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W.P.Nos.16607, 16610, 16613,
16614 and 16616 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 08.12.2023

CORAM

THE HON'BLE Mr. JUSTICE KRISHNAN RAMASAMY

W.P.Nos. 16607, 16610, 16613, 16614 and 16616 of 2023

and

WMP.Nos.15904, 15910, 15912, 15915 and 15916 of 2023

M/s.Supreme Trading House,
Represented by its Proprietor
Mr.A.Ibrahimkaleel
No.86, Kariya Gounder Street,
Khaderpet, Tirupur-641 601.

... Petitioner in all W.P.'s

...Vs...

1. The Assistant Commissioner (ST)
Tiruppur Central-II Assessment Circle,
Tiruppur-2.

2. The Commercial Tax Officer,
(Enforcement) Group-1,
Coimbatore.

... Respondents in all W.P.'s

Prayer in all W.P.'s : Writ Petitions filed under Article 226 of the Constitution of India to issue a Writ of Certiorari to call for the impugned proceedings of the first respondent in TIN Nos.



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33262463506/2010-2011, 33262463506/2011-2012,
33262463506/2012-2013, 33262463506/2013-2014,
33262463506/2014-2015 dated 15.03.2023 and quash the same as
without authority of law and contrary to Section 27 (3) of the
TNVAT Act, 2006.

For Petitioner : Mr.P.Rajkumar
(in all W.P.'s)

For Respondents : Mrs.E.Ranganayaki
(in all W.P.'s) Additional Government Pleader

COMMON ORDER

Since the issue involved in all these Writ Petitions are one and the same, they are taken up together and disposed of by a common order.

2. These writ petitions have been filed challenging the proceedings of the 1st Respondent in TIN Nos.33262463506/2010-2011, 33262463506/2011-2012, 33262463506/2012-2013, 33262463506/2013-2014, 33262463506/2014-2015 dated 15.03.2023 , in and by which penalty was imposed under Section 27 (3)



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of the Tamil Nadu Value Added Tax Act, 2006 (for brevity 'the TNVAT Act').

2. The learned counsel for the Petitioner submitted that the 1st Respondent through the impugned orders dated 15.03.2023 has levied penalty under Section 27 (3) of the TNVAT Act, which is contrary to the said Act, for the reason that penalty under Section 27 (3) of the TNVAT Act can be levied only in an Assessment Order passed under Section 27 (1)(a) of the TNVAT ACT and in other words, penalty under Section 27 (3) of the TNVAT Act cannot be levied by way of a separate order but should form part of the order made under Section 27 (1)(a) of the TNVAT Act. He further submitted that in these cases, the revision of assessment for the Assessment Years 2010-11 to 2014-15 were passed on 18.03.2020 and in those orders no penalty under Section 27 (3) of the TNVAT Act was levied, but only through the notice dated 5.12.2022, the 1st Respondent proposed to levy penalty under Section 27 (3) of the TNVAT Act. He therefore submitted that the 1st Respondent having passed the Assessment Orders without imposing penalty, at a later point of time cannot change his view and initiate independent proceedings for



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imposition of penalty, which is not permissible under the provisions of the TNVAT Act. In support of his contentions, he relied upon the Judgment of Division Bench of this Court in the case of *The Deputy Commissioner (C.T.) Coimbatore Vs. V.S.R.Ramaswami Chettiar and Bros.* reported in [1976] 38 STC 382 (Mad) and also the Judgment of learned Single Judge of this Court in the case of *Rainbow Foundations Ltd. Vs. Assistant Commissioner (CT) (FAC)* reported in [2011] 37 VST 592.

3. Despite opportunities being granted to the Respondents to file counter, the Respondents have not chosen to file the counter till date and even today when the matter was taken up for hearing, the learned Additional Government Pleader requested time to file counter and simply submitted that the judgments which are contra to the judgments relied on by the learned counsel for the Petitioner were also available and sought time to produce the same, but she fairly submitted that in the judgments relied on by the learned counsel for the Petitioner, it is held that independent penalty proceedings cannot be initiated, the same has to be passed along with the assessment order. She further submitted that the



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learned Single Judge of this Court in similar circumstances has passed an order on 03.08.2023, dismissing the Writ Petition in W.P.No.4202 of 2022 and as against which Writ Appeal has been preferred by the Petitioner therein and the same is pending.

4. Heard the submissions made by learned counsel appearing on either side and perused the materials available on record.

5. In the present case on hand, preliminary proceedings were initiated by the Respondents by virtue of issuing notice on 05.12.2022 and thereafter Assessment Orders were passed on 18.03.2020 and subsequently, impugned orders, dated 15.03.2023, imposing penalty under Section 27 (3) of the TNVAT Act came to be passed on 15.03.2023. The Division Bench of this Court in the case of ***The Deputy Commissioner (C.T.), Coimbatore Vs. V.S.R.Ramaswami Chettiar and Bros*** reported in [1976] 38 STC 382 has held as follows.

"....But, on the other hand, in cases falling under Section 16(2) unless there is a definite finding as to the wilful non-disclosure of taxable



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turnover, the assessing officer will have no jurisdiction to impose the penalty. Except for this difference, we do not find any other difference between section 12(3), as it stood at the relevant period, and section 16(2). As we have already seen, this Court in State of Madras V. Ramulu Naidu (1) held that the levy of penalty should form part of the assessment order itself. Thus, no separate order is also contemplated under section 16(2). Thiru S.V.Subramaniam, whom we required to argue the case in the absence of the respondent brought to our notice section 31 relating to the appeal to the Appellate Assistant Commissioner where, while section 12 is referred to without any reference to the sub-sections in that section, sub-sections (1) and (2) of section 16 is specifically referred to. It was so mentioned because two separate orders were contemplated under section 16(1) and (2). On the other hand, only a consolidated order was expected to be made in section 12 and, therefore, section 12 is referred to without any reference to the sub-sections therein. We are unable to accept this argument of the learned counsel also. Section 16 has two more sub-sections [sub-sections (3) and (4)], which do not contemplate making of any orders under that provision; whereas in section 12, each one of the sub-section deals with orders and, instead of mentioning each one of the sub-sections, the totality of that section is mentioned in the appeal provision. Further, section 12 contemplates two different types of orders, one accepting the return under section 12(1) and another a best judgment assessment under section 12(2). But section 31 did not make any specific reference because every one of the orders made under section 12 is appealable.



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We are, therefore, unable to hold that separate orders were contemplated under section 16(2). In fact, it was not even the case of the Government Pleader that only separate orders could be made under section 16(2). On the other hand, he contended that it was open to the assessing officer either to make a consolidated order or separate orders under section 16(2). We are, therefore, of the opinion that the Tribunal was right in holding that no separate order of penalty could be made under section 16(2)."

5. A mere reading of the aforesaid judgment would make it clear that no penalty proceedings can be initiated independently in terms of provisions of Section 16 (2) of the Tamil Nadu General Sales Tax Act, 1959 (in short 'the TNGST Act'). In the present case on hand, the penalty proceedings were initiated under Section 27 (3) of the TNVAT Act and the provisions of Section 27 (3) of the TNVAT Act and Section 16(2) of the TNGST Act are similar. For the sake of convenience, the same are extracted hereunder:

"Section 27 (3) of the TNVAT ACT:

(3) In making an assessment under clause (a) of sub-section (1), the assessing authority may, if it is satisfied that the escape from the assessment is due to willful non-disclosure of assessable turnover by a dealer, direct the dealer, to pay, in addition to the tax assessed under clause (a) of sub-section (1), by way of penalty a sum which shall be.



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(a) fifty percent on the tax due on the turnover that was wilfully not disclosed if the tax due on such turnover is not more than ten percent of the tax paid as per the return.

(b) one hundred per cent of the tax due on the turnover that was wilfully not disclosed if the tax due on such turnover is more than ten per cent of the tax paid as per the return.

(c) one hundred and fifty per cent of the tax due on the assessible turnover that was wilfully not disclosed, if the tax due on such turnover is more than fifty per cent of the tax paid as per the return."

"Section 16(2) of the TNGST Act.

(2) In making an assessment under clause (a) of sub-section (1), the assessing authority, may, if it is satisfied that the escape from the assessment is due to wilful non-disclosure of assessable turnover by the dealer, direct the dealer, to pay in addition to the tax assessed under clause (a) of sub-section (1), by way of penalty a sum which shall be-

(a) fifty per cent of the tax due on the turnover that was wilfully not disclosed if the tax due on such turnover is not more than ten per cent of the tax paid as per the return;

(b) one hundred per cent of the tax due on the turnover that was wilfully not disclosed if the tax due on such turnover is more than ten per cent but not more than fifty percent of the tax paid as per the return;

(c) one hundred and fifty per cent of the tax



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due on the assessable turnover that was willfully not disclosed, if the tax due on such turnover is more than fifty percent of the tax paid as per the return;

(d) one hundred and fifty per cent of the tax due on the assessable turnover that was wilfully not disclosed, in the case of self-assessment referred to in sub-section (1) of section 12:

Provided that no penalty under this sub-section shall be imposed unless the dealer affected has had a reasonable opportunity of showing cause against such imposition."

6. A reading of the aforesaid provisions would make it very clear that unless there is a definite finding as to the wilful non-disclosure of taxable turnover, the assessing officer will have no jurisdiction to impose the penalty. Therefore, this Court is of the considered view that once the Assessment Order is passed, without imposing penalty, subsequently the 1st Respondent cannot change his view and initiate the fresh penalty proceedings.

7. Considering the facts and circumstances of the case and also in the light of the judgments referred to supra, as well the provisions of Section 27 (3) of the TNVAT Act as well as Section 16 (2) of the TNGST Act, this Court is inclined to quash the impugned proceedings of



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the 1st Respondent dated 15.03.2023.

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8. Accordingly, the impugned orders passed by the 1st Respondent dated 15.03.2023 in TIN Nos. 33262463506/2010-2011, 33262463506/2011-2012, 33262463506/2012-2013, 33262463506/2013-2014 and 33262463506/2014-2015 are quashed.

In the result, these Writ Petitions are allowed. No costs. Consequently, connected Miscellaneous Petitions are closed.

08.12.2023

Speaking/Non-speaking order

Index : Yes / No

Neutral Citation : Yes / No

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To

1. The Assistant Commissioner (ST)
Tiruppur Central-II Assessment Circle,
Tiruppur-2.
2. The Commercial Tax Officer,
(Enforcement) Group-1, Coimbatore.

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KRISHNAN RAMASAMY.J.,

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