IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Special Original Jurisdiction)

Thursday, the Thirtieth day of August Two Thousand Eighteen

PRESENT

THE HON`BLE MR JUSTICE K.RAVICHANDRABAABU

WP NOS.22282 TO 22288 OF 2018

BORG WARNER COOLING SYSTEMS (INDIA) P LTD., REP. BY FINANCE CONTROLLER, MR.C. SUNDARA BHARATHI, SIPCOT INDUSTRIAL ESTATE, MAMBAKKAM VILLAGE, SRIPERUMBADUR, KANCHEEPURAM DISTRICT. [PETITIONER IN ALL THE PETITIONS]

Vs

1 THE ASSISTANT COMMISSIONER(ST)
KOYAMBEDU ASSESSMENT CIRCLE, NO. 426,
POONAMALLEE HIGH ROAD,
MADURAVOYAL, CHENNAI -95

[RESPONDENTS IN ALL HE PETITIONS]

2 THE ASSISTANT COMMISSIONER(ST)
OFFICE OF ASSISTANT COMMISSIONER(ST),
J.J.NAGAR ASSESSMENT CIRCLE, NO. 8, 39 & 42
FIRST FLOOR, J.J. COMPLEX, THIRUMANGALAM,
ANNA NAGAR, CHENNAI- 40.

3 THE ASSISTANT COMMISSIONER(ST)
SRIPERAMBADUR ASSESSMENT CIRCLE, BANGALORE
TRUNK ROAD, VADADHARAJAPURAM,
NAZARETPET - 602 102

4 THE JOINT COMMISSIONER(ST)
(SOUTH), PAPJM BUILDINGS, NO. 1,
GREAMS ROAD, CHENNAI - 6.

Writ Petitions under Article 226 of the Constitution of India praying that in these circumstances stated therein and in the respective affidavits filed therewith the High Court will be pleased to issue a Writ of Certiorarified Mandamus or any other appropriate writ or order or direction in the nautre of writ,

1. WP No.22282 of 2018
To call for the records of the case from the file of the 2nd respondent herein, quash the impugned reply/ memo in TIN/ 33241344816/ 2007-08 dated 31.07.2018 passed by the 2nd respondent

refusing to rectify the order of reassessment in TIN/ 33241344816/ 2007-08 dated 23.5.2018, direct the 2nd respondent to consider all the materials available with him, pass a rectified order of assessment with an opportunity of personal hearing to the petitioner

2. WP No.22283 of 2018
To call for the records of the case from the file of the 2nd respondent herein, quash the impugned reply/ memo in TIN/ 33241344816/ 2008-09 dated 31.07.2018 passed by the 2nd respondent refusing to rectify the order of reassessment in TIN/ 33241344816/ 2008-09 dated 23.5.2018, direct the 2nd respondent to consider all the materials available with him, pass a rectified order of assessment with an opportunity of personal hearing to the petitioner

3. WP No.22284 of 2018
To call for the records of the case from the file of the 2nd respondent herein, quash the impugned reply/ memo in TIN/ 33241344816/ 2009-10 dated 31.07.2018 passed by the 2nd respondent refusing to rectify the order of reassessment in TIN/ 33241344816/ 2009-10 dated 23.5.2018, direct the 2nd respondent to consider all the materials available with him, pass a rectified order of assessment with an opportunity of personal hearing to the petitioner

4. WP No.22285 of 2018
To call for the records of the case from the file of the 2nd respondent herein, quash the impugned reply/ memo in TIN/ 33241344816/ 2010-11 dated 31.07.2018 passed by the 2nd respondent refusing to rectify the order of reassessment in TIN/ 33241344816/ 2010-11 dated 23.5.2018, direct the 2nd respondent to consider all the materials available with him, pass a rectified order of assessment with an opportunity of personal hearing to the petitioner

5. WP No.22286 of 2018
To call for the records of the case from the file of the 2nd respondent herein, quash the impugned reply/ memo in TIN/ 33241344816/ 2011-12 dated 31.07.2018 passed by the 2nd respondent refusing to rectify the order of reassessment in TIN/ 33241344816/ 2011-12 dated 23.5.2018, direct the 2nd respondent to consider all the materials available with him, pass a rectified order of assessment with an opportunity of personal hearing to the petitioner

6. WP No.22287 of 2018
To call for the records of the case from the file of the 2nd respondent herein, quash the impugned reply/ memo in TIN/ 33241344816/ 2012-13 dated 31.07.2018 passed by the 2nd respondent refusing to rectify the order of reassessment in TIN/ 33241344816/ 2012-13 dated 23.5.2018, direct the 2nd respondent to consider all the materials available with him, pass a rectified order of assessment with an opportunity of personal hearing to the

petitioner and

7. WP No.22288 of 2018
To call for the records of the case from the file of the 2nd respondent herein, quash the Recovery Notice in TIN/ 33241344816/ 2007-08, 2008-09, 2009-10, 2010-11, 2011-12, 2012-13 Rc.No.Pdt-1/ CTO/ VAT/ A3 dated 02.07.2008 issued by the 2nd respondent respectively.

Order : These petitions coming on for orders upon perusing the petitions and the respective affidavits filed in support thereof and upon hearing the arguments of M/S.R.VENKATARAMAN Senior Counsel for M/S.LAKSHMI SRIRAM Advocate for the petitioner in all the petitions and of M/S.M.HARIHARAN Additional Government Pleader on behalf of the 1 to 4 respondents in all the petitions the court made the following order:-

Mr.M.Hariharan, learned Additional Government Pleader takes notice for the respondents in all these writ petitions.

2. Mr.R.Venkataraman, learned Senior Counsel appearing for the petitioner submitted that the impugned orders passed under Section 84 of the Tamil Nadu Value Added Tax, Act, 2006, are an outcome of total non-application of mind to the facts and circumstances and the points raised in the applications filed under Section 84 of the TNVAT Act, 2006. Therefore, he contended that the Assessing Officer has not discharged his statutory obligations in disposing the applications filed under Section 84 of the TNVAT Act, 2006 in a proper and perspective manner, since the impugned orders rejecting the applications were passed only by stating that the request to revise the assessment cannot be complied with, as the petitioner has not filed any fresh records and grounds warranting to revise the assessment.

3. The learned Additional Government Pleader appearing for the respondents contended that the petitioner seeks to produce some new documents for considering the same while disposing the applications filed under Section 84 of the TNVAT Act and therefore, the petitioner has not made out a case for revision of assessment under Section 84 of the TNVAT Act, in the absence of any error apparent on the face of the record.

4. But, a perusal of the impugned orders would indicate otherwise that the Assessing Officer, in fact, has observed in Paragraph No.2 that the documents along with Section 84 applications were already filed by the Assessee and were already examined by the Assessing Officer.

5. Therefore, I find that the above contention of the learned Additional Government Pleader for the respondent may not be factually correct. Even otherwise, a bare perusal of the impugned orders do not express any reasons and findings as to why the applications filed under Section 84 of the TNVAT Act, 2006, are

liable to be rejected, especially, when the petitioner has stated some facts, circumstances and reasons in their application under Section 84 of the TNVAT Act, 2006. Minimum requirement is a discussion of those details and disclosure of reasons for rejecting the same, if the authority is not convinced on those details. Here it is not done.

6.Therefore, I find a prima facie case in favour of the petitioner in granting interim relief during the pendency of the writ petition. Accordingly, the respondents are directed to maintain status quo as on today, till the disposal of the writ petitions. As it is stated by the learned Additional Government Pleader that the tax liability comes to Rs.2,91,72,585/-, the respondents shall ensure that the petitioner will operate the bank accounts, in respect of the sum, which are available over and above the said tax liability, being the subject matter of the present proceedings.

Post the matter on 06.09.2018 for filing counter.

-sd/-
30/08/2018
/ TRUE COPY /

Sub-Assistant Registrar (Statistics / C.S.)
High Court, Madras - 600 104.

TO

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KOYAMBEDU ASSESSMENT CIRCLE, NO. 426,
POONAMALLEE HIGH ROAD,
MADURAVOYAL, CHENNAI -95.

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OFFICE OF ASSISTANT COMMISSIONER(ST),
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NO. 38, 39 & 42 FIRST FLOOR, J.J. COMPLEX,
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(SOUTH), PAPJM BUILDINGS,
NO. 1, GREAMS ROAD, CHENNAI - 6.

C.C. to M/S.LAKSHMI SRIRAM Advocate SR.No.10283

C.C. To Special Government Pleader (Taxes) SR.No.10282

Order

in
WP.Nos.22282 TO 22288/2018

Date :30/08/2018

From 26.2.2001 the Registry is issuing certified
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SDR 03.09.2018