IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.01.2016

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.Nos.1703 to 1708 of 2016 and
WMP.Nos.1477 to 1482 of 2016

GE Power Conversion India Private Limited,
Represented by its Addl Director
7th Floor, Ramnath Towers,
Plot No.29 (SP), Thiru Vi Ka Industrial Estate,
Ekkatuthangal, Guindy, Chennai - 600 032.
.. Petitioner in all Writ Petitions.

Vs.

The Assistant Commissioner (CT)
Guindy Assessment Circle,
28, Greenways Road, Chennai - 600 028.
.. Respondent in all the Writ Petitions.

Prayer in WP.No.1703 of 2016 : Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of Certiorari calling for the records and proceedings of the case in TIN No.33400909066 76/2012-13 of the Impugned Assessment Order dated 30.11.2015 passed by the respondent under Section 27 of the Tamil Nadu VAT Act, for year 2012-13 and its consequent Notices of tax Demand dated 30.11.2015 in Form O and notice of penalty in Form RR dated 30.11.2015 issued by the respondent and quash the same as being perverse, illegal and in blatant violation of the principles of natural justice.

Prayer in WP.No.1704 of 2016: Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of Certiorari Calling for records and proceedings of the case in TIN No. 33400906676/2011-12 of the Impugned Assessment Order dated 30.11.2015 passed by Respondent under Section 27 of the Tamil Nadu VAT Act 2006 for year 2011-12 and its consequent Notices of tax Demand dated 30.11.2015 in Form O and two notices of penalty in Form RR dated 30.11.2015 issued by the Respondent and quash the same as being perverse illegal and in blatant violation of the principles of natural justice

Prayer in WP.No.1705 of 2016: Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of Certiorari Calling for records and proceedings of the case in TIN No. 33400906676/2013-14 of the Impugned Assessment Order dated 30.11.2015 passed by Respondent under Section 27 of the Tamil Nadu VAT Act 2006 for year 2013-14 and its consequent Notices of tax Demand dated 30.11.2015 in Form O and two notices of penalty in Form RR dated 30.11.2015 issued by the Respondent and quash the same as being perverse illegal and in blatant violation of the principles of natural justice

Prayer in WP.No.1706 of 2016: Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of Certiorari calling for the records from the files of the respondent herein in TIN : 33400906676/2014-15 and its consequent Notices of tax Demand dated 30.11.2015 in Form O and two notices of penalty in Form RR dated 30.11.2015 issued by the Respondent and quash the same as being perverse illegal and in blatant violation of the principles of natural justice

Prayer in WP.No.1707 of 2016: Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of Certiorari calling for the records and proceedings of the case in CST/1016999/2011-12 of the Impugned Assessment order dated 30.11.2015 passed by the Respondent under Section 9(2) of the TN VAT Act 2006 for the year 2011-12 and its consequent notice of demand dated 30.11.2015 in Form 3 issued by the respondent and quash the same as being perverse illegal, and in balant violationof the Principal of natural justice.

Prayer in WP.No.1708 of 2016: Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of Certiorari Calling for records and proceedings of the case in CST/1016999/2014-2015 of the Impugned Assessment Order dated 30.11.2015 passed by Respondent under Section 9(2) of the Central Sales Tax Act 1956 read with Section 27 of the Tamil Nadu VATAct 2006 for year 2014-15 and its consequent Notice of Demand dated 30.11.2015 in Form 3 issued by the Respondent and quash the same as being perverse illegal and in blatant violation of the principles of natural justice

For Petitioner	..	Mr.P.S.Raman, Senior Counsel for M/s.Pushpa Menon
For Respondent	..	Mr.V.Hari Babu Additional Government Pleader

ORDER

Heard Mr.P.S.Raman, learned Senior Counsel for the petitioner and Mr.V.Hari Babu, learned Additional Government Pleader accepting notice for the respondent and with their consent, the writ petition is taken up for final disposal at the admission stage itself.

2.The petitioner is a registered dealer under the provisions of the Tamil Nadu Value Added Tax Act, 2006 and the Central Sales Tax Act 1956. In all these writ petitions, the challenge is to the orders of assessment.

3.Though several grounds have been raised by the petitioner on the merits of the findings recorded by the Assessing Officer, the learned Senior Counsel for the petitioner confines his argument only to the issue with regard to the denial of opportunity of personal hearing. The Writ Petition in W.P.No.1703 of 2016 is taken as a lead case and from the documents filed in support of the writ petition, it is seen that the dealers were issued a notice dated 20.07.2015 calling upon them to file their objections within 15 days, for the proposals made under the notice which were under seven heads. Apart from those seven proposals, there was also a proposal to levy penalty under the provisions of the Act. The dealers were informed that they are entitled for an opportunity of being heard in person within 15 days from the date of receipt of such notice. It is not in dispute that the petitioner had submitted their reply on 20.08.2015 though not within the time, but within a period of 30 days. However, it is not very material since the Assessing officer has referred to the reply given by the dealers in the impugned order.

4.In the penultimate paragraph of the reply dated 20.08.15, the petitioner, while seeking to drop the proceedings initiated against them, has specifically sought for an opportunity of personal hearing to their company or its authorised representative before adjudicating upon the notice dated 20.07.2015. However, it appears that no opportunity of personal hearing has been granted to the petitioner as there is no reference to the same in the impugned order. In fact, an identical issue was considered by this Court in the case of Bajaj Electricals Limited V. The Assistant Commissioner (CT), FAC, Chennai, in W.P.No.3443 and 3444 of 2013 dated 10.11.2014 and this Court has taken note of the decision of the Hon'ble Division Bench in the case of SRC Projects Private Limited V. Commissioner of Commercial Taxes, Chennai and another reported 2010 (33) VST 333 (Mad.) wherein it was held that where the question involved was one of determination of certain factual disputes which were a bit complex and not free from controversy, the principles of fairness would encompass personal hearing within the concept of "reasonable opportunity to show cause" under Section 16(1)(a) of the Act. Further, Section 16(1)(a) of the Act had to be construed in accordance with the circular dated April 20, 2001 providing for oral hearing where the dealer demanded it by way of contemporanea expositio. Therefore, the order passed by way of revision of assessment without giving an opportunity of personal hearing was quashed in the said case.

5.In the light of the decision of the Hon'ble Division Bench, opportunity of personal hearing ought to have been afforded to the dealers before finalising the proposal in the show cause notice. This having not been done in the instant case, the order calls for interference on this technical ground. However, it is made clear that this Court has not gone into the merits of the contentions raised by the petitioner i.e. the merits of the assessment made on the petitioner.

6.In the light of the above, the Writ Petitions are allowed and the impugned orders are quashed and the matters are remanded to the respondent for fresh consideration with a direction to afford an opportunity of personal hearing to the petitioner during which the petitioner will be entitled to produce all records, documents in support of their contentions and after hearing the petitioner or their authorised representative, the respondent shall pass orders on merits and in accordance with law. It is made clear that this Court has interfered with the impugned orders only on the ground of violation of principles of natural Justice and the merits of the case have not been gone into and it shall be decided by the respondent in accordance with law as expeditiously as possible and the petitioner is directed to co-operate with the respondent for early disposal of the matter. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sgl

s/d-
Assistant Registrar(CS-VII)

True Copy

Sub-Assistant Registrar

To

The Assistant Commissioner (CT)
Guindy Assessment Circle,
28, Greenways Road, Chennai - 600 028.

+ 1 cc to M/s.Pushpa Menon, Advocate SR 3070

+ 1 cc to Spl.Govt.Pleader (Taxes) SR 3190

svi(co)
prk1/2

W.P.Nos.1703 to 1708 of 2016