IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.11.2019

CORAM :

THE HONOURABLE DR.JUSTICE ANITA SUMANTH

W.P.NOS.10458 TO 10464 OF 2016
AND
WMP.NOS.9195 TO 9201 OF 2016

W.P.No.10458 of 2016

Peps Industries (P) Ltd.,
Represented by its Director,
G.Shankar Ram, 192, Uthupalayam Road,
Arasur, Coimbatore-641 407.

... Petitioner in all the Writ Petitions

Vs.

The Assistant Commissioner (CT),
Central-II Circle, Tirupur.

... Respondent in all the Writ Petitions

Prayer:

Writ Petition filed under Article 226 of the Constitution of India, for the issuance of Writ of Certiorarified Mandamus, calling for the records on the files of the Respondent herein in Tin No.33902464512/2008-09, 2009-10, 2010-11, 2011-12, 2012-13, 2013-14, 2014-15 respectively dated 25.2.2016 to quash the same and direct the Respondent herein to consider and pass orders on the application filed under Section 84 of the TNVAT Act, 2006 dated 18.12.2015 received on 21.12.2015.

(In all WPs)
For Petitioner :Mr.N.Inbarajan

For Respondent :Mr.V.Haribabu
Additional Government Pleader (Taxes)

COMMON ORDER

The petitioner is a dealer under the provisions of the Tamil Nadu Value Added Tax Act, 2006 (in short 'Act') and an assessee on the file of the respondent herein.

2.The challenge in these seven writ petitions relating to the periods 2008-2009 to 2014-2015 is to orders levying penalty under Section 27(3) of the Act. Though the arguments revolve both around the legality of the orders themselves as well as the violation of the principles of natural justice, I see no reason to go into the merits on the basis of my conclusions in regard to the preliminary argument raised relating to the lack of opportunity extended to the petitioner.

3.Admittedly the impugned orders dated 25.02.2016 levy penalty at the rate of 100% on the tax computed in orders of assessment dated 12.10.2015. The assessing authority commences the impugned orders stating that they are passed 'in continuation of the orders passed in assessment'. However the provisions of Section 27(3) do not envisage separate orders to be passed while levying penalty. The scheme of assessment under Section 27 provides for the levy of penalty concurrent with the assessment of tax itself, if the officer were satisfied that the conditions preceded under the provision are satisfied.

4.The argument of the revenue is that there is no specific prohibition under the Act for a separate order of penalty to have been passed.

5.I disagree. Though a matter of procedure, the statute envisages separate orders of penalty in some cases and consolidated orders of assessment and penalty in others. This is clear from a comparison of the provisions of Sections 22(5) and 27(3) of the Act. Section 22 deals with deemed assessment and sets out the procedure to be followed in that regard. Sub-section (5) states that in addition to the tax assessed under sub-section 4, the assessing authority shall, 'in the order of assessment passed under sub Section 4 or by a separate order', direct the dealer to pay by way of penalty a sum which shall be 150% of the difference of the tax assessed and the tax already paid as per the returns of turnover.

6.In contrast, the provisions of Section 27(3) of the Act state that in making a re-assessment under Section 27(1), the assessing authority shall, if satisfied that the escapement of turnover is on account of the willful non- disclosure of assessable turnover by the dealer, direct the dealer to pay, in addition to the tax assessed, penalty which shall be computed in the manner set out therein. Thus a clear distinction is made between separate orders of assessment and penalty on the one hand and a consolidated order of tax and penalty on the other. This is a deliberate and conscious distinction and the argument of the revenue to the effect that in the absence of an express prohibition, the officer may do as he wishes in the matter is unacceptable.

7.This Court in the case of Rainbow Foundations Ltd. vs. Assistant Commissioner (CT) (FAC), T.Nagar (South) Assessment Circle, Chennai, (37 VST 592) has occasion to consider a similar situation, though in the context of Section 16 of the Tamil Nadu General Sales Tax Act, 1959, holding thus:

> 'The decision of this court Deputy Commissioner (C.T.), Coimbatore v. V.S.R. Ramaswami Chettiar and Bros. reported in [1976] 38 STC 382 clearly holds that under section 16(2) of the Act, the assessing authority has no 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 remains as it is, the view of the officer that by introduction of 12C, section 16(2) will lose its vitality, hence, the decision has no relevance, cannot be accepted by any standards of reasoning.
>
> In the circumstances, even though the writ petition is as against the penalty order, I have no hesitation in setting aside the order of the respondent, having regard to the law declared by this court in the case of Deputy Commissioner (C.T.), Coimbatore v. V.S.R.Ramaswami Chettiar and Bros. reported in [1976] 38 STC 382 and on the admitted fact that the order passed by the respondent levying penalty is through an independent order under section 16(2) of the Act. Accordingly, the writ petition is allowed. No costs. Consequently, M.P.No.1 of 2009 is closed.'

8.In the light of the discussion above, the impugned orders of penalty are set aside and these writ petitions stand allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

vs

To

The Assistant Commissioner (CT),
Central-II Circle, Tirupur.

+1cc to Mr.N.Inbarajan, Advocate, S.R.No.93974

W.P.Nos.10458 to 10464 of 2016
and
WMP.Nos.9195 to 9201 of 2016

RGN(CO)
CS/19/02/2020