HONOURABLE SRI JUSTICE V. RAMASUBRAMANIAN

AND

HONOURABLE SRI JUSTICE P. KESHAVA RAO

WRIT PETITION No.7614 OF 2019

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

Aggrieved by an order of penalty passed under Section 53(3) of the Telangana Value Added Tax Act, 2005, read with Section 9(2) of the Central Sales Tax Act, 1956, the dealer has come up with the above writ petition.

2. Heard Mr. Bhaskar Reddy Vemireddy, learned counsel for the petitioner, and Mr. J. Anil Kumar, learned standing counsel for the department.

3. Under Section 53(1) of the Telangana Value Added Tax Act, 2005, the dealer becomes liable to pay penalty at 10% or 20%, depending upon whether the case falls under one or other of the categories. Under Sub-Section (3), the dealer is liable to pay penalty equal to the under declared tax.

4. For invoking the Section 53(3), fraud or willful neglect is the essential *sine qua non*.

5. The notice dated 12.06.2017 and the impugned order do not contain an allegation of fraud or willful neglect. What is reflected is that the turnover reflected in the books of accounts, was not included in the turnover reflected in the returns.

6. When the assessing officer has different alternatives under the penal provisions, he must specify the category to which the case of the dealer would fall, so that there is clarity. Since it was not there in the original show cause notice dated 12.06.2017, the Writ Petition is allowed and the impugned order is set aside. It will be open to the assessing officer to proceed afresh in accordance with law. No order as to costs.

As a sequel thereto, Miscellaneous Petitions, if any pending, in the writ petition stand closed.

V. RAMASUBRAMANIAN, J

P. KESHAVA RAO, J

April 15, 2019.
PV