

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.12.2020

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

**W.P. No. 22132 of 2017
and
W.M.P. No. 23130 of 2017**

Tvl. BMW India Private Limited,
No. 36, 1st Cross Street,
2nd Avenue, Mahindra World City,
Natham,
Chengalpattu – 603 002,
Represented by its
Authorized Signatory,
Mr. Venkatraman Chandrasekar Babu.

... Petitioner

-vs-

1. The Deputy Commissioner (CT) – I,
Large Taxpayers Unit,
Chennai – 600 008.

2. The Joint Commissioner (CT) – I,
Large Taxpayers Unit,
Chennai – 600 008.

3. The Commissioner,
Large Taxpayers Unit,
Chennai – 600 008.

... Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records comprised in the impugned order in TIN: 33141603667/2014-15 dated 17.07.2017 on the file of the First Respondent and quash the same.

For Petitioner : Mr. Tarun Gulati, Senior Counsel
for Mr. Kishor Kunal

For Respondents : Mrs. G.Dhana Madhri,
Government Advocate (Taxes)

ORDER
(through video conference)

Heard Mr. Tarun Gulati, Learned Senior Counsel appearing for the Petitioner and Mrs. G.Dhana Madhri, Learned Government Advocate (Taxes) appearing for the Respondents and perused the materials placed on record, apart from the pleadings of the parties.

2. The First Respondent by Order No. TIN: 33141603667/2014-15 dated 17.07.2017 had assessed the liability of the Petitioner for tax for the year 2014-2015 and imposed penalty under the Tamil Nadu Value Added Tax Act, 2006 (hereinafter referred to as the 'TNVAT Act' for short).

3. It is submitted by the Learned Senior Counsel appearing for the Petitioner that though the Petitioner had submitted reply dated 16.12.2016 to the notice dated 09.12.2016 issued by the First Respondent, another notice dated 30.05.2017 had been issued by the First Respondent for which extension

of time to submit explanation had been sought by letters dated 27.06.2017, but without communicating as to whether that request has been acceded, the First Respondent has hastily proceeded to pass the impugned Order No. TIN: 33141603667/2014-15 dated 17.07.2017 entailing adverse civil consequences to the Petitioner in violation of the principles of natural justice. It is further informed that in order to show bonafides, the Petitioner has now submitted a reply dated 07.12.2020 and a copy of the same has been produced.

4. 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 came 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 assesseees 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 assesseees 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 granting 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 assesseees 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 assesseees 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 assesseees, 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 Respondents, on instructions, states that the enquiry for personal hearing would be held on 21.12.2020 and the Petitioner may appear before the First Respondent on that date with all supporting materials.

5. The result of the foregoing discussion is that the impugned order is set aside and the First Respondent shall take on record the reply dated 07.12.2020 submitted by the Petitioner as explanation to the notice dated 30.05.2017. The Petitioner shall appear before the First Respondent at 11.30 a.m. on 21.12.2020 with all supporting documents to substantiate its contentions. If the First 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 First 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 Petition is disposed on the aforesaid terms. Consequently, the connected Miscellaneous Petition is closed. No costs.

09.12.2020

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Index: Yes/No

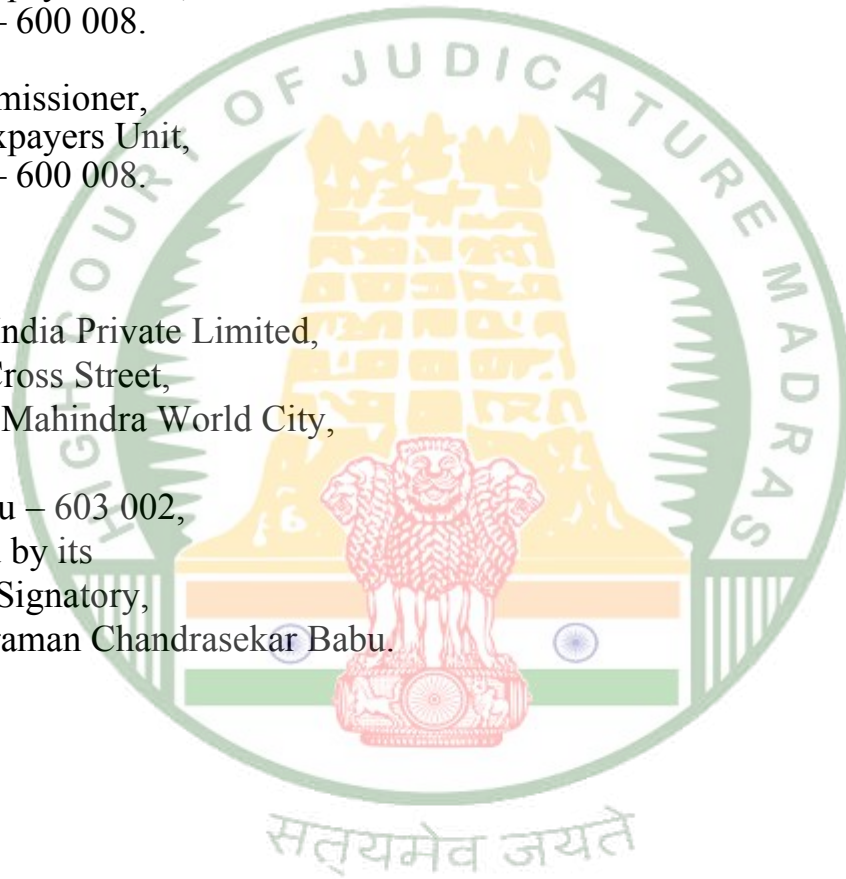
Note: Issue order copy by 18.12.2020.

To

1. The Deputy Commissioner (CT) – I,
Large Taxpayers Unit,
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