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

AND

THE HON'BLE SRI JUSTICE M.S.K.JAISWAL

W.P.Nos.42762 of 2017 with W.P.M.P.No.53031 of 2017, W.P.Nos.42764, 42765, 42784, 42786 and 42787 of 2017

Date: 19.12.2017

Between:

M/s.V.N.Exports,
Survey No.591/1, Konidena Road,
Martur-523 301, Prakasam district,
A.P., rep. by its Proprietrix
Smt.Devi Kunchala … Petitioner

And

The Deputy Commissioner (ST), Enforcement,
O/o. the Chief Commissioner (ST),
Andhra Pradesh at Edupugallu,
Near Vijayawada, Krishna district, A.P.,
and three others … Respondents

Counsel for the Petitioner : Mr. P.Girish Kumar

Counsel for the Respondents : Mr. S.Suri Babu,
Special Standing Counsel for
Commercial Tax (AP)

The Court made the following:

Order : (Per the Hon'ble Sri Justice C.V.Nagarjuna Reddy)

The petitioner in these writ petitions except W.P.No.42765 of 2017, is common. The petitioners in these writ petitions and also the petitioner in W.P.N.o.42765 of 2017, are dealers in granite. When the petitioners were transporting polished granite slabs, through different trucks, purportedly to the State of Maharashtra, the trucks were intercepted at Pondugala Check Post, Guntur district. Separate detention orders were passed by the Assistant Commissioner (ST), Enforcement Wing, A.P., Vijayawada. Notices for confiscation of goods was also sent to the petitioners. Separate notices for confiscation of the trucks through which goods were being conveyed, were also issued. The petitioners submitted their representations/objections to respondent No.1 and the proceedings before him are pending. In these writ petitions, the action of the respondents in detaining the goods, is questioned.

2. Mr.P.Girish Kumar, learned counsel for the petitioners, submitted that as the goods were intended to be transported to the State of Maharashtra, the transactions constitute inter-state sales and that, though e-way bills were not generated, as the server was down at the relevant time, the goods were accompanied by tax invoices. He has further submitted that under I.G.S.T. Act, the State has no jurisdiction to detain the goods, on the ground of alleged non-

payment of tax or non-generation of e-way bills, as eventually it is the Central Government to whom the tax is payable.

3. Mr.S.Suri Babu, learned Special Standing Counsel for Commercial Taxes, submitted that Rule 139 of the State G.S.T. Rules, envisages generation of e-way bill and that, admittedly, the petitioners have not produced e-way bills, in the absence of which, there is every possibility of evasion of tax through unauthorized transportation of goods and that, therefore, the goods were rightly intercepted and detained and proceedings initiated for recovery of tax as well as penalty.

4. We have considered the respective submissions of the learned counsel for both parties. As the confiscation proceedings are pending before respondent No.1, we refrain from expressing conclusive opinion on the respective submissions of the counsel for both parties. The undisputed fact is that, the goods being transported by the petitioners are liable for IGST. Though the tax was not immediately payable, for proper accounting of the transaction, the States are insisting upon generation of e-way bills, so that the dealers would not indulge in tax evasion. Admittedly, the petitioners have not generated e-way bills, purportedly on the ground that the server was down at the time of transportation of goods. In our *prima facie* opinion, the petitioners ought not to have commenced transportation of goods, without generating e-way bills. We however feel that

interests of justice would be met, if the detained goods along with the vehicles are released to the petitioners, subject to their paying tax component, as indicated in the confiscation notices, while staying recovery of penalty, pending confiscation proceedings. The petitioners are permitted to pay the demanded tax, as a condition for release of the detained granite along with the vehicles. On such payment, the respondents shall release the detained granite along with the vehicles, to the respective petitioners. The liability of the petitioners to pay tax and penalty, shall however, be subject to the result of the confiscation proceedings pending before respondent No.1.

5. With the above observations and directions, the writ petitions are disposed of.

6. As a sequel, miscellaneous petitions filed by the petitioners for interim relief, are disposed of as infructuous.

(C.V.Nagarjuna Reddy, J)

(M.S.K.Jaiswal, J)

Date: 19th December, 2017

msb