

In the High Court of Judicature at Madras

Dated : 13.11.2018

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

and

The Honourable Mr.Justice N.SATHISH KUMAR

Writ Petition Nos.22376 to 22379 of 2018 &
WP.SR.Nos.97605, 97610, 97615, 97620, 97625
97630, 97635, 97640, 97645, 97650, 97655, 97660,
97665, 97670, 97675, 97680, 97685, 97690,
117014, 117021, 117029, 117037, 117044, 117053,
117517, 117521, 117525, 117534 and 117538 of 2018
& all connected pending WMPs

WP.No.22376 of 2018 :

M/s.Cholamandalam MS General
Insurance Company Ltd., rep.by
its Chief Financial Officer
Mr.S.Venugopalan



...Petitioner

1.The Income Tax Appellate Tribunal,
'A' Bench, Chennai, A3, II Floor,
Rajaji Bhavan, Besant Nagar,
Chennai-90.

2.The Deputy Commissioner of Income
Tax, Large Tax Payer Unit, 1775,
Jawaharlal Nehru Inner Ring Road,
Anna Nagar Western Extension,
Chennai-101.

3.Ministry of Finance, Department of
Financial Services, rep.by its
Secretary, Jeevan Deep Building,
Parliament Street, New Delhi-110001.

4. Insurance Regulatory and Development Authority of India, rep. by its Chairman, Sy No.115/1, Financial District, Nanakramguda, Gachibowli, Hyderabad-500032.

5. The Central Board of Direct Taxes, rep. By its Chairman, 9th Floor, Lok Nayak Bhavan, Khan Market, New Delhi-3.

6. General Insurance Council, rep. by its Secretary General, 5th Floor, National Insurance Building, 14, Jamshedji Tata Road, Churchgate, Mumbai-20.

...Respondents

Prayer in WP.No.22376 of 2018 :

PETITION under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorari to call for the records in ITA No.2276/Chny/2014 dated 31.7.2018 on the file of the first respondent and quash the same.

For Petitioners in WP.Nos.22376 to 22379 of 2018 & WP.SR.Nos.97605, 97610, 97615, 97620, 97625, 97630, 97635, 97640, 97645, 97650, 97655, 97660, 97665, 97670, 97675, 97680, 97685 and 97690 of 2018 : Mr.Vijay Narayan, SC for Mr.Sandeep Bagmar

For Petitioners in WP.SR.Nos.117014, 117021, 117029, 117037, 117044, 117053, 117517, 117521, 117525, 117534 and 117538 of 2018 : Mr.M.V.Swaroop

For the Department : Mrs.Hema Muralikrishnan, SSC

For the UOI & the CBDT : Mr.Venkatasamy Babu, SPC

For the IRDAI : Mr.M.B.Gopalan

For the General Insurance Council : Mr.N.Vijaya Raghavan

COMMON ORDER
(Order of the Court was made by T.S.SIVAGNANAM,J)

We have heard the learned counsel appearing for all the parties.

2. In these writ petitions, the petitioners are three in number, namely Cholamandalam MS General Insurance Company Limited, Royal Sundaram General Insurance Company Limited and United India Insurance Company Limited. Four of the writ petitions filed by both the Cholamandalam MS General Insurance Company Limited and the Royal Sundaram General Insurance Company Limited were numbered as W.P.Nos.22376 to 22379 of 2018. Prior to the said petitions being numbered, Registry raised an objection with regard to maintainability on the ground that as against the impugned orders passed by the Income Tax appellate Tribunal (for brevity, the Tribunal), an appeal lies to this Court under Section 260A of the Income Tax Act, 1961 (for short, the Act) and the appeal has to be decided on a substantial question of law to be framed by the Division Bench.

3. It is represented by the learned Senior Counsel appearing for the Cholamandalam MS General Insurance Company Limited and the Royal Sundaram General Insurance Company Limited that the said writ petitions were directed to be numbered on 28.8.2018 subject to maintainability and by

order dated 30.8.2018, an order of interim stay has been granted for a period of four weeks.

4. It is seen that subsequently, by order dated 17.9.2018, the interim order has been extended till 10.10.2018. Again 10.10.2018, the Division Bench of this Court extended the interim order till 31.10.2018. Further, again on 31.10.2018, the matters were adjourned by two weeks and the interim order has been extended for a further period of two weeks. At this stage, the said writ petitions are listed before us. Along with the said writ petitions, the other writ petitions filed by the other two insurance companies are listed under the caption 'for maintainability'.

5. The Revenue objects to the maintainability of the writ petitions on the ground that an appeal lies to the Division Bench of this Court under Section 260A of the Act and that no writ is maintainable.

6. The reply by the learned Senior Counsel appearing for both the Cholamandalam MS General Insurance Company Limited and the Royal Sundaram General Insurance Company Limited is that the Tribunal transgressed its jurisdiction and had given certain findings, which have virtually made the IRDA (General Insurance – Reinsurance) Regulations, 2000 as nugatory. Furthermore, before rendering such a finding, the Tribunal

ought to have heard the Government of India, the Insurance Regulatory and Development Authority of India, the Central Board of Direct Taxes and the General Insurance Council, which are proper and necessary parties to be heard in the matters. According to the learned Senior Counsel, the petitioners are justified in their action in approaching this Court by filing the said writ petitions and had impleaded them as respondents 3 to 6.

7. In our considered view, the issue regarding maintainability of the writ petitions has become academic, as the Cholamandalam MS General Insurance Company Limited has already filed tax case appeals against the orders passed by the Tribunal and those appeals are in the process of being numbered.

8. So far as the other insurance companies are concerned, it is stated that they are in the process of filing appeals. They would further state that the period of limitation is 120 days and that the period is yet to be over.

9. It is settled legal principle that before the expiry of appeal time, if recovery proceedings are initiated, it would virtually render the appeal as infructuous. Therefore, considering the fact that the said writ petitions were directed to be numbered subject to maintainability and that there has been an interim order in force since 30.8.2018, we are of the considered view that

the petitioners should be protected against the recovery proceedings.

10. Hence, we restrain the respective Assessing Officers of the petitioners – insurance companies not to initiate any recovery proceedings pursuant to the orders passed by the Tribunal, against which, the insurance companies have filed appeals/are in the process of filing appeals under Section 260A of the Act. In the light of this order, there would be no necessity to keep these writ petitions, which have been numbered and which are yet to be numbered, pending. Accordingly, all the writ petitions are disposed of. No costs. Consequently, the connected WMPs are closed.

11. We make it clear that the parties, which were impleaded as respondents 3 to 6 in the writ petitions namely the Ministry of Finance, Department of Financial Services, the Insurance Regulatory and Development Authority of India, the Central Board of Direct Taxes and the General Insurance Council, will be suo motu impleaded by us in the tax case appeals, which are in the process of being numbered.

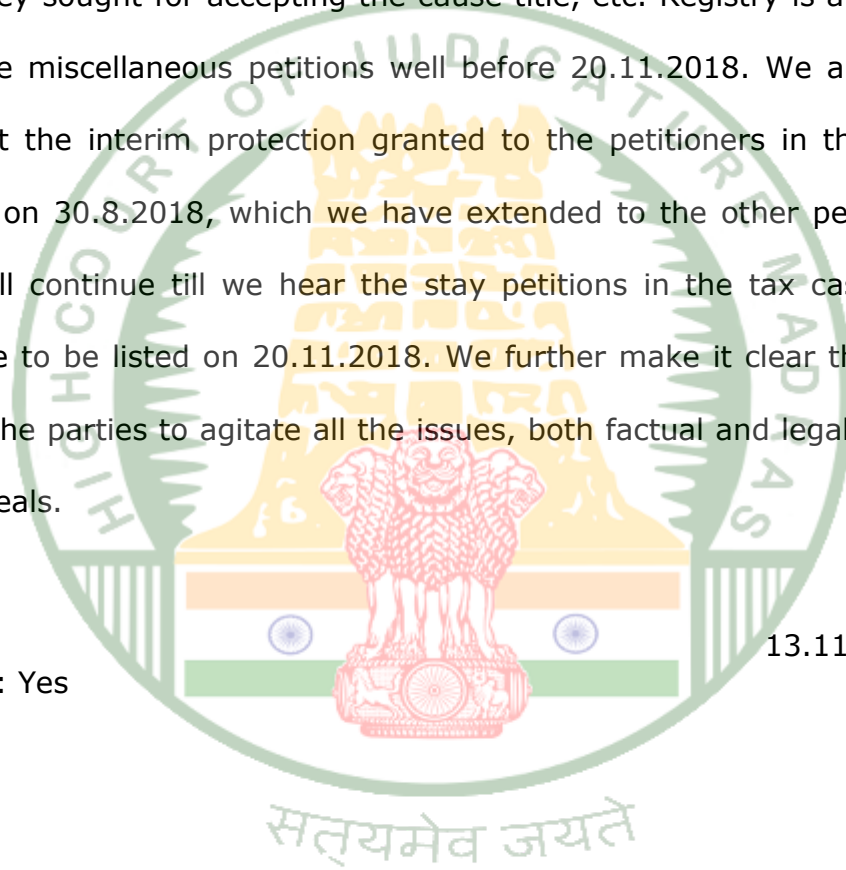
12. We find that both the Insurance Regulatory and Development Authority of India and the General Insurance Council have already filed their respective counter, which will be taken as the stand of both of them in the tax case appeals, in which, we will implead them as party respondents. We

direct the petitioners herein to get their appeals numbered and they shall be listed on 20.11.2018 for admission. Registry is further directed to list the miscellaneous petitions wherever the petitioners filed the same for dispensing with the production of certified copies of the orders passed by the Tribunal or where they sought for accepting the cause title, etc. Registry is also directed to list the miscellaneous petitions well before 20.11.2018. We also make it clear that the interim protection granted to the petitioners in the said writ petitions on 30.8.2018, which we have extended to the other petitioners as well, shall continue till we hear the stay petitions in the tax case appeals, which are to be listed on 20.11.2018. We further make it clear that it is left open to the parties to agitate all the issues, both factual and legal, in the tax case appeals.

Internet : Yes

RS

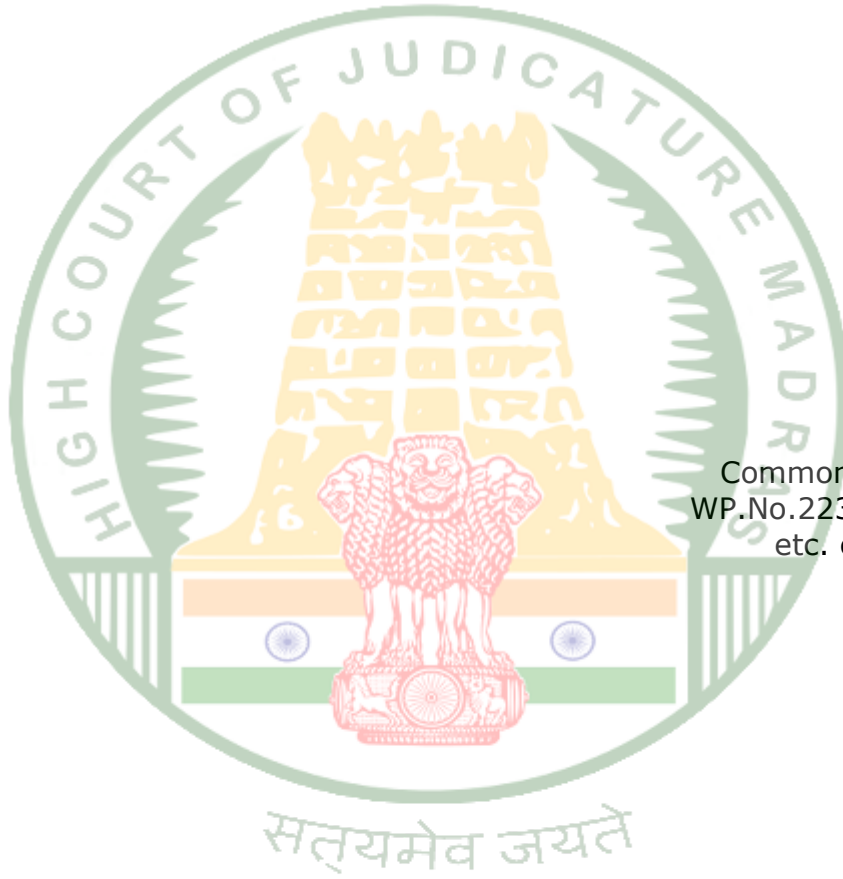
13.11.2018



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T.S.SIVAGNANAM,J
AND
N.SATHISH KUMAR,J

RS



Common Order in
WP.No.22376 of 2018
etc. cases

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