IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 28.09.2016

CORAM

THE HONOURABLE Mr.JUSTICE T.S.SIVAGNANAM

WP.No.32777/2015 & MP.NO.1/2015

Dennis Steels Pvt Ltd
represented by its Director
Sholly Dennis, Ekku Nagar
Arakkonam, Vellore District. .. Petitioner

Vs

The Commercial Tax Officer
Arakkonam Assessment Circle
Arakkonam, Vellore District. .. Respondent

Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorari calling for the records of the respondent in TIN No.33834302070/2013-14 dated 10.09.2015 and quash the same.

For Petitioner	:	Mr.R.Kumar
For Respondent	:	Mr.S.Kanmani Annamalai, AGP

ORDER

Heard Mr.R.Kumar learned counsel appearing for the petitioner and Mr.S.Kanmani Annamalai, learned Additional Government Pleader appearing on behalf of the respondent and with the consent on either side, the writ petition is taken up for final disposal.

2 The petitioner challenges the impugned Assessment Order dated 10.09.2015 passed by the respondent herein for the Assessment Year 2013-2014.

3 The short issue which falls for consideration in this writ petition is as to whether the impugned order could have been passed by the Assessing Officer imposing penalty by way of a separate order.

4 The learned counsel on either side would fairly state that the issue involved in this writ petition is squarely covered in favour of the dealer, by a decision of this Court reported in ***[2011] 37 VST 592 [Mad]*** *[Rainbow Foundations Ltd., Vs. Assistant Commissioner [CT] [FAC], T.Nagar [South] Assessment Circle, Chennai]*. In the said case, an identical question arose for consideration and it was held as follows:-

> *"Held, allowing the petition that under section 16[2] of the Act, the assessing authority had not jurisdiction to impose penalty by a separate and independent order. Even if a statute has brought in a new section by way of section 12C, given the fact that section 16[2] of the Act remained as it was, the view of the officer that by introduction of section 12C,*

> *section 16[2] would lost its validity, rendering the decision irrelevant, could not be accepted by any standard of reasoning. Therefore, the penalty levied through an independent order under section 16[2] of the Act was to be set aside."*

5 By applying the above decision to the facts of the instant case, it has to be necessarily held that the impugned order is not sustainable. Accordingly, the writ petition is allowed and the impugned order passed by the respondent dated 10.09.2015 is set aside. No costs. Consequently, the connected miscellaneous petition is closed.

28.09.2016

AP

To

The Commercial Tax Officer
Arakkonam Assessment Circle
Arakkonam, Vellore District.

T.S.SIVAGNANAM, J.
AP

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