IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.08.2018

CORAM

THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

Writ Petition Nos.22568 to 22572 of 2018
and
WMP.Nos.26424 to 26428 of 2018

M/s.BorgWarner Morse Systems
India Private Ltd.,
Represented by its Manager(Finance)
Mr.V.Prudhvi Raju .. Petitioner
(in WP Nos.22568 to 22572 of 2018)

vs.

1. The Assistant Commissioner (ST) (FAC)
Tiruvallur Assessment Circle
No.6/8, Lalbahadur Shastri Street,
Periyakuppam, Tiruvallur - 602 001.

2. The Commercial Tax Officer
Group I Enforcement (East)
PAPJM Buildings
Greams Road, Chennai-600 006. ..Respondents
(in WP Nos.22568 to 22572 of 20180

Writ petitions filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, to call for the records of the case from the file of the respondent herein, quash the impugned order passed by the first respondent in TIN. Nos.33981721448/2011-12, 33981721448/2012-13, 33981721448/2013-14, 33981721448/2014-15 and 33981721448/2015-16 respectively, dated 20.07.2018, direct the first respondent to grant sufficient time to produce the documents in an year wise manner, grant an opportunity of hearing separately for each year, consider the documents produced by the petitioner and then pass a revised order of assessment.

For Petitioner : Mr.R.Venkataraman
Senior Counsel appearing for
Mrs.Lakshmi Sriram
(in WP Nos.22568 to 22572 of 2018)

For Respondent: Mr.M.Hariharan
Additional Government Pleader (Tax)
(in WP Nos.22568 to 22572 of 2018)

C O M M O N   O R D E R

All these writ petitions are filed challenging the orders of assessment passed in respect of the assessment years 2011-2012 to 2015-2016.

2. Mr.M.Hariharan, learned Additional Government Pleader (Tax) takes notice for the respondents. By consent of the parties, these main writ petitions are taken up for final disposal at the admission stage itself.

3. Mr.R.Venkataraman, learned Senior Counsel appearing for the petitioner submitted that the impugned orders of assessment were passed without affording sufficient opportunity to the petitioner to place their objections with materials documents. He further contended that for filing such objections, the petitioner needs to collect voluminous documents and therefore, they want sufficient time for filing the reply, which the Assessing Officer failed to consider. It is his further contention that the impugned ordres also imposed penalty under Section 27(3) of the Tamil Nadu Value Added Tax, Act, 2006, without affording an opportunity of hearing to the petitioner. Therefore, he contended that the impugned orders violated the principles of natural justice in its strict sense. He also invited this Court's attention to the fact that the petitioner had filed their reply to the other three assessment years viz., 2009-2010, 2010-2011 and 2016-2017 and the Assessing Officer, based on the reply/objection filed therein has sent a deviation proceedings insofar as those 3 assessment years are concerned and the proceedings are pending at this stage. Thus, he contended that the above act of the petitioner in filing reply insofar as those 3 assessment years are concerned, would show their bona fide in prosecuting the matter with the Assessing officer in respect of the present assessment years as well and therefore, the petitioner is not evading the process of assessment in any manner and hence, the time sought for filing the reply was with genuine reason as stated supra.

4. The learned Additional Government Pleader (Tax) appearing for the respondents 1 and 2 submitted that the petitioner was given sufficient opportunity to file their reply to the notice of proposals on more than one occasion, which they miserably failed to utilize. Therefore, he contended that the Assessing Officer cannot be found fault with in passing the orders of assessment, based on the materials available before him. Insofar as the issue with regard to the penalty is concerned, the learned Additional Government Pleader submitted that the notice of proposals sent to the petitioner contained the proposal for imposing the penalty also. Therefore, it is for the petitioner to give their reply, which they miserably failed to do.

5. Heard both sides.

6. The present dispute between the parties is in respect of five assessment years viz., 2011-2012 to 2015-2016. Apart from these five assessment years, notice of proposal were sent to the petitioner in respect of the other three assessment years viz., 2009-2010, 2010-2011 and 2016-2017. It is not in dispute that the petitioner had given their reply to those three assessment years and it is stated that based on such reply, a deviation proposal is sent by the Assessing Officer. Even though those three assessment years are not the subject matter in dispute before this Court, it is evident that the petitioner is genuinely attempting to take part in the assessment proceedings, by filing a reply in respect of those three assessment years with necessary documents wherever available. However, insofar as the present five assessment years are concerned, it is stated that reasonable time is sought for by the petitioner for collecting relevant documents which are stated to be voluminous.

7. Therefore, the learned Senior Counsel appearing for the petitioner submitted if one more opportunity is given to the petitioner with sufficient time, they would certainly take part in the assessment proceedings, by filing their reply with supportive documents.

8. Considering the fact that the petitioner had already participated in the assessment proceedings in respect of those three assessment years, by filing their reply, I do not think that any attempt is being made by the petitioner to drag the proceedings insofar as these five assessment years are concerned, as they only want further time to file their reply, since they have to collect voluminous documents in support of their reply. Hence, I consider such request as genuine. Insofar as the penalty issue is concerned, no doubt the notice of proposals indicated the proposed penalty under Section 27(3) of the TNVAT Act, 2006. It is true that the petitioner has not given any reply to the notice before conclusion of the assessment. But, at the same time, perusal of the impugned orders insofar as the imposition of penalty portion is concerned, would show that no reasons or findings are given as to how the Assessing Officer is satisfied to impose the penalty on the petitioner. The assessment orders are totally silent on that aspect. Needless to say that while imposing penalty, not only an opportunity of personal hearing should be given to the petitioner and also the orders of assessment should spelt out reasons and findings as to how the imposition of penalty and warranted in that case. In the absence of any justifiable reasons stated for imposition of penalty, this Court is of the view that the matter has to go back to the Assessing Officer to consider the issue afresh and pass fresh orders of assessment on

merits and in accordance with law, after affording an opportunity of hearing to the petitioner. At the same time, considering the fact that the Assessing Officer has adjourned the proceedings for more than one occasion and also considering the fact that the tax liability is huge, this Court is of the view that the indulgence shown to the petitioner herein is to be with some terms as follows:-

9. Accordingly, all these writ petitions are allowed under the following terms:

(a) The impugned orders of assessment are set aside and the matter is remitted back to the Assessing Officer for passing fresh orders of assessment on merits and in accordance with law, after considering the reply to be filed by the petitioner within the time stipulated hereunder and also on receipt of the part payment of tax liability as further indicated hereunder.

(b) The petitioner is given 6 weeks time to file their reply with supportive documents before the Assessing Officer from the date of receipt of a copy of this order.

(c) The petitioner should also pay 10% of the tax liability for each assessment year along with their reply, without prejudice to their contention.

(d) On receipt of the reply along with the tax payment as stated supra, the Assessing Officer shall intimate the date of personal hearing to the petitioner and thereafter, on completion of personal hearing, the Assessing Officer shall pass fresh orders of assessment on merits and in accordance with law, within a period of six weeks thereafter.

(e) Needless to say that any amount paid by virtue of the order passed by this Court in these writ petitions, will have to be adjusted accordingly, after the orders of assessment passed in each assessment year.

No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS-VI)

//True Copy//

Sub Assistant Registrar

mk

To

1. The Assistant Commissioner (ST) (FAC)
Tiruvallur Assessment Circle
No.6/8, Lalbahadur Shastri Street,
Periyakuppam
Tiruvallur - 602 001.

2. The Commercial Tax Officer
Group I Enforcement (East)
PAPJM Buildings
Greams Road, Chennai-600 006.

+ 1 cc to Mr. Special Government Pleader Sr.60281
+ 5 ccs to M/s. Lakshmi Sriram, Advocate Sr.60462

W.P.Nos.22568 to 22572 of 2018

(CS-VI)
EU(06/09/2018)