at the rate of 20% of the value of the goods and a penalty at twice the rate of tax. In otherwise, the petitioner may have to shell out 60% of the value of the goods, if goods are to be released.

6. Considering the above, we are of the view that by directing the release of the goods, the interest of both parties could be safeguarded. It is no doubt true that the notice is one for confiscation. Therefore, the very release of the goods will tantamount to virtually setting aside the show cause notice, as no order as of confiscation can be passed thereafter.

7. But the proper method of looking at the above issue is that whenever the concerned offices are obliged or permitted under law to release the goods upon furnishing a security for the total value of the goods, confiscation need not be taken to be the only alternative available. Therefore, we do not agree with the contention of the learned special standing counsel for the department that the show cause notice may become infructuous whenever release of the goods is ordered after a notice under Section 47(7)(b) of the Act is issued.

8. In the light of the above, the writ petition is disposed of directing the petitioner to pay tax at the rate of 20% of the value of the goods together with twice the rate as penalty. Upon these amounts being paid, the 2nd respondent shall release the goods. But if the 2nd respondent passes a final order after giving opportunity of hearing to the

petitioner, the 2nd respondent will also to be free to indicate the manner in which the balance amount is to be paid. There shall be no order as to costs. Pending miscellaneous applications, if any, in this writ petition, shall stand closed.

V. RAMASUBRAMANIAN, J

J. UMA DEVI, J

Date: 06.02.2017
Note: Furnish CC by tomorrow
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HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
HON'BLE MS. JUSTICE J. UMA DEVI

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Writ Petition No.43033 of 2016
(*per Hon'ble Sri Justice V. Ramasubramanian)*

Date: 06.02.2017

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