

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.11.2017

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
and

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR
W.A.No.1295 of 2017

1. The Commissioner of Commercial Taxes,
Government of Tamil Nadu,
Chepauk, Chennai - 600 005.
2. The Joint Commissioner (CT),
Large Tax Payers Unit,
Chennai - 600 008.
3. The Deputy Commissioner (CT) I,
Large Tax Payers Unit,
Chennai - 600 008. ... Appellants/Respondents 1 to 3

versus

1. M/s.Empee Distilleries Ltd.,
Rep. by its Chairman,M.P.Purushothaman,
Empee Tower, No.59, Harris Road,
Pudupet.Chennai - 600 002. 1st Respondent/Petitioner
2. The Tamil Nadu State Marketing Corporation Ltd.,
Rep. by its Managing Director,
(TASMAC), 4th Floor, CMDA Tower II,
Gandhi Irwin Bridge Road,
Egmore, Chennai - 600 008 ...2nd Respondent/Respondent 4

Prayer:-

Writ Appeal filed under clause 15 of Letter patent praying to set aside the Order passed in W.P.No.24657 of 2017, dated 14.09.2017.

For Appellants : Mrs.Narmatha Sampath
Spl. Government Pleader (Taxes)

For Respondents : Mr.P.Bakiyaraj (for R1)

Prayer in W.P.No.24657 of 2017:-

Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certioraified Mandamus to call for the records of the 3rd respondent by his proceedings pertains to the Notice in Form U dated 31.08.2017 in TIN No. 33980640189/ 2017-18 for the return month of July 2017 and quash the same and direct the Respondents 1-3 to grant 10 months time to the petitioner to pay the present VAT arrears and interest for the total of Rs. 34,68,83,092/- (Rupees Thirty Four Crores Sixty Eight Lakhs Eighty Three Thousand Ninety Two Only).

JUDGMENT

(Order of the Court was delivered by S.MANIKUMAR, J.)

Challenge in this writ appeal is to an order made in W.P.No.24657 of 2017, by which the writ Court, while disposing of the writ petition, filed challenging the garnishee order dated 31.08.2017, issued by Deputy Commissioner (CT-1), Large Tax Payers Unit, Chennai, granted liberty to M/s.EMPEE Distilleries Limited, rep. by its Chairman, 1st respondent herein, to pay the arrears of tax together with applicable interest, in five equal monthly installments, as hereunder

".... The first of such instalment shall be paid on or before 25.9.2017 and all the subsequent instalments shall be paid on 25th of every succeeding month. Subject to compliance of the above condition, the third respondent is directed to kept in abeyance the impugned Form U notice / garnishee order. If the petitioner fails to pay any one of the instalments within the time stipulated by this Court, the impugned Form U notice / garnishee order will stand automatically revived without any further reference to this Court. On the petitioner clearing the entire arrears along with interest as per the time frame fixed by this Court, the third respondent shall lift the order of attachment / garnishee order.."

2. Short facts leading to the appeal are as hereunder:

Respondent, is a company incorporated under the Indian Companies Act, 1956, engaged in the business of manufacture of sale of Indian Make Foreign Liquor, duly licenced by Government of Tamilnadu and supplier to Tamilnadu State Marketing Corporation (TASMAC), Chennai, 2nd respondent herein. According to the respondent company, which has been licenced to manufacture 4,19,400 cases of liquor per month has engaged about 750 workers, besides 3000 on contract basis. It is the case of the respondent that though there is increase in the cost of the manufacture of liquor, transport charges, electricity consumption charges, the purchase price of Indian Made Liquor, fixed in November 2007, revised after seven years on 01.11.2014, has not been enhanced. According to the respondent, sales turn over was about 75 crores per month, which includes excess duty and VAT at 58%, under Section 21 of the Tamilnadu Value Added Tax Act, 2006.

3. As per Rule 7 of the Tamilnadu Value Added Tax Rules, 2007, a registered dealer, whose turn over in the preceding year is above Rs.200 Crores, the dealer shall file a return on or before 14th of the succeeding month, to the assessing authority in whose jurisdiction, the principal place of business or head

office is located and the return shall be accompanied by proof of payment of tax. In the event of delay in payment of tax, penal interest at 2% per mensem is levied.

4. Before the writ Court, respondent has submitted that due to increase in production cost, on the one hand and selling price remaining static for a considerable period, respondent has suffered financial crisis, leading to the delay in payment of tax on the date of filing of the returns. The respondent had faced such difficulty in the months of February, March also. Having regard to the abovesaid reasons, the respondent could not remit the tax, within the time as provided therefor, in the rules.

5. In the supporting affidavit to the writ petition, respondent has further contended that under the sales tax return for the month of March 2017, the respondent was liable to pay Rs.32,63,17,472/- (Rupees thirty two crores sixty three lakhs seventeen thousand four hundred seventy two only) and interest for the month of March 2017. The respondent could not pay the same, on account of the above factors. However, the Deputy Commissioner (CT) Large Tax Payer's Unit, the 3rd appellant, within three days of the date of filing the return, without providing a reasonable time to the respondent issued a notice dated 19.04.2017 under Rule 9(4) of the Tamilnadu Value Added Tax Act, 2006 to Tamilnadu State Marketing Corporation, Chennai, the 2nd respondent herein, to pay the total sum of Rs.32,63,17,472/- to the 3rd appellant, towards VAT dues and interest. Similar notices under Form U, has been issued to the petitioner's bankers. Virtually, the petitioner's finances have been frozen, making it impossible for the respondent, to resolve their financial problem, by not dispatching the finished goods."

6. On the above averments, writ petition No.24657 of 2017 has been filed for a writ of certiorarified mandamus, calling for the records of the Deputy Commissioner (CT)-I, Large Tax Payers Unit, Chennai, the 3rd appellant vide Notice in Form U dated 31.08.2017 in TIN No.33980640189 for the return month of July 2017 and to quash the same. Consequently, the respondent has prayed for a direction to the appellants 1 to 3, to grant 10 months time to the petitioner to pay the present VAT arrears and interest for the total sum of Rs.34,68,83,092/- (Rupees Thirty Four Crores Sixty Eight Lakhs Eighty Three Thousand Ninety Two Only).

7. Before the writ Court, reliance has also been made to an order made in W.P.No.10573 of 2017 dated 28.04.2017, permitting the respondent to pay arrears in four installments. Order dated 28.04.2017, has been clarified on 08.05.2017 permitting the respondent to pay the arrears of tax in four installments

commencing from 25.05.2017 and directing the appellants to keep the garnishee order, in abeyance till the respondent completed the payment of entire arrears, subject matter in W.P.No.10573 of 2017.

8. Though submissions have been made by learned Additional Government Pleader (T) that an appeal has been filed, against the order dated 28.04.2017 in W.P.No.24657 of 2017, observing that the respondent has duly and faithfully complied with the directions issued by this Court in the order dated 08.05.2017 in W.P.No.10573 of 2017 and that the entire arrears alongwith interest have been cleared, that the respondent is undergoing severe financial crises and taking note of the earlier order passed in W.P.No.10573 of 2017, giving indulgence to the respondent in W.P.No.24657 of 2017, dated 14.09.2017, writ Court has permitted the respondent to pay entire arrears of tax together with applicable interest in five equal monthly installments, details of which extracted supra. Being aggrieved, Commissioner of Commercial Taxes, Government of Tamilnadu, Chennai and two others, have filed the instant writ appeal.

9. Order made in W.P.No.24657 of 2017 dated 14.09.2017 is assailed on the grounds that,

(a) the writ Court ought to have considered the fact that the respondent had collected the entire sale value for liquor products, including Rs.34,68,83,092/- towards tax amount from TASMAC, in respect of IMFL sold during the month of July 2017.

(b) the writ Court ought to have considered the fact that as per the return payable for the month of July'17 under TNVAT Act, the respondent had already left, with an unpaid balance of Rs.34,50,53,918/- and this Court has directed the 1st respondent to pay the arrears, in five equated monthly installments, starting the 1st instalment due payable on or before 25.9.17. Subsequently, as per the return payable for the month of August'17, due on 12th on every month, the first respondent collected the tax from their dealers, but failed to remit the tax collected to the exchequer. The tax collected by the 1st respondent from the dealer for the months of August '17, is Rs.37,14,00,243/-. When both the arrears and tax collected unpaid, clubbed together works around Rs.71,64,54,153/- which remains totally unpaid, instead utilized by the 1st respondent, for their own business promotion activities in violation to the provision, of the Act.

(c) Writ Court ought to have considered that, as per the provision of Rule 7(1)(a) and 7(1)(b) of the TNVAT Rules, the respondent should pay tax due along with the monthly return, in Form I as prescribed by the TNVAT Rules. The dealer/respondent has filed monthly return for the month of July 2017, without accompanying the proof of payment of tax. Value Added Tax is

one of the important sources of revenue to the State, through which the State Government generates 65% of the revenue and used for the welfare of the State.

(d) Writ Court ought to have considered that the respondent is duty bound to pay tax collected from TASMAT to the Government on or before 12th day of the succeeding month.

(e) Even if the dealer has not received the sale price from the buyer, the respondent is mandated to make payment of tax, in time, as per the statute. Even after having received the tax amount, along with the sale price, well before the date of filing the return on or before 14th day of succeeding month, the dealer / respondent, has received the sale price, with tax, not remitted to the Government and misused the tax amount, for their own purpose.

(f) If the tax amount is not realized in time as scheduled, it will prolong or delay the implementation of the projects of schemes initiated for the welfare of the Public.

(g) Writ Court ought to have seen that the respondent has never paid the entire tax due, along with the monthly returns and even failed to clear the arrears before the end of the month. Earlier, the dealer has not paid the tax within the stipulated period for the years 2013-14, 2014-15 and 2016-17.

(h) Writ Court ought to have considered that tax liability is not fixed out of the dealers income, whereas sales tax is paid by the respondent out of the tax collected from the other end. In the present case, the respondent has collected tax amount from the buyer i.e. TASMAT and by not paying the tax due even beyond the stipulated period, the respondent has misused the public money for their own welfare, and the same cannot be allowed.

(i) Writ Court ought to have considered that allowing the defaulter to make the tax payment in installments, when tax amount is already collected by the respondent from their customers, would amount to unjust enrichment and will set a dangerous precedent, as it may be followed by the merchant community.

(j) Writ Court ought to have considered that section 45(1) (b) of the TNVAT Act, permits any one holding money on behalf of the defaulter dealer or liable to pay to the defaulter dealer, then the amount has to be remitted to the Government on behalf of the defaulter dealer. Writ Court ought to have considered that once legitimate tax, is due, the same can be collected from the other person who holds money on behalf of the defaulter and allowing the defaulter to pay the tax in installments which has to be paid in time as contemplated under Section 21 of the Tamilnadu Value Added Tax Act, 2006, would amount to rewriting the statute, which is against the spirit of the taxing statute.

10. On 24.10.2017, Ms.Narmatha Sampath, learned Special Government pleader submitted that case of the 1st respondent has

no bonafide and for every monthly payment of tax, the 1st respondent has obtained orders from this Court for payment of tax on installment basis and even for the month of August 2017, another writ petition has been filed with a similar prayer.

11. Having regard to the pendency of another writ petition for the month of August 2017, and submission of the learned Special Government Pleader that the writ Court may consider passing similar orders, in the case of M/s.EMPEE Distilleries, Chennai, stay of the order made in the writ petition viz., W.P.No.24657 of 2017, was sought for. Observing that grant of interim order would result in disallowing the prayer sought for in the writ petition, while ordering notice, we dismissed, the writ miscellaneous petition. However, directed the appellants to bring it to the notice of the writ court that, challenge made to the order in W.P.No.24657 of 2017, has been entertained.

12. On this day, when the writ petition came up for further hearing, learned counsel for the appellants, further submitted that in the absence of any statutory provision, enabling payment of tax, in installments, writ Court, ought not to have permitted the petitioner to pay tax of Rs.34,68,83,092/- for the month of July in five instalments. She further submitted that writ petition has been ordered, at the admission stage itself and therefore, the appellants, could not file a detailed counter affidavit.

13. Responding to the notice and based on the typed set of papers dated 01.11.2017, Mr.Packiaraj, learned counsel for the respondent submitted that amount due and payable by the respondent as on 31.08.2017 was Rs.34,68,83,092/-. On 14.09.2017, Writ Court directed said amount to be paid in five equal instalments with interest. On 19.09.2017, 1st installment with interest Rs.6,93,76,618.4p was paid. The 2nd instalment of Rs.7,27,08,000.01p, was paid on 25.10.2017. According to the learned counsel for the respondent, 1st and 2nd installment have been paid and that the respondent would comply with the directions of this Court within the time. He further submitted that though, in terms of the order dated 08.05.2017, made in W.P.No.10573 of 2017, the appellants, ought to have lifted the Form-U, enabling the respondent to continue their operations and generate the cash flow to comply with the directions of this Court made in W.P.No.24657 of 2017, the same was not done by the appellants and therefore, the respondent was constrained to issue a contempt notice dated 22.09.2017.

14. Inviting the attention of this Court to the operative portion of the order made in W.P.No.24657 of 2017, dated 14.09.2017 directing Form-U notice / garnishee order to be kept in abeyance, learned counsel for the respondent submitted that

despite the above, TASMACH, Chennai, is not releasing even 50% of payment due for the month of October. Therefore, the respondent was constrained to send a letter dated 25.10.2017, to the Managing Director, TASMACH, to do so. Reiterating that the respondent is facing financial constraint, learned counsel for the respondent prayed to sustain the order made by the writ Court.

15. Heard the learned counsel for the parties and perused the materials available on record.

16. Before advertng to the rival submissions, this Court deems it fit to consider the relevant provisions of the TNVAT Act, 2006 and TNVAT Rules, 2007.

(a) Section 21 of the TNVAT Act, 2006 deals with Filing of Returns

"Every dealer, liable to pay tax under this Act, shall file return, in the prescribed form showing the total and taxable turnover within the prescribed period in the prescribed manner, along with proof of payment of tax. The tax under this section shall become due without any notice of demand to the dealer on the date of receipt of the return or on the last date of the period for filing return as prescribed, whichever is later."

(b) Rule 7 of the TNVAT Rules, 2007 reads as follows:

7. Filing of returns.- (1) (a) Every registered dealer liable to pay tax under the Act, other than a dealer who opted to pay tax under sub-section (4) of section 3 or section 6 or section 8 including agent of a non-resident dealer and casual trader, shall file return for each month in Form I on or before 20th of the succeeding month, to the assessing authority in whose jurisdiction his principal place of business or head office is situated. Such return shall be accompanied by proof of payment of tax.

(b) Every registered dealer who is liable to pay tax under sub-section (5) of section 3 shall file a return in Form J on or before 20th of the succeeding month to the assessing authority in whose jurisdiction his principal place of business or head office is situated. Such return shall be accompanied by proof of payment of tax:

Provided that a registered dealer specified in clause (a) or (b), whose taxable turnover in the preceding year is two hundred crores of rupees and above, shall file the above returns on or before 12th of the succeeding month to the assessing authority in whose jurisdiction his principal place of business or

head office is situated. Such return shall be accompanied by proof of payment of tax:

(c) The option exercised under sub-section (4) of section 3 of the Act shall be final for the financial year and such option shall be exercised within thirty days from the date of commencement of the Act or commencement of his business whichever is later.

(d) Every registered dealer who opts to pay tax under sub-section (4) of section 3 shall file a return for each month in Form K on or before 20th of the succeeding month to the assessing authority along with proof of payment of tax.

(e) Every registered dealer who opts to pay tax under section 6 or section 8 shall file a return for each month in Form L on or before 20th of the succeeding month to the assessing authority along with proof of payment of tax.

(f) Every registered dealer who opts to pay tax under Section 6-A shall file a return for each month in Form L-1 on or before the 20th of the succeeding month to the assessing authority along with proof of payment of Tax.

(2) Every principal or head office shall include the turnover relating to the goods consigned to the agent and file a return in Form I for each month on or before 20th of the succeeding month with the particulars of name and full address of the agent, value of the goods sold or purchased, tax collected on sale and tax paid on purchase by the agent along with proof of payment of tax.

(3) Every branch or agent of a dealer shall file a return in Form I, on or before the date on which the head office or his principal has to file return, for the preceding month, to the assessing authority under whose jurisdiction he carries on business.

(4) Every department of Government liable to pay tax under the Act shall file a statement in Form M showing the total and taxable turnover for each quarter on or before 20th of the month succeeding the quarter along with proof of payment of tax.

(5) Every dealer liable to pay tax under the Act shall file return in duplicate:

Provided that such category of dealers as may be directed by the Commissioner shall file returns electronically or in ICR form supplied by the Government.

(6) If a dealer receives or returns in any year any amount due to price variation, he shall within thirty days from the end of the year submit a return in Form N to the assessing authority.

(7) Every registered dealer who is not liable to pay tax under the Act, shall file return for each year in Form I-1 on or before the 20th day of May of the succeeding year showing the actual total turnover in respect of all goods dealt with by him:

Provided that for the year 2007-2008, the return shall be filed on or before the 31st day of December 2008.

(8) In case of dealers making electronic payment of the tax, the dealers whose taxable turnover in the previous year is two hundred crores of rupees and above, shall file the returns on or before 14th of the succeeding month along with proof of payment of tax and the others shall file the above returns on or before 22nd of the succeeding month along with proof of payment of tax.

(9) If a dealer having filed a return, finds any omission or error therein, other than as a result of an inspection or audit or receipt of any other information or evidence by the assessing authority, he shall file a revised return rectifying the omission or error within a period of six months from the last day of the relevant period to which the return relates. Where, as a result of such revised return, the tax payable by the dealer increased, the dealer shall furnish along with such revised return, proof of payment of tax and interest due thereon under sub-section (4) of Section 42 of the Act.

(c) In terms of Section 22, procedure to be followed by the Assessing authority, is set out in Rule 8 of TNVAT Rules, 2007 and the same is extracted hereunder.

"8. Procedure for assessment.- (1) In pursuance of Explanation II to clause (41) of section 2, the amounts specified in the following clauses shall not, subject to the conditions specified therein, be included in the turnover of a dealer -

(a) all amounts refunded to purchasers in respect of goods returned by them to the dealer, provided the accounts show the date on which the goods were returned and the date on which and the amount for which refund was made or credit was allowed to the purchaser.

(b) all amounts received from the sellers in respect of goods returned to them by the dealer, provided the accounts show the date on which the goods were returned and the date on which and the amount for which refund was received or advice of credit was received from the seller.

(c) all amounts charged separately as interest on the unpaid amount payable or finance charges in the case

of hire purchases or any such system of payment by instalments.

(2) While determining the taxable turnover, in respect of a dealer other than those who opted to pay tax under sub-section (4) of section 3, section 6 and section 8, the post sale charges and the amounts specified in the following clauses shall, subject to the conditions specified therein be deducted from the total turnover of a dealer -

(a) all amounts for which goods specified in the Fourth Schedule to the Act are sold;

(b) all amounts for which goods exempted by a notification issued by the Government under section 30 are sold or purchased, as the case may be, provided the terms and conditions, if any, for the exemption in the notification are complied with.

(3) In making an assessment under section 24, the assessing authority shall take into account such of the following factors as may be relevant to the determination of the prevailing market price of the goods, namely:--

(a) The price charged by other dealers at the relevant stage of sale of similar goods during the relevant period;

(b) The difference between the price charged by a dealer towards the purchase of the goods from the earlier seller and the price charged on the resale of the same goods;

(c) The difference between the price paid by the dealer towards the purchase of the goods from the earlier seller and price charged for the resale of the same goods; and

(d) The differential price charged on sales against bulk orders and small orders in respect of the same goods. If the difference in prices, exclusive of the tax element, is more than fifteen per cent (15%), the assessing authority shall examine the reasons for the variation, taking into account the relationship between the parties to the transactions, the charges for after sales services, packaging, transport and other expenses incurred by subsequent sellers which add to the cost of the goods at each stage of sale by successive dealers. The assessing authority shall also examine whether there is such difference in the price charged on the sales of the same goods to different customers and whether the goods are made available to all distributors or other customers in unlimited quantities and at the same prices. After making due allowance towards the variation in prices and normal profit margin, the assessing authority shall arrive at the market price that should have been charged by the dealer and levy tax on the taxable

turnover so arrived at.

(4) On receipt of the return in Form N, the assessing authority shall pass orders -

(a) demanding the tax payable on the amount received due to price variation and shall serve upon the dealer a notice in Form O; or

(b) refunding the tax due on the amount returned and shall serve upon the dealer a notice in Form P.

(5) The taxable turnover of the dealer liable to pay tax under section 5 on transfer of property in goods involved in the execution of works contract shall be arrived at after deducting the following amounts from the total turnover of that dealer, namely:-

(a) All amounts involved in respect of goods involved in the execution of works contract in the course of export of the goods out of the territory of India or in the course of import of the goods into the territory of India or in the course of inter-State trade or commerce;

(b) All amounts relating to the sale of any goods involved in the execution of works contract which are specifically exempted from tax under the Act;

(c) All amounts paid to the sub-contractors as consideration for execution of works contract whether wholly or partly:

Provided that no such deduction shall be allowed unless the dealer claiming deduction, produces proof that the sub-contractor is a registered dealer liable to pay tax under this Act and that the turnover of such amount is included in the return filed by such sub-contractor;

(d) All amount towards labour charges and other charges not involving any transfer of property in goods, actually incurred in connection with the execution of works contract, or such amounts calculated at the rate specified in column (3) of the Table below, if they are not ascertainable from the books of accounts maintained and produced by a dealer before the assessing authority.

THE TABLE.

Sl.No.	Type of works contract	Labour or other charges as a percentage value of the works contract
(1)	(2)	(3)
1.	Electrical Contracts	15
2.	All structural contracts	15
3.	Sanitary contracts	25
4.	Watch and / or clock repair contracts	50
5.	Dyeing contracts	50
6.	All other contracts	30

(e) all amounts, including the tax collected from the customer, refunded to the customer or adjusted towards any amount payable by the customer, in respect of unexecuted portion of works contract based on the corrections on account of measurements or check measurements, subject to the conditions that—

(i) the turnover was included in the return and tax paid; and

(ii) the amount including the tax collected from the customer is refunded or adjusted, within a period of six months from the due date for filing of the return in which the said amount was included and tax paid.

(e) all amounts, including the tax collected from the customer, refunded to the customer or adjusted towards any amount payable by the customer, in respect of unexecuted portion of works contract based on the corrections on account of measurements or check measurements, subject to the conditions that—

(i) the turnover was included in the return and tax paid; and

(ii) the amount including the tax collected from the customer is refunded or adjusted, within a period of six months from the due date for filing of the return in which the said amount was included and tax paid.

(6) After assessment or revision of assessment under sections 22, 24, 27, 28 or 29 of the Act, the assessing authority shall serve on the dealer a demand notice in Form O, after adjusting the eligible input tax credit. If the tax due on assessment or revision of assessment, after adjustment of eligible input tax credit, is lower than the tax already paid, the assessing authority shall serve upon the dealer a notice in Form P, informing the dealer of the adjustment of excess tax towards the arrears or the refund of the amount, as the case may be.

(7) The declaration that an identical question of law is pending before the High Court or the Supreme Court referred to in sub-section (1) of section 23 shall be in Form Q."

(d) Section 45 (1) (b) of TNVAT Act, 2006, reads thus.

"(b) any person who holds or may subsequently hold money for, or on account of the dealer or other person who has become liable to pay any amount due under this Act, to pay to the assessing authority either forthwith upon the money becoming due or being held at or within the time specified in the notice, (not being before the money becomes due or is held) so much of the money as is sufficient to pay the amount due by the dealer or other person in respect of the arrears that have become

payable under this Act or the whole of the money when it is equal to or is less than the arrears aforesaid."

17. Assessment has been finalized for the month of July, fixing the liability as Rs.34,68,83,092/-.

18. As reliance has been made to a decision in W.P.No.10573 of 2017, in the supporting affidavit, the same was called for. Perusal of the same shows that a similar Notice in Form 'U' has been issued for the month of March 2017, wherein the tax levied was Rs.32,63,17,472/-. Respondent has sought for a writ of certiorarified mandamus, to call for the records of the 3rd appellant pertaining to the Notice in 'Form U' in TIN No.33980640189/2017-18 dated 19.04.2017 for the month of March 2017 and to quash the same. Consequently, the respondent has prayed for a direction to the respondents 1-3 therein to grant 10 months time to the petitioner to pay the present VAT arrears and interest for the total sum of Rs.32,63,17,472/- (Rupees Thirty Two Crores Sixty Three Seventeen Thousand Four Hundred and Seventy Two only).

19. After considering the submissions and payments made, while disposing of W.P.No.10573 of 2017, on 28.04.2017, writ Court, ordered as follows:

"7.Upon considering the facts and circumstances of the case as well as the submission made by both sides, it is seen that the petitioner has not disputed their liability to pay the arrears of tax. On the other hand, they seek only time to make such payment. It is further seen that the petitioner has also effected a part payment of Rs.10,48,49,403.20p, out of the total demand as on today. The said payment is is not disputed, but at the same time, this Court is of the view that the petitioner cannot seek indulgence of this Court every time to make the payment in installments by stating one reason or other. Once the tax is fixed and also admitted by the petitioner, it is their bounden duty to pay without dragging the matter. As I have already pointed supra, this Court also granted one indulgence in the year 2015. Therefore, this writ petition is disposed of, with a direction to the petitioner, to pay the balance of arrears with interest in four monthly installments commencing from 15.05.2017. It is made clear that no further indulgence shall be shown by this Court, in respect of any future arrears, as it is the bounded duty of the petitioner to effect the payment of tax then and there."

20. By order dated 28.04.2017 in W.P.No.10573 of 2017, writ

Court has made it clear that the respondent cannot seek indulgence everytime to make the payment in instalments by stating one reason or the other, and further observed that once the tax liability is fixed and also admitted by the respondents, it is the bounden duty to pay without dragging the matter.

21. As per the order made in W.P.No.10573 of 2017 dated 28.04.2017, no further indulgence shall be shown by this Court, in respect of future arrears, as it is the bounden duty of the respondent to effect payment of tax, then and there.

22. When writ Court, vide order dated 28.04.2017, in W.P.No.10573 of 2017, has categorically observed that no indulgence, in future be granted, suppressing the above, once again for the month of July, similar relief has been sought for in W.P.No.24657 of 2017. Learned Special Government Pleader submitted that the above writ petition No.24657 of 2017, has been disposed of at the admission stage itself. Perusal of the order made in W.P.No.24657 of 2017 dated 14.09.2017, shows that when the matter came up for hearing, the learned counsel appearing for the appellants, have consented for the disposal of the W.P.No.24657 of 2017 dated 14.09.2017. Appellants ought to have brought to the notice of the writ Court, the full text of the order made in W.P.No.10573 of 2017 dated 28.04.2017.

23. In W.P.No.30496 of 2015 dated 06.10.2015, permission has been granted to pay arrears of tax with interest in 20 equated weekly instalments, and after considering the same, W.P.No.10573 of 2017, filed for the month of March 2017, has been disposed of.

24. Suppression of the observations made in the earlier W.P.No.10573 of 2017 dated 28.04.2017, in the very case of the respondent, in the supporting affidavit to W.P.No.24657 of 2017, is per se apparent on the face of record, when the respondent at paragraph No.12, has simply averred that earlier in W.P.No.10573 of 2017, this Court has allowed the respondent to pay VAT arrears in four instalments with interest and the said order has been complied with from the month of May to July 2017. For brevity, paragraph No.12 of the supporting affidavit in W.P.No.24657 of 2017, is extracted.

"12. The petitioner states that the aggrieved the act of the 3rd respondent without having an any other effective and efficacious remedy approached this Hon'ble Court by filing this petition under Article 226 of the Constitution of India in W.P.No.10573 of 2017 and the same was allowed to pay the VAT arrears in four installments with interest and the said order condition has been complied by the petitioner from the month of May to July 2017."

25. As per Rules 7(1)(a) and 7(1)(b), respondent has to pay tax due along with the monthly returns in Form I, as prescribed. Submission of returns alongwith, proof of payment of tax, is mandatory.

26. As per the statutory provisions, tax has to be paid, before the 12th day of the succeeding month. Contention of the appellant in the grounds of appeal that even after receiving the tax amount along with the sale price from TASMAL Limited, well before the date of filing of the return, the respondent has not remitted the tax to the government, has not been refuted by filing any counter in this appeal.

27. Contention of the appellants that the respondent has not paid the entire tax along with the monthly returns within the time, for the year 2013-14, 2014-15 and 2016-17, has not been disputed. As rightly contended by the appellants, tax liability is not fixed out of the dealers income, whereas, sales tax is paid by the respondent out of the tax collected from the other end, and as observed earlier, the specific case of the appellant that the respondent has already collected the tax from the buyer, TASMAL, has not been disputed. As rightly contended by the appellants, withholding the tax collected from the buyer and not remitting the same to the Court, within time, would amount to unjust enrichment.

28. As per the statute, tax has to be paid in time, failing which interest is levied. There is no provision in the statute to pay tax in installments. Writ Court, vide order dated 14.09.2017 has considered the plea of financial constraint. Supporting the above, letter dated 15.09.2017, addressed to the Deputy Commissioner (CT), Large Tax Payers Unit, Chennai has been filed. Said letter is extracted hereunder.

September 15, 2017

The Deputy Commissioner (CT),
Large Tax Payers Unit-1,
Chennai - 8.

Dear Sir,

Sub: VAT Return for the month of July - filed on
17.08.2017 - Form U dated 31.08.2017.

We filed our monthly Return for the month of July 2017 but due to the continued financial crunch were not in a position to settle the VAT amount on time.

A Form U Notice was issued by you on 31.08.2017 demanding payment of the Return amount. Upon receipt

of this Form U Notice we called on your Office to explain about the continued financial constraints our Company has been facing due to reasons beyond our control. Further, lack of clarity on GST resulted in suspension of supplies by Vendors which further aggravated our difficulties.

We further wish to state that despite such adverse conditions, we have been earnest in efforts to settle the VAT dues, though belatedly, with the applicable interest so far. However, frequent stoppage of production due to financial constraints has resulted in creating a crises like situation at our manufacturing Unit. Unless we are able to set right such adverse situation, operation of our IMFL Unit in Tamil Nadu will be jeopardy.

Under the above compelling situation, we were left with no other alternative than to file a Writ Petition in the Hon'ble High Court of Madras seeking payment of the VAT dues in installments. The Hon'ble Madras High Court in Writ Petition No.24657 of 2017 & WMP No.26018 of 2017 was pleased to order payment of the VAT arrears in five equal monthly instalments with the first instalments to be paid on 25.09.2017.

We now send herewith a copy of the Order dated 14.09.2017 issued by the Hon'ble High Court of Madras and would request you to kindly lift the Form U Notice in order to enable us to resume our normal manufacturing operations and meet the VAT commitments. Your kind co-operation at this juncture will be of great help to our Company in rebuilding our business, which needless to say, would help generate higher revenue to the Government.

We once again request your kindly lift the Form U Notice at the earliest.

Thanking you,
Yours sincerely,
for EMPEE DISTILLERIES LTD

Sd/-
AUTHORISED SIGNATORY

29. Nowhere in the said letter, the respondent has averred about the escalation cost of manufacture, electricity consumption charges and other reasons stated in the supporting affidavit to W.P.No.24657 of 2017, except to state that the company is facing continued financial constraint, due to reasons beyond their control. Lack of clarity on GST, has been assigned

as one of the reasons, for remitting the tax in time.

30. Before the Deputy Commissioner of Tax (CT), Large Tax Payers Unit, Chennai, when the respondent, has assigned the above reasons, for not remitting the tax in time, before the writ Court, has given different reasons. Mere averments in the supporting affidavit to a writ petition, do not amount to proof.

31. Explaining the distinction between the pleadings and proof, required in a writ petition filed under Article 226 of the Constitution of India and the pleadings in the Civil Court, the Hon'ble Supreme Court at paragraph No.13, in Bharat Singh and Others Vs. State of Haryana and Others, reported in 1988 (4) SCC 534, held as follows:

".... In our opinion, when a point which is ostensibly a point of law is required to be substantiated by facts, the party raising the point, if he is the writ petitioner, must plead and prove such facts by evident which must appear from the writ petition and if he is the respondent, from the counter-affidavit. If the facts are not pleaded or the evidence in support of such facts is not annexed to the writ petition or to the counter-affidavit, as the case may be, the court will not entertain the point. In this context, it will not be out of place to point out that in this regard there is a distinction between a pleading under the Code of Civil Procedure and a writ petition or a counter-affidavit. While in a pleading, that is, a plaint or a written statement, the facts and not evidence are required to be pleaded, in a writ petition or in the counter-affidavit not only the facts but also the evidence in proof of such facts have to be pleaded and annexed to it."

In the light of the above decision though financial hardship is pleaded, it is not substantiated.

32. From the above, it is manifestly clear that the respondent has suppressed collection of tax from the buyer, and failed to remit the same to the government in time. The respondent has suppressed the text of the earlier order made in W.P.No.10573 of 2017 dated 28.04.2017, that no indulgence can be granted in future. Remedy under Article 226 of the Constitution of India, is equitable and not to be extended to a person, who has suppressed material facts, and approached the Court with unclean hands. Reference can be made to few decisions.

(i) In Prestige Lights Ltd., v. State Bank of India reported in 2007 (8) SCC 449, at Paragraphs 27, 33, 34 and 35, held as follows:

"26. In *Gorden v. Gorden*, (1904) 73 LJ 41 : 90 LT 597 : 16 Dig 90, 1128, Cozens Hardy, L.J. put the principle succinctly in the following words; "I desire expressly to limit my judgment to a case in which the [party in contempt] is saying that the order complained of is outside the jurisdiction of the court, as distinguished from the case of an order which, although it is within the jurisdiction of the court, ought not, it is said, to have been made.

.....
33. It is thus clear that though the appellant- Company had approached the High Court under Article 226 of the Constitution, it had not candidly stated all the facts to the Court. The High Court is exercising discretionary and extraordinary jurisdiction under Article 226 of the Constitution. Over and above, a Court of Law is also a Court of Equity. It is, therefore, of utmost necessity that when a party approaches a High Court, he must place all the facts before the Court without any reservation. If there is suppression of material facts on the part of the applicant or twisted facts have been placed before the Court, the Writ Court may refuse to entertain the petition and dismiss it without entering into merits of the matter.

34. The object underlying the above principle has been succinctly stated by Scrutton, L.J., in *R v. Kensington Income Tax Commissioners*, [(1917) 1 KB 486 : 86 LJ KB 257 : 116 LT 136], in the following words: "(I)t has been for many years the rule of the Court, and one which it is of the greatest importance to maintain, that when an applicant comes to the Court to obtain relief on an ex parte statement he should make a full and fair disclosure of all the material facts, not law. He must not misstate the law if he can help the Court is supposed to know the law. But it knows nothing about the facts, and the applicant must state fully and fairly the facts, and the penalty by which the Court enforces that obligation is that if it finds out that the facts have not been fully and fairly stated to it, the Court will set aside, any action which it has taken on the faith of the imperfect statement". (emphasis supplied)

34. It is well settled that a prerogative remedy is not a matter of course. In exercising extraordinary power, therefore, a Writ Court will

indeed bear in mind the conduct of the party who is invoking such jurisdiction. If the applicant does not disclose full facts or suppresses relevant materials or is otherwise guilty of misleading the Court, the Court may dismiss the action without adjudicating the matter. The rule has been evolved in larger public interest to deter unscrupulous litigants from abusing the process of Court by deceiving it. The very basis of the writ jurisdiction rests in disclosure of true, complete and correct facts. If the material facts are not candidly stated or are suppressed or are distorted, the very functioning of the writ courts would become impossible."

(ii) In *Arunima Baruah v. Union of India* reported in 2007 (6) SCC 120, the Hon'ble Supreme Court held as follows:

"12.It is also trite that a person invoking the discretionary jurisdiction of the court cannot be allowed to approach it with a pair of dirty hands. But even if the said dirt is removed and the hands become clean, whether the relief would still be denied is the question.

13. In *Moody v. Cox* [(1917) 2 Ch. 71: (1916-17) All ER Rep 548 (CA)], it was held: (All ER pp. 555 I-556 D)

"When one asks on what principle this is supposed to be based, one receives in answer the maxim that anyone coming to equity must come with clean hands. I think the expression "clean hands" is used more often in the textbooks than it is in the judgments, though it is occasionally used in the judgments, but I was very much surprised to hear that when a contract, obtained by the giving of a bribe, had been affirmed by the person who had a primary right to affirm it, not being an illegal contract, the courts of equity could be so scrupulous that they would refuse any relief not connected at all with the bribe. I was glad to find that it was not the case, because I think it is quite clear that the passage in *Dering v. Earl of Winchelsea* [(1787) 1 Cox Eq Cas 318: 2 Bos & P 270], which has been referred to, shows that equity will not apply the principle about clean hands unless the depravity, the dirt in question on the

hand, has an immediate and necessary relation to the equity sued for."

14. In Halsbury's Laws of England, 4th Edn., Vol. 16, pp. 874-76, the law is stated in the following terms:

"1303. He who seeks equity must do equity.—In granting relief peculiar to its own jurisdiction a court of equity acts upon the rule that he who seeks equity must do equity. By this it is not meant that the court can impose arbitrary conditions upon a plaintiff simply because he stands in that position on the record. The rule means that a man who comes to seek the aid of a court of equity to enforce a claim must be prepared to submit in such proceedings to any directions which the known principles of a court of equity may make it proper to give; he must do justice as to the matters in respect of which the assistance of equity is asked. In a court of law it is otherwise: when the plaintiff is found to be entitled to judgment, the law must take its course; no terms can be imposed.

1305. He who comes into equity must come with clean hands.—A court of equity refuses relief to a plaintiff whose conduct in regard to the subject-matter of the litigation has been improper. This was formerly expressed by the maxim 'he who has committed iniquity shall not have equity', and relief was refused where a transaction was based on the plaintiff's fraud or misrepresentation, or where the plaintiff sought to enforce a security improperly obtained, or where he claimed a remedy for a breach of trust which he had himself procured and whereby he had obtained money. Later it was said that the plaintiff in equity must come with perfect propriety of conduct, or with clean hands. In application of the principle a person will not be allowed to assert his title to property which he has dealt with so as to defeat his creditors or evade tax, for he may not maintain an action by setting up his own fraudulent design.

The maxim does not, however, mean that equity strikes at depravity in a general way; the cleanliness required is to be judged in relation to the relief sought, and the conduct complained of must have an immediate and necessary relation to the equity sued for; it must be depravity in a legal as well as in a moral sense. Thus, fraud on the part of a minor deprives him of his right to equitable relief notwithstanding his disability. Where the transaction is itself unlawful it is not necessary to have recourse to this principle. In equity, just as at law, no suit lies in general in respect of an illegal transaction, but this is on the ground of its illegality, not by reason of the plaintiff's demerits."

(iii) In T.Vijendra Doss v. M.Subramaniam reported in 2008 (1) LW 1 (SC), the Hon'ble Supreme Court held as follows:

"appellants and their predecessors, are also guilty of suppressio veri. Ordinarily, a statute shall prevail over the common law principle. However, in a case of this nature, in the event of any conflicting interest, this Court in exercise of its equity jurisdiction under Article 142 of the Constitution is to weigh the effect of a fraud and the consequences of non-impleadment of a necessary party. We would hold that the scale of justice weighs in favour of the person, who is a victim of fraud and thus, we should not refuse any relief in his favour, only because he might have been wrongly advised."

(iv) In Udayami Evan Khadi Gramodyog Welfare Sanstha v. State of U.P., reported in 2008(1) SCC 560, at Paragraph 16, the Hon'ble Supreme Court held as follows:

"15. A writ remedy is an equitable one. A person approaching a superior court must come with a pair of clean hands. It not only should not suppress any material fact, but also should not take recourse to the legal proceedings over and over again which amounts to abuse of the process of law. In Advocate General, State of Bihar v. M/s.Madhya Deah Khair Industries and Anr. [1980 (3) SC 311, this Court was of the opinion that such a repeated filing of writ petitions amounts to criminal contempt."

Respondent, who has suppressed the material facts, is not entitled to any equitable remedy.

33. Statute does not provide payment of tax in installments and therefore, respondent has no right to seek for payment of tax in installments and consequently, no mandamus can be issued. Reference can be made to few decisions, as to when a writ of mandamus, can be issued.

(i) In *Oriental Bank of Commerce v. Sunder Lal Jain* reported in (2008) 2 SCC 280, the Hon'ble Supreme Court, at paragraphs 11 and 12, held thus,

"11. The principles on which a writ of mandamus can be issued have been stated as under in *The Law of Extraordinary Legal Remedies* by F.G. Ferris and F.G. Ferris, Jr.:

Note 187.-Mandamus, at common law, is a highly prerogative writ, usually issuing out of the highest court of general jurisdiction, in the name of the sovereignty, directed to any natural person, corporation or inferior court within the jurisdiction, requiring them to do some particular thing therein specified, and which appertains to their office or duty. Generally speaking, it may be said that mandamus is a summary writ, issuing from the proper court, commanding the official or board to which it is addressed to perform some specific legal duty to which the party applying for the writ is entitled of legal right to have performed.

Note 192.-Mandamus is, subject to the exercise of a sound judicial discretion, the appropriate remedy to enforce a plain, positive, specific and ministerial duty presently existing and imposed by law upon officers and others who refuse or neglect to perform such duty, when there is no other adequate and specific legal remedy and without which there would be a failure of justice. The chief function of the writ is to compel the performance of public duties prescribed by statute, and to keep subordinate and inferior bodies and tribunals exercising public functions within their jurisdictions. It is not necessary, however, that the duty be imposed by statute; mandamus lies as well for the enforcement of a common law duty.

Note 196.-Mandamus is not a writ of right. Its issuance unquestionably lies in the sound judicial discretion of the court, subject always to the well-settled principles which have been established by the courts. An action in mandamus is not governed by the principles of ordinary litigation where the matters alleged on one side and not denied on the other are

taken as true, and judgment pronounced thereon as of course. While mandamus is classed as a legal remedy, its issuance is largely controlled by equitable principles. Before granting the writ the court may, and should, look to the larger public interest which may be concerned-an interest which private litigants are apt to overlook when striving for private ends. The court should act in view of all the existing facts, and with due regard to the consequences which will result. It is in every case a discretion dependent upon all the surrounding facts and circumstances.

34. From the above, it is manifestly clear that the respondents having collected tax from TASMAL Limited, has not only failed to remit tax, due to the Government, in time, but also withheld the same for a considerable period and by filing successive writ petitions, has been gaining long time, for payment of tax, on installment basis, which the statute does not contemplate. Taking note of the averments in the supporting affidavit to W.P.No.24657 of 2017 as regards financial constraint, respondent seemed to have persuaded the writ Court to exercise discretion in favour of the respondent, which on the facts and circumstances of the case, not entitled.

35. At the risk of repetition, Note 196 in The Law of Extraordinary Legal Remedies by F.G. Ferris and F.G. Ferris, Jr., is reproduced hereunder:

"Note 196.-Mandamus is not a writ of right. Its issuance unquestionably lies in the sound judicial discretion of the court, subject always to the well-settled principles which have been established by the courts. An action in mandamus is not governed by the principles of ordinary litigation where the matters alleged on one side and not denied on the other are taken as true, and judgment pronounced thereon as of course. While mandamus is classed as a legal remedy, its issuance is largely controlled by equitable principles. Before granting the writ the court may, and should, look to the larger public interest which may be concerned-an interest which private litigants are apt to overlook when striving for private ends. The court should act in view of all the existing facts, and with due regard to the consequences which will result. It is in every case a discretion dependent upon all the surrounding facts and circumstances.

36. During the course of hearing of this appeal, it was brought to our notice that the respondent has filed a similar

W.P.No.26082 of 2017, challenging the 'U Form-I, notice for the month of August 2017, wherein tax amount is Rs.37,14,00,243/- and prayed to grant 3 to 10 months time to pay the above, and an interim order has been passed on 13.10.2017, perusal of which also indicates that the writ Court has taken note of the fact that as on date of passing of the abovesaid order, no amount is payable by TASMALC Ltd. Thus, it is clear even after collection of tax from the buyer TASMALC Limited, the same is not remitted to the government in time, as per the statute.

37. As rightly contended by the learned Special Government Pleader, tax laws being economic legislations, have to be strictly implemented. Tax collected is used for implementing welfare measures. Payments of installment of the tax cannot be sought for, as a matter of right, moreso, when not provided for under the Act.

38. Section 45 (1)(b) of TNVAT Act, 2006, states that any person who holds or may subsequently hold money for, or on account of the dealer or other person who has become liable to pay any amount due under this Act, to pay to the assessing authority either forthwith upon the money becoming due or being held at or within the time specified in the notice, (not being before the money becomes due or is held) so much of the money as is sufficient to pay the amount due by the dealer or other person in respect of the arrears that have become payable under this Act or the whole of the money when it is equal to or is less than the arrears aforesaid.

39. When the dealer had collected the tax from the buyer, the tax should be paid to the Government, within time. Retention of the same, would amount to unjust enrichment and as rightly pointed out would pave way, to similar request.

40. Though, the case in Additional Secretary, Govt of India Vs. Smt.Alka Subhash Gadia and another, reported in 1992 Supp (1) SCC 496, deals with a case of detention, the Hon'ble Supreme Court has explained exercise of discretion, as hereunder.

"12.....This is to point out the limitations which the High Court and the Supreme Court have to observe while exercising their respective jurisdiction in such cases. These limitations are normal and well known, and are self-imposed as a matter of prudence, propriety, policy and practice and are observed while dealing with cases under all laws. Though the Constitution does not place any restriction on these powers, the judicial decisions have evolved them over a period of years taking into consideration the nature of the right infringed or threatened to be infringed, the scope and object of the legislation or of the

order or decision complained of, the need to balance the rights and interests of the individual as against those of the society, the circumstances under which and the persons by whom the jurisdiction is invoked, the nature of relief sought etc. To illustrate these limitations: (i) in the exercise of their discretionary jurisdiction the High Court and the Supreme Court do not, as courts of appeal or revision, correct mere errors of law or of facts; (ii) the resort to the said jurisdiction is not permitted as an alternative remedy for relief which may be obtained by suit or other mode prescribed by statute. Where it is open to the aggrieved person to move another tribunal or even itself in another jurisdiction for obtaining redress in the manner provided in the statute, the Court does not, by exercising the writ jurisdiction, permit the machinery created by the statute to be bypassed; (iii) it does not generally enter upon the determination of questions which demand an elaborate examination of evidence to establish the right to enforce which, the writ is claimed; (iv) it does not interfere on the merits with the determination of the issues made by the authority invested with statutory power, particularly when they relate to matters calling for expertise, unless there are exceptional circumstances calling for judicial intervention, such as, where the determination is mala fide or is prompted by extraneous considerations or is made in contravention of the principles of natural justice or any constitutional provision; (v) the Court may also intervene where (a) the authority acting under the concerned law does not have the requisite authority or the order which is purported to have been passed under the law is not warranted or is in breach of the provisions of the concerned law or the person against whom the action is taken is not the person against whom the order is directed; or (b) where the authority has exceeded its powers or jurisdiction or has failed or refused to exercise jurisdiction vested in it; or (c) where the authority has not applied its mind at all or has exercised its power dishonestly or for an improper purpose; (vi) where the Court cannot grant a final relief, the Court does not entertain petition only for giving interim relief. If the Court is of opinion that there is no other convenient or efficacious remedy open to the petitioner, it will proceed to investigate the case on its merits and if the Court finds that there is an infringement of the petitioner's legal rights, it will grant final relief but will not dispose of the petition only by granting

interim relief; (vii) where the satisfaction of the authority is subjective, the Court intervenes when the authority has acted under the dictates of another body or when the conclusion is arrived at by the application of a wrong test or misconstruction of a statute or it is not based on material which is of a rationally probative value and relevant to the subject matter in respect of which the authority is to satisfy itself. If again the satisfaction is arrived at by taking into consideration material which the authority properly could not, or by omitting to consider matters which it ought to have, the Court interferes with the resultant order; (viii) In proper cases the Court also intervenes when some legal or fundamental right of the individual is seriously threatened, though not actually invaded.

13. These limitations are not only equally observed by the High Court and the Supreme Court while exercising their writ jurisdiction in preventive detention matters, but in view of the object for which the detention law is enacted and is permitted by the Constitution to be enacted, the courts are more circumspect in observing them while exercising their said extraordinary equitable and discretionary power in these cases. While explaining the nature of the detention law and of the orders passed under it and the scope of the powers of the Court in these matters, this Court has often emphasised the distinction between the existence of its wide powers and the propriety and desirability of using them.

15. In *Dwarkanath, Hindu Undivided Family v. ITO*, reported in 1965 (3) SCR 536 = AIR 1966SC 81 while dealing with the nature and scope of power under Article 226, this Court observed that though the High Court under that article has a wide power to reach injustice wherever it is found, it does not mean that the High Court can function arbitrarily under it. Some limitations are implicit in the article and others may be evolved to direct the article through defined channels."

41. In *National Insurance Co. Ltd., Vs. Keshav Bahadur and others*, reported in 2004 (2) SCC 370, the Hon'ble Supreme Court at paragraphs 8 to 12, held as follows:-

"8. ... In the words of Lord Cairns, L.C. in *Julius v. Bishop of Oxford*, reported in 1880 5 AC 214 = 49 LJQB 577 = 42 LT 546 (HL)

"But there may be something in the nature of the thing empowered to be done, something in the object for

which it is to be done, something in the conditions under which it is to be done, something in the title of person or persons for whose benefit the power is to be exercised, which may couple the power with a duty, and make it the duty of the person in whom the power is reposed to exercise that power when called upon to do so."

This classic observation has been quoted with approval by this Court in several cases. (See *Commr. of Police v. Gordhandas Bhanji*, reported in AIR 1952 SC 16 and *S.P. Gupta v. Union of India*, reported in 1981 Supp SCC 87 = AIR 1982 SC 149). In Halsbury's Laws of England, 4th Edn., Vol. I, it has been observed:

"28. Duty and discretion.--

A statutory discretion is not, however, necessarily or, indeed, usually absolute: It may be qualified by express and implied legal duties to comply with substantive and procedural requirements before a decision is taken whether to act and how to act. Moreover, there may be a discretion whether to exercise a power, but no discretion as to the mode of its exercise; or a duty to act when certain conditions are present, but a discretion how to act. Discretion may thus be coupled with duties."

9. Discretion, in general, is the discernment of what is right and proper. It denotes knowledge and prudence, that discernment which enables a person to judge critically of what is correct and proper united with caution; nice discernment, and judgment directed by circumspection; deliberate judgment; soundness of judgment; a science or understanding to discern between falsity and the truth, between wrong and right, between shadow and substance, between equity and colourable glosses and pretences, and not to do according to the will and private affections of persons. When it is said that something is to be done within the discretion of the authorities, that something is to be done according to the rules of reason and justice, not according to private opinion; according to law and not humour. It is to be not arbitrary, vague and fanciful, but legal and regular. And it must be exercised within the limit, to which an honest man, competent to the discharge of his office ought to confine himself. (Per Lord Halsbury, L.C., in *Sharpe v. Wakefield*, reported in 1891 AC 173 = (1886-

90) All ER Rep 651 (HL). Also see S.G. Jaisinghani v. Union of India, reported in AIR 1967 SC 1427.

10. The word "discretion" standing single and unsupported by circumstances signifies exercise of judgment, skill or wisdom as distinguished from folly, unthinking or haste; evidently, therefore, a discretion cannot be arbitrary but must be a result of judicial thinking. The word in itself implies vigilant circumspection and care; therefore where the legislature concedes discretion it also imposes a heavy responsibility.

"The discretion of a judge is the law of tyrants; it is always unknown. It is different in different men. It is casual, and depends upon constitution, temper, passion. In the best it is oftentimes caprice; in the worst it is every vice, folly, and passion to which human nature is liable," said Lord Camden, L.C.J., in *Hindson and Kersey*, reported in (1680) 8 How St Tr 57.

11. If a certain latitude or liberty is accorded by statute or rules to a judge as distinguished from a ministerial or administrative official, in adjudicating on matters brought before him, it is judicial discretion. It limits and regulates the exercise of the discretion, and prevents it from being wholly absolute, capricious, or exempt from review.

12. Such discretion is usually given on matters of procedure or punishment, or costs of administration rather than with reference to vested substantive rights. The matters which should regulate the exercise of discretion have been stated by eminent judges in somewhat different forms of words but with substantial identity. When a statute gives a judge a discretion, what is meant is a judicial discretion, regulated according to the known rules of law, and not the mere whim or caprice of the person to whom it is given on the assumption that he is discreet (per Willes, J. in *Lee v. Bude Rly. Co.*, reported in (1871) 6 CP 576 = 24 LT 827 and in *Morgan v. Morgan*, reported in (1869) 1 P&M 644.

42. In the light of the above discussion and decisions, action of the 3rd appellant in issuing 'U' Form dated 31.08.2017, cannot be set at naught, by granting liberty to the respondent to pay tax in installments. Appellants are empowered

to collect the amount from the buyer, due and payable by respondent. Order made in W.P.No.24657 of 2017 dated 14.09.2017 is set aside and the Writ Appeal is allowed. No Costs.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

ars

To

1. The Commissioner of Commercial Taxes,
Government of Tamil Nadu,
Chepauk, Chennai-600 005.
2. The Joint Commissioner (CT)
Large Tax Payers, Unit,
Chennai-600 008.
3. The Deputy Commissioner (CT)
Large Tax Payers Unit,
Chennai-600 008.

+2ccs to Mr.P.Bakiyaraj, Advocate, S.R.No.78322
+1cc to the Special Government Pleader, S.R.No.78617

W.A.No.1295 of 2017

MR(CO)
CS/29/11/17

सत्यमेव जयते
WEB COPY