IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.01.2017

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THE HONOURABLE MR.JUSTICE RAJIV SHAKDHER

W.P.Nos.43927 to 43931 of 2016
And
W.M.P.Nos.37753 to 37757 of 2016

BorgWarner Morse Systems India Private Ltd.,
Formerly known as
BorgWarner Morse Tech India Private Ltd.,
Represented by its Senior Manager,
Mr.L.Dinesh

..Petitioner in all the W.Ps.

Vs.

The Assistant Commissioner (CT),
Tiruvallur Assessment Circle,
No.174, J.N.Road,
Tiruvallur - 602 001.

..Respondent in all the W.Ps.

Common Prayer:

Petitions filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, call for the records of the case from the file of the respondent herein, quash the impugned order of the respondent in TIN 33981721448/2010-11, TIN 33981721448/ 2011-12, TIN 33981721448/2012-13, TIN 33981721448/2013-14 and TIN 33981721448/2014-15 respectively, dated 18.11.2016 (served on 24.11.2016) for the TNVAT assessment years 2010-11, 2011-12, 2012-13, 2013-14 and 2014-15 respectively, direct the respondent to grant an opportunity of personal hearing to the petitioner and to considering the documents duly received and acknowledged by the respondent.

For Petitioner : Ms.Lakshmi Sriram

For Respondent : Mr.S.Kanmani Annamalai
Additional Government Pleader

C O M M O N   O R D E R

1.The captioned writ petitions are directed against five separate orders of even date i.e., 18.11.2016, passed vis-a-vis assessment years 2010-11, 2011-12, 2012-13, 2013-14 and 2014-15 respectively.

2.By virtue of the impugned orders, the petitioner has been called upon to pay tax and penalty for each of these assessment years, the details qua which are set forth below:

Sl.No.	Assessment Year	Tax Payable (in Rs.)	Penalty Imposed (in Rs.)
1	2010-11	28,52,965/-	28,52,965/-
2	2011-12	1,09,198/-	1,09,198/-
3	2012-13	3,33,87,058/-	3,33,87,058/-
4	2013-14	4,78,72,341/-	4,78,72,341/-
5	2014-15	67,82,671/-	67,82,671/-

3.In respect of each of the assessment years, prior notices were issued. These notices are also of even date i.e., 31.12.2015. The proposal to impose tax was reflected in each of these notices. The petitioner filed separate replies, each of which, are dated 03.02.2016.

4.Principally, the respondent has proceeded to pass the impugned order on the basis that Input Tax Credit (ITC) was availed of by the petitioner qua inter-state sales without submission of declarations, in Form 'C', as required under Section 19 (5) (c) of the Tamil Nadu Value Added Tax Act, 2006 (in short, the Act).

4.1.This apart, the respondent in the impugned order also adverts to the fact that, since, the petitioner had undertaken electrical works contract, it had to pay tax at the rate of 4% and not 2%.

5.Learned Counsel for the petitioner informs me that differential tax as determined by the respondent has already been paid. Insofar as the submission of the 'C' Forms is concerned, the learned counsel for the petitioner draws my attention to the documents appended at pages 20 and 21 of the typed set of documents. Based on these documents, it is contended that copies of 'C' Forms had been filed which were duly had been acknowledged by the Department.

5.1.Learned counsel further says that Industrial Input Certificates had also been submitted to the respondent, which have not been taken into account.

6.Mr.Kanmani Annamalai, who appears for the respondent says that, perhaps, the documents did not reach the respondent and, therefore, on account of over sight, the impugned orders came to be passed without considering the impact of the 'C' Forms and Industrial Input Certificates.

7.Having regard to the aforesaid, the impugned orders passed qua each of the assessment years are set aside. The petitioner's authorized representative will appear before the respondent, on 15.02.2017 at 11 a.m. In case the said date is not convenient to the respondent, he will fix another date which will be proximate to the date mentioned above. The respondent, after affording an opportunity of hearing to the petitioner's authorized representative, will pass a fresh order. Needless to say, the authorized representative of the petitioner, will present the original 'C' Forms, declarations, as well as, the Industrial Input certificates to the respondent, on the date of hearing adverted to above.

8.The writ petitions are disposed of in terms of the aforementioned directions. Consequently, pending applications are closed. No costs.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

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To
The Assistant Commissioner (CT),
Tiruvallur Assessment Circle,
No.174, J.N.Road,Tiruvallur - 602 001.

+5ccs to Ms. Lakshmi Sriram, Advocate, S.R.No.3223
+1cc to the Special Government Pleader S.R.No.3337

SK(CO)
EU 02.2.17

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