



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15-12-2025

CORAM

WEB COPY

THE HON'BLE DR.JUSTICE ANITA SUMANTH

AND

THE HON'BLE MR.JUSTICE MUMMINENI SUDHEER KUMAR

W.A.Nos.2659, 2925, 2957, 2670, 2671, 2692, 2693, 2865, 2922, 2927, 2928, 2933, 2942, 2943, 2945, 2956, 2662, 2664, 2665 and 2666 of 2021 & 613 of 2022 & W.P.Nos.28949, 28951, 28952, 8933, 3809, 801 and 8792 of 2019 & 11253 of 2020 & 25687 of 2021

& CMP.Nos.17375, 17310, 17332, 17336, 17445, 17450, 19190, 19823, 19841, 17371, 17318, 17320, 19844, 19877, 19945, 19979, 20067 and 20081 of 2021 & 29708 of 2025 & 4345 of 2022

& WMP.Nos.877, 28698, 28700, 28702, 4231, 9356 and 9499 of 2019 & 13718 of 2020, 27126 of 2021 and 2261 of 2022

W.A.No.2659 of 2021:

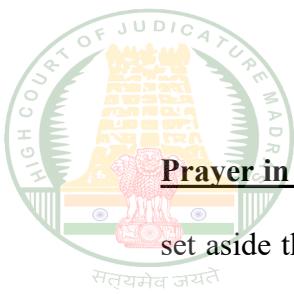
M/s.Tamilnadu Transmission Corporation Ltd.
(tantransco) Rep. By Its Superintending Engineer,
Attur Bye Pass Road, Kamarajar Colony,
Salem-636 001.

..Appellant(s)

Vs

1. The Commissioner Of GST
Central Excise (audit), Coimbatore Audit
Commissionerate, No.6/7, A.T.D. Street, Race
Course, Coimbatore.
2. The Commissioner Of Central GST And Central
Excise, Salem,
No.1, Foulks Compound, Anai Road, Salem.

..Respondent(s)

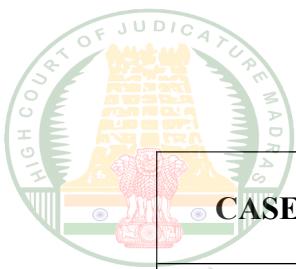


Prayer in W.A.No.2659 of 2021:- Writ appeal filed under Clause 15 of the Letters Patent to

set aside the order dated 7-7-2021 made in W.P.No.15388 of 2018 holding that the amounts

collected by the appellant as i) liquidated damages for non-performance or partial performance of the contracts from the contractors ii) cheque dishonour charges collected from consumers when the cheque given by them for payment of Current consumption charges returned unpaid; iii) belated payment charges for delayed payment of current consumption charges from the customers; iv) forfeiture of EMD charges for not fulfilling the contracts from contractors and v) fine and penalty collected from consumers who indulge in theft of energy and thus render justice.

CASE NUMBER	APPELLANT/ PETITIONER	RESPONDENT
WA/2659/2023	Mr.M.A.Mudimannan	Mr.Rajnish Pathiyil SSC
WP/11253/2020	Mr.M.A.Mudimannan	Mr.Su.Srinivasan SSC
WA/2662/2021	Mr.M.A.Mudimannan	Mr.K.Umesh Rao SSC
WA/2664/2021	Mr.M.A.Mudimannan	Mr.Rajnish Pathiyil SSC
WP/3809/2019	Mr.M.A.Mudimannan	Mr.M.Santhanaraman SSC
WP/801/2019	Mr.M.A.Mudimannan	Mr.Rajnish Pathiyil SSC
WP/8792/2019	Mr.M.A.Mudimannan	Mr.M.Santhanaraman SSC
WA/2665/2021	Mr.M.A.Mudimannan	Mr.Rajnish Pathiyil SSC
WP/25687/2021	Mr.M.A.Mudimannan	Mr.S.Gurumoorthy SSC
WP/28949/2019	Mr.M.A.Mudimannan	Mr.Rajnish Pathiyil SSC
WP/28951/2019	Mr.M.A.Mudimannan	Mr.Rajnish Pathiyil SSC
WP/2666/2021	Mr.M.A.Mudimannan	Mr.Rajnish Pathiyil SSC
WP/28952/2019	Mr.M.A.Mudimannan	Mr.Rajnish Pathiyil SSC
WA/2670/2021	Mr.M.A.Mudimannan	Mr.K.Umesh Rao SSC
WA/2671/2021	Mr.M.A.Mudimannan	Mr.Rajnish Pathiyil SSC
WA/2692/2021	Mr.M.A.Mudimannan	Mr.Rajnish Pathiyil SSC
WA/2693/2021	Mr.M.A.Mudimannan	Mr.Rajnish Pathiyil SSC
WA/2865/2021	Mr.M.A.Mudimannan	Mr.Rajnish Pathiyil SSC



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WA No. 2659 of 2021 & b



CASE NUMBER	APPELLANT/ PETITIONER	RESPONDENT
WA/2922/2021	Mr.M.A.Mudimannan	Mr.Rajnish Pathiyil SSC
WA/2925/2021	Mr.M.A.Mudimannan	Mr.K.Umesh Rao SSC
WA/2927/2021	Mr.M.A.Mudimannan	Mr.Rajnish Pathiyil SSC
WA/2928/2021	Mr.M.A.Mudimannan	Mr.A.P Srinivas SSC
WA/2933/2021	Mr.M.A.Mudimannan	Mr.K.Umesh Rao SSC
WA/2942/2021	Mr.M.A.Mudimannan	Mr.K.Umesh Rao SSC
WA/2943/2021	Mr.M.A.Mudimannan	Mr.Rajnish Pathiyil SSC
WA/2945/2021	Mr.M.A.Mudimannan	Mr.Rajnish Pathiyil SSC
WA/2956/2021	Mr.M.A.Mudimannan	Mr.Rajnish Pathiyil SSC
WA/2957/2021	Mr.M.A.Mudimannan	Mr.K.Umesh Rao SSC
WP/613/2022	Mr.Joseph Prabakar	Mr.A.P Srinivas SSC
WP/8933/2019	Mr.M.A.Mudimannan	Mr.S.R.Sundar SSC

COMMON JUDGMENT

(Judgment of the Court was delivered by Dr.Anita Sumanth J.)

This is a batch of 30 matters, comprising 21 Writ Appeals and 9 Writ Petitions. Barring two Writ Appeals and two Writ Petitions, where the challenge is to Orders-in-original, in the other matters, the challenge is to show cause notices. 29 of the 30 matters relate to proceedings in the case of various Circles of the Tamil Nadu Generation and Distribution Corporation Limited (Tangedco) and the solitary instance involving a private entity is in W.A.No.613 of 2022.

2. We have heard all learned counsel in detail. The issue that arises in common across the Writ Appeals and Writ Petitions is whether pre-consultative



process under the Central Excise Act is mandatory prior to issuance of show cause notice on the merits of the matter/passing of orders-in-original.

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3. The parties refer to a decision of the Bombay High Court in a batch of matters in *Rochem Separation Systems (India) Pvt. Ltd. V. The Union of India*¹, wherein an identical issue has been considered by the Division Bench. The Bombay High Court has held that the requirement of pre-consultation process cannot be dismissed as an empty formality and would have to be held to be mandatory.

4. The following decisions of various Courts have been considered for the proposition that Circulars issued by the CBIC are binding upon the authorities, and that thus, pre-consultation process, a laudable move on the part of the Revenue/Department, must hence be taken to be mandatory.

1. *Amadeus India Pvt. Ltd. V. Principal Commissioner, Central Excise, Service Tax and Central Tax Commissionerate*²
2. *Back Office IT Solutions Pvt. Ltd. V. Union of India*.³
3. *Dharamshil Agencies and Union of India*⁴
4. *K.P. Varghese V. Income Tax Officer, Ernakulam and Anr.*⁵

¹2025-VIL-1096-BOM-ST

² 2019 (25) G.S.T.L. 486 (Del.)

³2021 (50) G.S.T.L. 522 (Del.)

⁴2022 96 GSTR 220

⁵(1981) 4 SCC 173



5. *Commissioner of Customs, Calcutta and Ors. V. Indian Oil Corp. Ltd., and anr.*⁶

6. *Union of India and Ors. V. Arviva Industries India Limited and Ors.*⁷

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7. *Commissioner of Income Tax V. Camco Colour Co.*⁸

8. *State of Tamil Nadu V. India Cements Limited*⁹

9. *Tube Investment of India Ltd. V. Union of India and Ors.*¹⁰

10. *Dharmashil Agencies V. Union of India*¹¹

11. *Jay Mahakali Industrial Services V. Union of India*¹²

12. *Hitachi Power Europe GMBH Project Office V. Central Board of Indirect Taxes and Customs and Ors.*¹³

13. *Varalaxmi Construction Co. V. Union of India and Ors.*

14. *Brilliant Corporate Services Private Limited (now known as M/s. Brivas Private Limited) V. Commissioner of GST and Central Excise, Chennai.*¹⁴

15. *Ramnath Prasad V. Principal Commissioner of CGST and Central Excise Patna and Anr.*¹⁵

16. *Singh Caterers and Vendors V. Directorate General of GST Intelligence (Govt. of India) Department of Revenue, New Delhi and Ors.*¹⁶

⁶(2004) 3 SCC 488

⁷(2004) 3 SCC 488

⁸(2002) 173 CTR 255

⁹ 2011 (13) SCC 247

¹⁰2019 (69) GSTR 78 (Mad.)

¹¹ 2022 96 GSTR 220

¹²2025 (393) E.L.T. 28(Guj.)

¹³ 2019 SCC OnLine MAD 4005

¹⁴(2022) 104 GSTR 296

¹⁵(2025) 144 GSTR 556

¹⁶(2025) 144 GSTR 576



17. *Tata Teleservices Limited V. Commissioner of CGST Delhi East and Anr.*¹⁷

18. *Ruchi Soya Industries Ltd. V. Union of India and Anr.*¹⁸

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19. *Commissioner of Central Excise, Bolpur V. Ratan Melting & Wire Industries*¹⁹

20. *Yaduka Agrotech Pvt. Ltd. V. Commissioner of CGST*²⁰

21. *Director of Inspection of Income-tax (Investigation), New Delhi*²¹

5. Incidentally, the order under appeal has also been discussed by the Bombay High Court. The Court notes that this order is a solitary instance where the learned Judge has held that pre-consultation process is not mandatory but directory. The discussion of the Bombay High Court at paragraph Nos. 41 and 42 is extracted below:

“41. The requirement of a pre-consultative process cannot be dismissed as some empty formality. The master circular and the Circular of 19 November 2020 style this requirement as mandatory in cases where the tax demand exceeds Rs 50 lakhs, unless, of course, the case falls in any of the exceptions. Such circulars bind the Department. Apart from its binding character, we cannot ignore that such a requirement has been introduced as an important step towards trade facilitation and to promote necessary compliance, thereby reducing the need for issuing show-cause notices in every case. This requirement promotes an alternate dispute resolution process, which is now accepted as vital for the ease of doing business. During the pre-consultative process, it is possible that the department convinces the assessee or is itself convinced regarding the necessity or otherwise of

¹⁷ 2025 SCC OnLine Del 1374

¹⁸ (2021) 17 GSTR-OL 346

¹⁹ (2008) 231 ELT 22 (SC)

²⁰ 2022 (66) G.S.T.L 385 (S.C.)

²¹ [1974] 96 ITR 390 (SC)



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raising tax demands or the quantum thereof. Such issues can always be resolved or at least seriously attempted to be resolved during the pre-consultative process. Even the Commercial Code mandates a pre-conciliation before proceedings are launched, and no urgent interim reliefs are claimed. For all the above reasons, we are satisfied that no case has been made out to persuade us to take any view that is inconsistent with our position in the case of Varalaxmi Construction Co. (*supra*) or similar views adopted by the Delhi High Court and Gujarat High Court on this issue.

42. *Accordingly, a case is made out to quash the impugned show cause notices because, admittedly, such show cause notices were issued without adopting the pre-consultation process mandated by the Master Circulars dated March 10, 2017, and November 19, 2020. No arguments were made on behalf of the Revenue to attract any of the exceptions provided in the Circulars.”*

6. We concur with the detailed reasoning and conclusions of the Bombay High Court and other Courts cited in that decision to the effect that pre-consultation process is mandatory. As observed by the Bombay High Court, the order under appeal is a solitary instance where a different conclusion has been arrived at, and there is an overwhelming view to the contrary.

7. That apart, Courts today are looking to integrate, as far as possible, the elements of Alternate Dispute Resolution mechanisms even within statutory frameworks. Evidently, the pre-consultative process adumbrated by the Central Board of Indirect Taxes and Customs ('CBIC')/('Board') is such an attempt. Master Circulars dated March 10, 2017, and November 19, 2020 of the CBIC stipulate a pre-consultative, amicable approach to settlement to disputes, in preference to an adversarial litigative processes. The Department cannot eschew the same now.



8. As against the decision of the High Court of Delhi in *Amadeus India Pvt. Ltd.*,²² Special Leave Petition (Civil) Diary No (s). 35886 of 2019 had been filed by the Department. Notice had been issued on 04.11.2019, in the following terms:

'Delay condoned. Learned Additional Solicitor General submits that if a fresh show cause notice is to be issued as directed by the High Court after pre-consultation, the Department may be given liberty to revive the earlier show cause notice to obviate any objection in regard to limitation.

Issue notice confined to the above issue, returnable in eight weeks'.

9. The conclusion of the Division Bench of the Delhi High Court holding pre-consultation to be mandatory has hence been affirmed by the Apex Court and it is solely in the context of limitation in the event the prior SCN was revived, that notice has been issued.

10. The following directions are issued have been issued in *Rochem Separation Systems*²³ and we apply the same as being applicable to the cases covered under the present order as well:

"(a) The impugned show cause notices are hereby quashed and set aside.

(b) The Revenue is given the opportunity to carry out the pre-consultative process by issuing a pre-consultation notice within four weeks from the date this order is uploaded.

(c) If such a pre-consultation notice is issued, the Assessees must file their replies within two weeks of their receipt.

²² Foot Note Supra (2)

²³Foot Note Supra (1)



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(d) *The pre-consultation process must be completed one way or the other, in accordance with law, within a period of a further six weeks from the date of receipt of the Assessee's replies.*

(e) *Depending on the outcome of the pre-consultation process, the Revenue would be entitled to issue fresh show-cause notices.*

(f) *The period of limitation from 30 January 2023 until the fresh show cause notices are issued (if at all), within the timeline indicated above, shall not be counted for the purpose of limitation.*

(g) *The exclusion of limitation which we have directed above shall be in addition to any other exclusion or extension that the Revenue can claim under the law. This includes exemptions or extensions granted due to the COVID-19 pandemic.”*

11. Learned Senior Standing Counsel for the Department draw our attention to Instruction in F.No.116/13/2020-CX-3 dated 11.11.2021, wherein the Board has issued a clarification in respect of Master Circular No.1053/02/2017-CX dated 10.03.2017, under which the pre-consultation process had been introduced.

12. The Board states that in cases where show cause notices/proceedings had been issued/completed for recovery of duties or taxes not levied or paid, or short levied or short paid, or erroneously refunded by reason of fraud, collusion, wilful mis-statement, suppression of facts or contravention of any of the provisions of the Central Excise Act, 1944 or Chapter V of the Finance Act, 1994 or connected rules, with an intent to evade payment of duties or taxes, then pre-consultation would not be mandatory.



13. Hence, it is clear that the Board has itself, vide the above Circular, made the position clear, that pre-consultation is mandatory in all other cases.

WEB COPY This would support our conclusion in the present order.

14. As far as Instruction dated 11.11.2021 is itself concerned, we are of the view that the invocation of extended limitation is based on the Department establishing fraud, collusion, wilful mis-statement, suppression of facts or contravention of the statutory provisions or rules, with intent to evade payment of duties or taxes. The aforesaid process involves the marshalling of evidence and constitutes a question of fact.

15. Invariably as also in the cases before us, assessees are entitled to object to the invocation of extended limitation, and argue that there has been no fraud, collusion, wilful mis-statement, suppression of facts or contravention of the Act and Rules, with intent to evade payment of duties and taxes.

16. Hence, there is no justification in the Department taking a unilateral view in such matters concerning the invocation of extended period of limitation. There is thus no merit in the exclusion of such matters from the ambit of pre-consultation and Master Circular dated 10.03.2017 would thus apply across the Board, to all proceedings without exception.



17. In light of the above, the impugned orders of assessment and the show cause notices are quashed. The proceedings stand revived from the stage of **WEB COPY** reference to pre-consultation process.

18. All Writ Appeals and Writ Petitions are allowed. No costs.

Connected Miscellaneous Petitions are closed.

(A.S.M.,J.) (M.S.K.,J.)
15-12-2025

Index: Yes

Speaking order

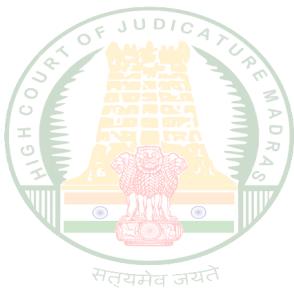
Neutral Citation: Yes

SL

Note: Registry is directed to type full cause-title, if necessary, while issuing the order.

To

1. The Commissioner Of GST
Central Excise (audit), Coimbatore Audit
Commissionerate, No.6/7, A.T.D. Street, Race
Course, Coimbatore.
2. The Commissioner Of Central GST And Central
Excise, Salem,
No.1, Foulks Compound, Anai Road, Salem.



WA No. 2659 of 2021 & b



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DR.ANITA SUMANTH J.

AND

MUMMINENI SUDHEER KUMAR J.

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W.A.Nos.2659 of 2021 & etc.batch

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