IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 19.06.2019

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR

W.P.Nos.16739, 16742, 16743 and 16746 of 2019 &
W.M.P.Nos.16343, 16352, 16354 and 16355 of 2019

W.P.No.16739 of 2019

Eaton Power Quality Pvt. Ltd.,
Represented by its DGM Finance Mr.A.Devaraj
Safexpress Logistics Park
Adayalampattu
Vanagaram, Chennai - 600 095 ... Petitioner

Vs.

Commercial Tax Officer
Vanagaram Assessment Circle
No.176-B, MTH Road
Villivakkam
Chennai- 600 049 ... Respondent

Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorari calling for the records in the proceedings of the respondent in Assessment Order CST/1308920/2014-15 dated 02.05.2019 issued by the respondent and quash the same as arbitrary and illegal.

W.P.No.16742 of 2019

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Eaton Power Quality Pvt. Ltd.,
Represented by its DGM Finance Mr.A.Devaraj
Safexpress Logistics Park
Adayalampattu
Vanagaram, Chennai - 600 095 ... Petitioner

https://hcservices.ecourts.gov.in/hcservices/

Vs.

Commercial Tax Officer
Vanagaram Assessment Circle
No.176-B, MTH Road
Villivakkam
Chennai- 600 049 ... Respondent

Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorari calling for the records in the proceedings of the respondent in Assessment Order CST/1308920/2015-16 dated 03.05.2019 issued by the respondent and quash the same as arbitrary and illegal.

W.P.No.16743 of 2019

Eaton Power Quality Pvt. Ltd.,
Represented by its DGM Finance Mr.A.Devaraj
Safexpress Logistics Park
Adayalampattu
Vanagaram, Chennai - 600 095 ... Petitioner

Vs.

Commercial Tax Officer
Vanagaram Assessment Circle
No.176-B, MTH Road
Villivakkam
Chennai- 600 049 ... Respondent

Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorari calling for the records in the proceedings of the respondent in Assessment Order TIN/33946265047/2014-15 dated 20.05.2019 issued by the respondent and quash the same as arbitrary and illegal.

W.P.No.16746 of 2019

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Eaton Power Quality Pvt. Ltd.,
Represented by its DGM Finance Mr.A.Devaraj
Safexpress Logistics Park
Adayalampattu
Vanagaram, Chennai - 600 095 ... Petitioner

https://hcservices.ecourts.gov.in/hcservices/

Vs.

Commercial Tax Officer
Vanagaram Assessment Circle
No.176-B, MTH Road
Villivakkam
Chennai- 600 049 ... Respondent

Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorari calling for the records in the proceedings of the respondent in Assessment Order TIN/33946265047/2015-16 dated 21.05.2019 issued by the respondent and quash the same as arbitrary and illegal.

For Petitioner : Mr.Joseph Prabakar
in all W.Ps

For Respondent : Mr.M.Hariharan
Additional Government Pleader
for Respondent in W.Ps

O R D E R

This common order will dispose of all these four writ petitions.

2. Mr.Joseph Prabakar, learned cousnel on record for writ petitioner in all four writ petitions is before this Court. Mr.M.Hariharan, learned Additional Government Pleader, who accepts notice on behalf of sole respondent in all four writ petitions, is before this Court.

3.These writ petitions are listed under the caption 'FOR ADMISSION' in the motion list today. However, with the consent of learned counsel on both sides, the main writ petitions itself are taken up, heard out and are being disposed of.

4.This Court is informed that writ petitioner and sole respondent are same in all the four writ petitions. It is also submitted that all the four writ petitions arise out of a common factual matrix. This court is also informed that while two writ petitions pertain to 'Central Sales Tax' ('CST'), two other writ petitions pertain to 'Tamil Nadu Value Added Tax' ('TNVAT' for brevity). Relevant statute being 'Central Sales Tax Act' ('CST Act' for brevity) and 'Tamil Nadu Value Added Tax Act, 2006'('TNVAT Act' for brevity). There are two assessment years under each of the statutes and they are 2014-15 and 2015 -16.

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There is no disputation before this Court that the Central/Core issue in all these writ petitions is the same. That is how all these four writ petitions are heard together.

5. Writ petitioner is engaged in the business of certain products. The central theme of the dispute is, while these products, according to the writ petitioners, are 'Uninterrupted Power Supply' ('UPS' for brevity) and battaries thereto, according to the respondent, they are voltage stabilizers. The first schedule to TNVAT Act gives description of goods in three parts, namely Part-A, Part-B and Part-C. Description of goods which find place in Part -A are taxable at 1%, those which find their place in Part-B are taxable at 5% and others which find their place in Part-C are taxable at 14.5%. While voltage stabilizers are shown as Serial No.31 in Part -C, UPS is shown as Sub-serial No.27 in Serial No.68 of Part-B. It follows as a sequitur that if the products manufactured by the writ petitioner assessee is UPS, it will be taxable only at 5%, whereas if it is voltage stabilizers, the tax liability will be at 14.5%. This is the central dispute.

6. The aforementioned two assessment years in two different statutes (four assessment years together), shall collectively be referred to as 'said assessment years'.

7. Respondent passed an Assessment Order dated 18.04.2018 with regard to said assessment years. It was assailed by the writ petitioner in this Court by way of writ petitions being W.P.No.13830 to 13833 of 2018 and these four writ petitions came to be disposed of by a Hon'ble single Judge of this Court by order dated 08.06.2018. It is not in dispute before this Court that this order dated 08.06.2018 has not been carried in appeal and the same has become final.

8. A perusal of the order reveals that this Court being satisfied that there is violation of 'natural justice principles' (NJP), directed the respondent to do the assessment afresh. The operative portion is paragraph 13 of the earlier order of this Court and the same reads as follows:

> '13.For the above reasons, the writ petitions are disposed of by directing the petitioner to treat the impugned assessment orders as show-cause notices and submit their objections along with all enclosures and annexures, within a period of 15 days from the date of receipt of a copy of this order. On receipt of the objections, the respondent shall fix a date for personal hearing, hear the authorized representative of the petitioner and redo the assessments in

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accordance with law. As pointed out earlier, the respondent shall not be guided by the observations made by the Enforcement Officer and shall take an independent decision in the matter. This is more so in the instant cases because the sworn statement prepared by the Enforcement Officer has been refused to be signed by the authorised representative of the petitioner and vide their e-mails dated 05.05.2017 and 15.05.2017, the petitioner sought for revising what has been written by the Enforcement Officer. Till fresh orders are passed, no coercive action shall be initiated against the petitioner. No costs. Consequently, the connected WMPs are closed.'

9. A perusal of the operative portion of earlier order reveals that this Court had directed the respondent to treat the earlier Assessment Orders dated 18.04.2018 as show-cause notices (SCNs), permitted the writ petitioner to submit objections to the same with all enclosures and annexures within a time frame of 15 days. Thereafter, this Court had directed the respondent to fix a date for persoanl hearing, hear the authorised representative of the writ petitioner and redo the assessment in accordance with law. There is also a rider that the Assessing Authority shall not be guided by the observations made by the Enforcement Officer and shall take an independent decision in the matter. This is obviously what has now come to stay as Narasus principle [Narasus Roller Flour Mills Vs. Commercial Tax Officer (Enforcement Wing), Sankagiri and Another reported in [2015] 81 VST 560 (Mad)]. It may not be necessary to advert to that in great detail owing to the order that is now being passed. The sequence as directed by this Court in the aforesaid earlier order is as follows:

a) Writ petitioner to submit objections treating the impugned assessment orders as SCNs within 15 days. Objections shall be filed along with all enclosures and annexures;

b) On receipt of aforesaid objections, the respondent shall fix a date for personal hearing and hear the authorised representative of the writ petitioner. As this is a common factual issue, further personal hearing will be in all four assessment years.

c) Thereafter, the respondent shall redo the assessment in accordance with law.

10. Learned counsel for writ petitioner adverting to the case file submitted that in accordance with the aforesaid order of this Court, writ petitioner submitted their objections on 25.06.2018. It was also pointed out that the objections primarily turned on the issue that the products manufactured by

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the writ petitioner are UPS falling under Sub-serial No.27 in Serial No.68 of Part-B and not voltage stabilizers falling under Serial No.31 in Part -C.

11. Thereafter, writ petitioner was given the opportunity of personal hearing on 10.09.2018. There is no dispute that this opportunity of personal hearing was availed and personal hearing was held. If the respondent Assessing Authority has passed an order that may have well been the end of the matter, but what has happened is, respondent Authority has, after the personal hearing on 10.09.2019, sent a communication to the writ petitioner being communication dated 25.02.2019, calling upon the writ petitioner to furnish certain documents. To be precise, there is an adumbration of 12 sets of documents, which were specifically asked for. This communication dated 25.02.2019 also makes it clear that those documents are required to verify the correctness of the contentions made by the writ petitioner.

12. In response to this 25.02.2019 notice, writ petitioner sent a reply dated 08.04.2019 inter alia with enclosures.

13. Thereafter, without a personal hearing, the respondent has passed orders on 02.05.2019, 03.05.2019, 20.05.2019 and 21.05.2019 which have been called in question in the instant writ petitions.

14. Though several grounds have been raised in the affidavits filed in support of the writ petitions and though certain submissions touching upon merits were made, learned counsel for writ petitioner, confined his submissions to one point. That one point is, post personal hearing on 10.09.2018, the respondent having chosen to call upon the writ petitioner to furnish certain documents vide communication dated 25.02.2019, more so when it has been mentioned that these documents i.e., 12 sets of documents are necessary for verifying the correctness of the contention of the writ petitioner, it is imperative that a fresh personal hearing ought to have been given so that verification of correctness of the contentions could have been done in the personal hearing. Learned counsel submitted that this is violation of NJP and more importantly not in tune with earlier order made by this Court. Therefore, writ petitioner is entitled to have a further personal hearing albeit being limited to the communication dated 25.02.2019 and writ petitioner's reply dated 08.04.2019 together with annexures thereto.

15. As already alluded to supra, central issue in the instant proceedings is whether the products manufactured by the writ petitioner are UPS or voltage stabilizers.

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16. Learned counsel for writ petitioner pressed into service judgment of a Division Bench of this Court in Canon India Private Limited Vs. State of Tamil Nadu and others reported in 2013-VIL-53-MAD. Adverting to Canon India Private Limited, learned counsel submitted that UPS machine has to necessarily find its place under aforesaid Serial No.68 (sub-serial No.27 of Part-B).

17. Per contra, learned Revenue counsel pointed out that it would be a Voltage Stabilizer falling under Serial No.31 of Part -C of First Schedule to TNVAT Act.

18. A perusal of Canon India case reveals that it is a matter touching upon classification of a undisputed product and not on the question of a factual dispute as to what the product itself is.

19. In the instant case, as already alluded to supra, the central issue is the factual dispute as to what the product is? i.e., whether it is Voltage Stabilizer or UPS.

20. Be that as it may, it may not be necessary to advert to this aspect further and make any discussion on this aspect of the matter as this Court considers it appropriate to direct the respondent to give one more personal hearing owing to 25.02.2019 communication and 08.04.2019 reply thereto.

21. In the light of the narrative thus far, the following order is passed:

a) All the four assessment orders i.e., CST/1308920/2014-15, CST/1308920/2015-16, TIN/33946265047/2014-15 and TIN/33946265047/2015-16 dated 02.05.2019, 03.05.2019, 20.05.2019 and 21.05.2019 respectively are set aside. To be noted, Assessment Orders are set aside only on the ground of further personal hearing (post 25.02.2019 communication from Revenue and writ petitioner's reply to same) not being given. In other words, this Court does not express any opinion or view on merits of the matter.

b) Further personal hearing, is now fixed on 05.07.2019 (Friday) at 12 Noon and venue shall be office of the respondent.

c) Writ petitioner undertakes to avail personal hearing on 05.07.2019 (Friday) at 12 Noon in the office of the respondent. This personal hearing will be confined only to the communication dated 25.02.2019 and reply thereto dated 08.04.2019 together with enclosures and no other new document shall be introduced. No other new plea shall be made and

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matters already heard out on 10.09.2018 personal hearing shall not be revisited.

d) After aforesaid personal hearing in the aforesaid manner on 05.07.2019, the respondent shall pass Assessment Orders afresh inter alia based on the personal hearing on 05.07.2019, which is confined to 25.02.2019 notice and 08.04.2019 reply thereto within a period of six weeks therefrom.

e) The Assessment Orders passed afresh shall be communicated to the writ petitioner assessee in a manner known to law under due acknowledgement within seven working days from the date of fresh proceedings.

With the above directions, these writ petitions are disposed of. There shall be no order as to costs. Consequently, all connected WMPs are closed.

s/d-
Assistant Registrar(CS VI)

True Copy

Sub-Assistant Registrar

gpa

To

The Commercial Tax Officer,
Vanagaram Assessment Circle,
No.176-B, MTH Road,
Villivakkam,
Chennai- 600 049.

+1cc to Mr.Joseph, Advocate Sr.49918
+1cc to the Special Government Pleader Sr.50816

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