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

Writ Petition No.46372 of 2016

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

Aggrieved by an order of penalty, which was confirmed on appeal due to non-compliance with the requirements of pre-deposit, the dealer has come up with the above writ petition.

2. Heard Sri Bhaskar Reddy Vemireddy, learned counsel for the petitioner and Sri M. Govinda Reddy, learned standing counsel for the Commercial Tax Department.

3. By an order of assessment dated 01.12.2014, the petitioner was imposed with a demand in a sum of Rs.1,03,42,355/-. The order of assessment related to the period from April, 2012 to March, 2014.

4. As against the order of assessment, the petitioner filed a statutory appeal before the Appellate Deputy Commissioner (CT). During the pendency of the appeal, a notification and demand was issued on 12.02.2015. As against the said order, an appeal was filed before the Appellate Deputy Commissioner (CT). He rejected the appeal at the stage of admission for non-compliance with the requirements of pre-deposit. However, the appeal filed as against the original order of assessment was partly allowed by the Appellate Deputy Commissioner by order dated 29.10.2016. In view of the changed circumstances, the dealer has come up with the present writ petition challenging the rejection of their appeal arising out of penalty at the stage of admission.

5. There is no dispute about the fact that the original order of assessment stood modified by the order passed on a regular appeal.

Once the original order of assessment on which a demand for penalty was made, has undergone a change, the order of penalty would have no legs to stand. Therefore, the order of penalty passed upon the original order of assessment will have to perish.

6. In normal circumstances, the matter should be remitted back to the respondents for arriving at the penalty on the basis of the order passed in the appeal against the original order of assessment. But in the case on hand, the petitioner claims to have paid the tax on the dismissed portion as well as the proportionate penalty. Therefore, the question of remand does not arise.

7. Hence, the writ petition is allowed and the impugned order is set aside. The original order of penalty passed on the basis of the original order of assessment will stand set aside. 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: 18.01.2017
BSS

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AND
HON'BLE MS. JUSTICE J. UMA DEVI

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

Date: 18.01.2017

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