IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.09.2017

CORAM :

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.Nos.21204 and 21205 of 2014
&
MP.Nos.1 & 1 of 2014

M/s. Ben Foundations Pvt. Ltd.,
Rep. by its Managing Director,
No.1 South Park Road,
Anna Nagar West, Chennai-40. ... Petitioner in both Wps

Vs

The Assistant Commissioner (CT),
Koyambedu Assessment Circle,
Chennai. ...Respondent in both Wps

Common Prayer: Petitions filed under Article 226 of the Constitution of India praying for the issuance of Writ of Certiorari calling for the records of the respondent in TIN: 33891350424/2010-11 and 2011-12 and quash the order dated 08.07.2014 respectively passed therein.

For Petitioner in both WPs : Mr.R.L.Ramani Senior Counsel for Mr.B.Raveendran

For Respondent in both WPs : Mrs.Narmadha Sampath, Special Government Pleader

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C O M M O N O R D E R

Heard Mr.R.L.Ramani, learned Senior Counsel for Mr.B.Raveendran, learned counsel appearing for the petitioner and Mrs.Narmadha Sampath, learned Special Government Pleader, appearing for the respondent.

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2. The petitioner in these writ petitions has challenged the orders passed by the respondent, levying penalty by way of separate orders. The question that arises for consideration is, whether by way of separate orders, such penalty can be imposed. This is no longer res-integra and has been answered by the Division Bench of this Court in the case of Deputy Commissioner (CT), Coimbatore Vs. V.S.R. Ramaswami Chettiar and Bros. Reported in 38 STC 382, wherein it is held that under Section 16 (2) of the Tamil Nadu General Sale Tax Act, 1959, the Assessing Officer has no jurisdiction to impose penalty by separate and independent order. This decision was followed in the case of Rainbow foundations Ltd. Vs. Assistant Commissioner reported in 37 VST 592, wherein the petition filed by the dealer was allowed holding that even if the statute has brought in new section by way of Section 12C of the TNGST Act, given a fact that Section 16(2) of the TNGST Act remained as it was, the view of the Assessing Officer that by the introduction of Section 12C, Section 16(2) would lose its vitality, rendering the decision irrelevant, could not be accepted by any standard of reasoning. Therefore, in the said case, the penalty levied through independent order under Section 16 (2) of the Act was set aside.

3.The position is no different under the provisions of the Tamil Nadu Value Added Tax Act, 2006. Therefore, the legal propositions enunciated in the case of Deputy Commissioner (CT), Coimbatore Vs. V.S.R. Ramaswami Chettiar and Bros. Reported in 38 STC 382, and Rainbow foundations Ltd. Vs. Assistant Commissioner reported in 37 VST 592, are fully applicable to the facts and circumstances of the case on the hand and consequently it has to be held that the impugned orders levying penalty by way of separate orders is without jurisdiction.

4. Thus, for the above reasons, the writ petitions are allowed and the impugned orders are quashed. No Costs. Consequently, connected miscellaneous petitions are closed.

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Asst.Registrar (CS IV)

/true copy/

Sub Asst. Registrar

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To

The Assistant Commissioner (CT),
Koyambedu Assessment Circle,
Chennai.

+ 1 cc to Mr.B.Raveendran Advocate,SR.68013

+ 1 cc to The Special Govt.Pleader(Taxes), SR.68029

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NR 10/10/2017

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