IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.07.2016

CORAM

THE HONOURABLE Mr. JUSTICE T.S.SIVAGNANAM

W.P.No.24288 of 2016

Borgwarner Cooling systems Pvt., Ltd.,
E-14, SIPCOT Industrial Park,
Mambakkam – 602 105.
Kancheepuram District. .. Petitioner

..Vs..

1.The Assistant Commissioner (CT),
Sriperumbadur Assessment Circle,
Varadarajapuram – 602 103.
Kancheepuram District.

2.The Joint Commissioner (CT)(South),
Greams Road, Egmore,
Chennai – 600 006. .. Respondents

Prayer: Writ Petitions filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, call for the records of the case from the file of the first respondent herein, quash the impugned order of the first respondent in CST 802048/2013-14, dated 18.05.2016, (served on 13.06.2016) read with ex-parte order in CST 802048/2013-14, dated 21.01.2016, (served on 08.03.2016), direct the first respondent to accept the export documents under Section 5(1) of the CST Act, pass a rectified order of assessment with an opportunity of personal hearing to the petitioner, pass such other or further orders.



For Petitioner : Mrs.Lakshmi Sriram

For Respondent : Mr.S.Kanmani Annamalai AGP

ORDER

Heard Mrs.Lakshmi Sriram, learned counsel for the petitioner, Mr.S.Kanmani Annamalai, learned Additional Government Pleader for the respondent and with the consent of either side, the writ petitions are taken up for final disposal.

2. This is a classical case where on account of transfer of Assessment Circle due to the Departmental convenience, has left the dealer in a quandary. The petitioner initially was registered under the provisions of the Tamil Nadu Value Added Tax Act, 2006, (TNVAT Act) and the Central Sales Tax Act, 1956, on the file of the Koyambedu Assessment Circle. It appears that during June 2014, the petitioner shifted the place of business to Sriperambadur and consequently, their registration had to be transferred to the jurisdiction of the first respondent. On 08.08.2014, the petitioner was issued notices by the first respondent under the provisions of the TNVAT Act, for the assessment years 2007-08 to 2014-15. The petitioner requested for time to provide necessary documents and respond to the show cause notices. The petitioner had filed their objections and when they went before the first respondent for completing the assessment under the TNVAT Act, the first respondent is said to have informed the petitioner that as per the website of the department, their registration was alive in the J.J.Nagar Assessment Circle. Therefore, the petitioner was directed to go before the concerned Assistant Commissioner of Commercial Taxes, J.J.Nagar Assessment Circle. The petitioner promptly complied with the same and all the assessments upto the year 2013-14 under the TNVAT Act had been completed.

3. Sofar as the assessment under the CST Act for the years from 2008-09 to 2012-13, have also been completed by the J.J.Nagar Assessment Circle, by assessment orders dated 30.12.2015, and 04.01.2016, respectively. The problem is arisen only for the one assessment year under the CST Act, namely for 2013-14. The petitioner was shocked to receive the assessment order, dated 21.01.2016, redetermining the total and taxable turnover. In the said assessment order, it has been stated that the petitioner was issued a notice on 08.08.2014, to submit C-Form declaration and in the absence of declaration, the turnover is proposed to be assessed at 14.5%. Since the petitioner did not receive any notice, immediately the petitioner addressed a representation on 11.03.2016, and along with that, they have submitted the C-Form and export sale registration, apart from other details to show their export transaction. It appears that the first respondent received the C-Form alone, but returned the export documents and orally informed the petitioner to approach

the Joint Commissioner, namely the second respondent. Promptly, the petitioner complied with the directions and submitted representation to the second respondent on 27.04.2016, requesting acceptance of the export documents for the relevant year. The second respondent by communication dated 28.04.2016, addressed to the first respondent enclosed the representation given by the petitioner dated 27.04.2016, along with the enclosures and forwarded the same to the first respondent for verification and to act in accordance with law. The first respondent, therefore, ought to have considered all the documents namely, the export documents, which have been enclosed along with the petitioner's representation dated 27.04.2016, addressed to the Joint Commissioner, which had been forwarded to the first respondent. However, by proceedings dated 18.05.2016, the first respondent had accepted only the C-Form declaration filed by the petitioner, but not even referred to the export documents and proceeded to assess the export sales as not supported by documents at the rate of 14.5%. Immediately, the petitioner submitted a representation on 05.07.2016, stating that they have been penalised with the demand on the ground of non-submission of export documents, which they had presented at the time when they submitted the C-forms. However, they were ignored by the office of the first respondent. Therefore, it was requested that the first respondent may accept the export documents and revise the assessment under Section 84 of the TNVAT Act.

4. The first respondent being an Assessing Officer is expected to consider such a request and pass an order, but curiously enough in the said representation itself, the first respondent has rejected the request stating that the non-submission of the documents prior to the date of assessment is not an error on the face of the record. The manner in which the first respondent has rejected the petitioner's request is not tenable. Admittedly, the export documents were produced by the petitioner along with the C-Forms, but for reasons best known, the first respondent accepted only the C-forms on 16.03.2016. Therefore, the petitioner went before the Joint Commissioner and the Joint Commissioner namely, the second respondent in turn directed the first respondent to consider all the documents. Therefore, the first respondent could not have rejected the petitioner's request to take into consideration the export documents and re-do the assessment in accordance with law.

5. In the light of the above, the Writ Petition is allowed and the impugned order dated 18.05.2016, is set aside, in sofar as it relates to the assessment of the export sales turnover alone and the first respondent is directed to take note of the export documents, it shall be produced by the petitioner and re-

do the assessment under the said head in accordance with law after affording a personal hearing. The above direction shall be complied with, within a period of three weeks from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

pbn

To

1.The Assistant Commissioner (CT),
Sriperambadur Assessment Circle,
Varadarajapuram - 602 103.
Kancheepuram District.

2.The Joint Commissioner (CT)(South),
Greams Road, Egmore,
Chennai - 600 006.

+1cc to Mr.S. Lakshmi Sriram, Advocate, S.R.No.39405
+1cc to the Special Government Pleader, S.R.No.39962

TM(CO)
EU(04/08/2016)

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