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W.P. Nos.15405 & 15406 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.05.2023

CORAM:

THE HONOURABLE MR. JUSTICE P.B.BALAJI

W.P.Nos.15405 and 15406 of 2023 and W.M.P.Nos.14945 to 14948 of 2023

Exide Industries Limited
represented by its Head of Accounts, South Zone
103-A, Fourth Floor, Navins Presidum
A Block Nelson Manickam Road
Aminjikai
Chennai, Tamil Nadu 600 029

Petitioner in both WPs.

v

The Deputy Commissioner (CT)
Large Taxpayers Unit-I, South Tower
Nandanam
Chennai
Tamil Nadu 600 035

Respondent in both WPs

Writ Petitions filed under Article 226 of the Constitution of India seeking a writ of certiorari calling for the records relating to the impugned orders dated 10.02.2023 with reference nos.ZD330223045704R and ZD330223045763N, respectively, on the file of the respondent and quash the same.

For petitioner in both WPs : Mr. Vinay Kumar Shruff

For respondent in both WPs : Mrs. E. Ranganayaki
Special Government Pleader



W.P. Nos.15405 & 15406 of 2023

COMMON ORDER

WEB COPY In view of commonality of the issue involved and so also the parties, both these writ petitions are considered and decided by this common order.

2 These writ petitions have been filed calling into question the legality and validity of the orders dated 10.02.2023 passed by the respondent under Section 73 of the Central Goods and Services Tax Act, 2017, *qua* financial years 2019-2020 and 2018-2019, respectively.

3 The case of the petitioner is that it is a company incorporated under the provisions of the Companies Act, 1956, having its registered office at Kolkota, West Bengal, engaged in the business of manufacture of lead acid storage batteries; the petitioner is registered under the Goods and Services Tax Act; in furtherance of a show cause notice dated 15.12.2022 issued under Section 73 of the Central Goods and Services Tax Act, 2017, citing various grounds for levy of penalty and interest, the petitioner submitted its reply on 13.01.2023 and on the same day, concededly, the petitioner was afforded a personal hearing; subsequently, since further



details were sought, on 23.01.2023, the petitioner gave details with regard to three of the six queries raised and sought time as regards the remaining three queries; however, the respondent proceeded to pass the impugned orders dated 10.02.2023.

4 This Court perused the impugned orders. The respondent has not adverted to the petitioner's request with regard to extension of time in respect of three of the queries. Circular No.12/2022 dated 26.09.2022 issued by the respondent is brought to the notice of this Court by the learned counsel for the petitioner. Paragraph 6(b) of the said circular reads thus:

“b) Grant of reasonable time to file reply and dealing with adjournments:

The person to whom show cause notice is issued should be given sufficient and reasonable time, to prepare their reply. What is reasonable time depend on the facts and circumstances of the each case, however, giving too short time for compliance of a notice will amount to denial of reasonable opportunity. Therefore, the show cause notice shall be issued granting a minimum of 15 days time or such time, as prescribed in the provisions of the Act, to file reply.

Further extension of time/adjournment shall be granted by the Assessing / Adjudicating Officer, on case to case basis, according to the facts and circumstances of the case and duly recording the reasons thereof. Where the Assessing/Adjudicating Authorities refuses any adjournment, such decision shall be exercised with sound reason and not in an arbitrary or capricious manner. Further, the communication of granting time or refusal to grant time shall also be sent to the assessee.”



5 From the above, it is crystal clear that reasonable opportunity ought to be given to a person to show cause and depending upon the facts of each case, even further extension of time can be granted by the Assessing / Adjudicating Officer. In any event, the decision to refuse or extend time ought to be exercised with sound reasons and not in an arbitrary or capricious manner. The circular dated 26.09.2022 of the respondent also clearly stipulates that the communication granting time or refusal to grant time, shall also be sent to the assessee.

6 This Court finds that the impugned orders do not discuss the reasons for extension of time at all, leave alone giving its finding either granting or refusing the adjournment. In such circumstances, it is clear that there is a clear violation of the circular of the respondent themselves and it would be just and proper that the petitioner is afforded a fair opportunity to submit its explanation in respect of three pending queries within a reasonable time and thereupon, the respondent may pass fresh orders considering the entire explanation submitted by the petitioner, including the earlier explanations submitted by it.



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7 In such perspective of the matter, the impugned orders dated 10.02.2023 are set aside and the respondent is at liberty to fix a date for enquiry, giving a minimum of 30 days' time to enable the petitioner to submit its explanation with regard to the three pending queries or any further explanation that may be required by the respondent and thereupon, pass final orders, on merits, after affording personal hearing to the petitioner.

In fine, these writ petitions stand allowed. Costs made easy.
Connected W.M.Ps. are closed.

11.05.2023

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Note to Office: Issue order copy by 12.05.2023 (Friday)



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P.B. BALAJI, J.

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Common order in
W.P. Nos.15405 and 15406 of 2023

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