IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.12.2020

CORAM

THE HON'BLE MR. JUSTICE P.D. AUDIKESAVALU

W.P. Nos. 34058, 34059, 34061,
34088, 34092 and 34096 of 2018
and
W.M.P. Nos. 39557, 39560, 39563, 39607,
39609 and 39619 of 2018

M/s. General Tyre Retreading Corporation,
rep. by its Managing Partner,
No. 17/9 Smith Road, Anna Salai,
Chennai - 600 002. ... Petitioner
(in all WPs)

-vs-

The State Tax Officer (ST)
Anna Salai Assessment Circle,
Chennai. ... Respondent
(in all WPs)

Prayer in W.P. No. 34058 of 2018:- Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records of the Respondent in his proceedings in TIN : 33580620136/2010-11, quash the assessment order dated 23.11.2018 passed therein.

Prayer in W.P. No. 34059 of 2018:- Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records of the Respondent in his proceedings in TIN : 33580620136/2011-12, quash the assessment order dated 23.11.2018 passed therein.

Prayer in W.P. No. 34061 of 2018:- Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records of the Respondent in his proceedings in TIN : 33580620136/2012-13, quash the assessment order dated 23.11.2018 passed therein.

Prayer in W.P. No. 34088 of 2018:- Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records of the Respondent in his proceedings in TIN : 33580620136/2013-14, quash the assessment order dated 23.11.2018 passed therein.

Prayer in W.P. No. 34092 of 2018:- Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records of the Respondent in his proceedings in TIN : 33580620136/2014-15, quash the assessment order dated 23.11.2018 passed therein.

Prayer in W.P. No. 34096 of 2018:- Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records of the Respondent in his proceedings in TIN : 33580620136/2015-16, quash the assessment order dated 23.11.2018 passed therein.

For Petitioner : Mr. R.L.Ramani (Senior Counsel)
(in all WPs) for Mr. B.Raveendran
For Respondent : Mr. A.N.R.Jayaprathap
(in all WPs) Government Advocate

C O M M O N O R D E R
(through video conference)

Heard Mr. R.L.Ramani, Learned Senior Counsel appearing for the Petitioner and Mr. A.N.R.Jayaprathap, Learned Government Advocate appearing for the Respondent and perused the materials placed on record, apart from the pleadings of the parties.

2. It is submitted by the Learned Senior Counsel appearing for the Petitioner that the Petitioner was issued Notices Nos. TIN 33580620136/ 2010-11, TIN 33580620136/2011-12 and TIN 33580620136/2012-13 dated 04.10.2018 by the Respondent requiring to appear for personal hearing at 3.00 p.m. on 09.10.2018, 11.10.2018 and 15.10.2018 respectively at the office of the Respondent in respect of assessment for the years 2010-2011 to 2012-2013 under the Tamil Nadu Value Added Tax Act, 2006 (hereinafter referred to as the 'TNVAT Act' for short) and that the Petitioner has sent letters dated 06.10.2018 to the Respondent stating as follows:-

> " However, our auditors and accounts staff are engaged with Income Tax Filing wherein the due date falls on 15.10.2018. Hence, we kindly request your good self to please postpone the dates for this personal hearing any time after 15.10.2018."

Though the receipt of the said letters requesting for adjournment of the personal hearing had been received, the Respondent without communicating any decision on that request, had proceeded to pass assessment orders for the years 2010-2011 to 2015-2016 on 23.11.2018. Aggrieved thereby, the Petitioner has filed these Writ Petitions challenging the said orders.

3. In this context, reference must be made to the Circular dated 05.04.1984 issued by the Commissioner of Commercial Taxes,

which reads as follows:-

> " It is considered that the dealers should know then and there whether their request for further time is complied with or not. The Assessing Officers shall pass orders on such requests on spot and communicate them then and there. If they feel that the dealers have already been given reasonable opportunities and sufficient time and there is no reason for granting further time and order rejecting the request shall be passed and communicated to the dealers then and there. If the assessing officers decide to comply with the request the date fixed for further hearing or extension of time given shall be similarly intimated."

The said circular had come up for consideration before the Division Bench of this Court in M/s. EMCEE Chemicals -vs- Registrar, Tamil Nadu Taxation Special Tribunal, Chennai (Order dated 25.09.2001 in W.P. Nos. 8766 to 8769 of 2000), where it has been held as follows:-

> "2. The circular referred to relied upon by the assessees is the one issued by way of clarification by the Commissioner on 05.04.1984. That circular required Assessing Officers to pass orders on requests time from assessees on spot and communicate to them then and there. It also states that if the Assessing Officers feel that the dealers have already been given reasonable opportunities and sufficient time, there is no reason for grating further time, the order rejecting the request shall be passed and communicated to the dealers then and there. If the Assessing Officers decide to comply with the request the date fixed for further hearing on extension of time given shall be similarly intimated. Here no date was given to the Petitioners and Petitioners after their request for extension and they were not made aware that the time granted was only two weeks. The order made by the Officer at the end of the period while leaving the assessees with the impression that by reason of the period of time sought by them not having been rejected, that period could be regarded by them as has been granted, has therefore, to be set aside with a view to give the assessees the opportunity to give explanation to the demand, fused or slips that had been recovered and on the basis of which a finding of suppression was accorded, which is turn led to a substantial addition to the turnover of the assessees, liability to pay additional tax. We, therefore, set aside the order of the Tribunal, and of the authorities, which were questioned before it and direct the Assessing Officer to receive the objection for the proposed assessment, if such objection is filed within a period of two weeks

from today and thereafter make the assessment. Writ Petitions are disposed of accordingly.”

Having regard to the aforesaid legal position, the faulty decision-making process adopted while passing the impugned order cannot be sustained. Learned Government Advocate appearing for the Respondent, on instructions, states that the enquiry for personal hearing would be held on 28.12.2020 and the Petitioner may appear before the Respondent on that date with all supporting materials. A memo dated 08.12.2020 has been filed to that effect, which is placed on record.

4. The result of the foregoing discussions is that the impugned orders are set aside and the Petitioner shall appear before the Respondent at 11.30 a.m. on 28.12.2020 with all supporting materials to substantiate its contentions. If the Respondent is not in a position to take up the matter on that date, he shall inform the Petitioner of the adjourned date of hearing in the prescribed manner. It is incumbent upon the Respondent to conduct enquiry affording full opportunity of personal hearing to the Petitioner following the prescribed procedure in consonance with the principles of natural justice, deal with each of the contentions raised and pass reasoned orders on merits and in accordance with law and communicate the decision taken to the Petitioner under written acknowledgment.

The Writ Petitions are disposed on the aforesaid terms. Consequently, the connected Miscellaneous Petitions are closed. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

The State Tax Officer (ST)
Anna Salai Assessment Circle,
Chennai.

Copy to
The Managing Partner,
M/s. General Tyre Retreading Corporation,
No. 17/9 Smith Road, Anna Salai,
Chennai - 600 002.
+1cc to the Special Government Pleader(Taxes), S.R.No.39946

W.P. Nos. 34058, 34059, 34061, 34088, 34092 and 34096 of 2018

SS(CO)
RV(21/12/2020)