IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **10.11.2023**

CORAM:

THE HON'BLE MR. JUSTICE KRISHNAN RAMASAMY

W.P. Nos.11235, 11237, 11238 & 11644 of 2022
and WMP Nos.10799, 10809, 10803 & 11113 of 2022

Ben Foundation Pvt. Limited
Represented by its Managing Director
Mr.D.Rajan Dev,
No.1, South Park Road,
Padikuppam, Anna Nagar,
Chennai – 600 040. ... Petitioner in all WPs

vs.

The Assistant Commissioner (S.T)
Office of the Assistant Commissioner (s.T)
Koyambedu Assessment Circle,
Chennai – 600 123. ... Respondent in all WPs

Common Prayer : Writ Petitions filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari calling for the records relating to the Show Cause Notice in TNGST/VAT/33891350424/2002-03, 2003-04, 2004-05 & 2006-07 dated 25.03.2022 issued by the respondent and to quash the same as arbitrary and illegal.

In all WPs

For Petitioner : Mr.Joseph Prabakar
For Respondent : Mr.R.Siddharth,
Government Advocate (Taxes)

COMMON ORDER

All these writ petitions are filed challenging the notices issued under Section 12 (2) of the Act in WP Nos.11235, 11237 & 11238 of 2022 and 22 (4) notice r/w Section 12(2) in WP No.11644 of 2022 passed by the respondent herein.

2. The petitioner is a dealer registered with the respondent's assessment circle and they are involved in the business of execution of works contract of construction of residential flats.

3. The main issue raised by the writ petitioner in these matters is that all the impugned notices are barred by limitation. In the present cases, the notices were issued to assess the income under Best Judgement Assessment under Section 12 (2) of the TNGST Act and 22 (4) of the VAT Act. However, the period of limitation in terms of Section 16 of TNGST Act is five years and therefore the impugned notices dated 12.03.2015 are without any authority of law.

4. The learned counsel appearing for the petitioner would submit that there is no limitation prescribed under TNGST Act to assess the income of the petitioner under Best Judgment Assessment, however in the VAT Act which came into effect from 01.01.2007, the petitioner would submit that there is a limitation provided under Section 27 to assess the escaped turn over. He would further submit that Section 16 of the erstwhile TNGST Act contemplates revision of an assessment in certain specific circumstances. Sub-Sections (1) & (2) of Section 16 of TNGST Act refer to a five year period within which the revised assessment order could be passed by referring to the date of passing of first/original assessment. Therefore, he would contend that Section 16 of TNGST Act would come into play only when an assessment has already been passed. Admittedly, in the present cases, no such assessment order has been passed for the Assessment Years 2002-03, 2003-04, 2004-05 and 2006-07. Therefore, the respondent is supposed to make the Best Judgement Assessment of the turn over within a reasonable time . He would further submit that it should not exceed the maximum time limit provided under the Act for any other category of assessment. In the present cases, the maximum time limit provided for assessing the turn over is only for the escaped turnover. Therefore, at

any cost, under the TNGST Act, the assessment cannot be made under the Best Judgement Assessment beyond the period of five years and under the VAT Act, beyond the period of six years under Section 27 of the Act.

5. On the other hand, the learned Government Advocate appearing for the respondent brought to the knowledge of this Court a similar view taken by this Court in a batch of writ petitions in WP Nos.28896 of 2019, etc. batch, wherein the learned Judge in Para 49 has held as follows -

> *49. Such order under Section 22(4) can be passed at any time for a period of six years which is the time already provided for passing of an order of revision of assessment under Section 27 of the Act. The periods of limitation for passing of an order under Sections 22(4) and 27, thus, in my view, co-exist and no order under Section 22(4) an be passed beyond the period of limitation as set out for initiation of proceedings under Section 27 of the Act. Needless to say, this emanates from a comprehensive reading of the statutory provisions at play.*

He would further submit that against this judgment, so far the Department has not preferred any appeal and hence he would submit that appropriate orders may be passed by this Court.

6. In reply, the learned counsel for the petitioner would submit that the above said judgment of this Court may be followed however he would submit that during the Assessment Year 2002-03 and 2003-04 as against the notices issued in respect of these Assessment Years, they have filed their reply and thereafter the present show cause notices have been issued against the company which have been incorporated only in November 2004. However prior to that, it was a proprietary concern and therefore the impugned notices issued against the company which was not in existence are illegal and arbitrary.

7. At this juncture, the learned Government Advocate appearing for the respondent would submit that the petitioner is taking this stand for the first time before this Court and he has not taken any such stand in the grounds of appeal in this regard. Therefore, he would submit that appropriate orders may be passed in the light of the decision of this court, cited supra.

8. Heard the learned counsel for the petitioner as well as the

learned Government Advocate (Taxes) appearing for the respondent and perused the materials on record.

9. Considering the submissions made by the learned counsel for the petitioner as well as the learned Government Advocate (Taxes) appearing for the respondent, it appears that the present notices have been issued under Section 27 under the Best Judgment Assessment for the Assessment Years 2002-03, 2003-04 , 2004 – 05 and 2006-07 on 12.03.2015. The Assessment Years 2002-03, 2003-04, 2004-05 which would fall under TNGST Act, notices were issued under Section 12 (2) of the Act and for the Assessment Year 2006-07, notice was issued under Section 22 (4) of the VAT Act which came into effect on 01.01.2007. Therefore, notices were issued under TNGST Act and VAT Act by referring to Section 12 (2) after a period of nine months and under Section 22 (4) under VAT Act after a period of three months. In all these cases, no proceedings have been initiated within the maximum time limit provided in the Act, for the escaped turnover. Since no time limit has been fixed under the Best Judgement Assessment, the Court has taken into consideration with regard to the reasonable time limit, that is the maximum time limit provided under any other assessment

proceedings which can be taken only if there is no time limit prescribed under any other provision. In the present case, for the escaped turnover, the assessment under TNGST Act, the maximum time limit under Section 16 is five years and under the VAT Act, under Section 27, it is six years. No doubt, in the present case, Show Cause Notices were issued beyond the period of five years and six years against the respective assessment years. As this Court has taken a view that the time limit for passing an order under Section 22 (4) and 27 co-exist and no order under Section 22 (4) can be passed beyond the period of limitation, as prescribed under Section 27 of the Act.

10. For all the above reasons, this Court is of the view that the present notices came to be issued beyond the period of limitation and this Court accepts the submissions made on behalf of the petitioner and in view of the law laid down by this Court in WP Nos.28896 of 2019 etc. batch and following the same, this Court is inclined to quash the impugned Show Cause Notices in TNGST/VAT/33891350424/2002-03, 2003-04, 2004-05 & 2006-07 dated 25.03.2022 issued by the respondent. Accordingly, the same are hereby quashed.

11. In the result, all the writ petitions are allowed. There shall be no order as to costs. Consequently connected Miscellaneous Petitions are closed.

10.11.2023

Index: Yes/No
Speaking/Non-Speaking Order
Neutral Citation: Yes/No.
rgr

To

The Assistant Commissioner (S.T)
Office of the Assistant Commissioner (s.T)
Koyambedu Assessment Circle,
Chennai – 600 123.

KRISHNAN RAMASAMY, J.

rgr

W.P. Nos.11235, 11237, 11238 & 11644 of 2022

10.11.2023