IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.11.2023

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THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

W.P.Nos.5575, 5582, 5587 and 5590 of 2022
and
W.M.P.No.5676, 5678, 5679 and 5681 of 2022

CG Power & Industrial Solutions Limited,
(formerly) known as Crompton Greaves Limited),
represented by its Senior Manager – Finance
V. Hariharan ... Petitioner in all W.P's

Vs.

1. The Deputy Commissioner (ST) Zone VI
No.1, Greams Road, Chennai-600 006.
(amended as per orders dated 08.11.2023 in
WMP Nos.1362, 1363, 1268 and 1274 of 2022)

2. The Assistant Commissioner (CT),
T.Nagar Assessment Circle
26, Greenways Road, Chennai-600 028. ... Respondents in all W.P's

Prayer in W.P.No.5575 of 2022: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus calling for the records on the file of the 1st respondent here in CST/619053/2008-09 dated 28.03.2014 and to quash the same with direction to pass orders on the application filed under Section 9(2) of the CST Act, 1956 r/w Section 84 of the TNVAT Act, 2006 dated 28.04.2014 after providing an opportunity of personal hearing.

Prayer in W.P.No.5582 of 2022: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus calling for the records on the file of the 1st respondent here in CST/619053/2009-10 dated 07.04.2014 and to quash the same with direction to pass orders on the application filed under Section 9(2) of the CST Act, 1956 r/w Section 84 of the TNVAT Act, 2006 dated 28.04.2014 after providing an opportunity of personal hearing.

Prayer in W.P.No.5587 of 2022: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus calling for the records on the file of the 1st respondent here in CST/619053/2010-11 dated 03.04.2014 and to quash the same with direction to pass orders on the application filed under Section 9(2) of the CST Act, 1956 r/w Section 84 of the TNVAT Act, 2006 dated 28.04.2014 after providing an opportunity of personal hearing.

Prayer in W.P.No.5590 of 2022: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus calling for the records on the file of the 1st respondent here in CST/619053/2011-12 dated 03.04.2014 and to quash the same with direction to pass orders on the application filed under Section 9(2) of the CST Act, 1956 r/w Section 84 of the TNVAT Act, 2006 dated 28.04.2014 after providing an opportunity of personal hearing.

For Petitioners : Mr.R.Kumar [in all W.P's.]

For Respondents : Mr.V.Prashanth Kiran
Government Advocate (T)[in all W.P's]

COMMON ORDER

These writ petitions have been filed challenging the impugned assessment orders dated 28.03.2014, 07.04.2014 and 03.04.2014 passed by the 1st respondent herein.

2. Mr.R.Kumar, learned Counsel for the petitioner would submit that if the relief is restricted to grant leave to the petitioner to appeal before the Appellate Authority, it would be suffice to meet out the ends of justice.

2.1 He has further submitted that the petitioner has filed the present writ petitioner challenging the impugned assessment orders, based on the aspect that though the petitioner had filed rectification applications dated 28.04.2014 and 11.12.2014 before the 2nd respondent, without disposing of the said rectification applications, the present recovery proceedings dated 14.02.2022 have been passed against the petitioner. According to the learned Counsel, if the rectification applications are considered, the question of payment of tax would not arise.

3. Mr.V.PrashanthKiran, learned Government Advocate (T) for the respondent would submit that the petitioner under the guise of rectification applications, seeks substantial modification of the impugned orders based on the facts which were not pleaded at the time of passing the impugned orders. Therefore, it would amount to reconsideration of fresh material and circumstances, which is not permissible. Therefore, the only relief available to the petitioner is to file an appeal before the appropriate Appellate Authority. In the event of filing of an appeal, the same is subject to the order of this Court whereby the limitation aspect will be considered by the Appellate Authority.

4. Heard both sides and also perused the materials available on record.

5. In the present case, it is contented by the learned counsel for the petitioner that the impugned orders were passed without disposing of the rectification applications dated 28.04.2014 and 11.12.2014. A perusal of the rectification applications would disclose that the petitioner/company was not seeking for rectification, but substantial modification of the impugned orders

itself which is not permissible in law. Therefore, the right course available for the petitioner-company is only to file an appeal against the impugned orders as rightly contended by the learned Government Advocate appearing for the respondents.

6. In the present case, the petitioner has already paid a sum of Rs.1.5 Crores out of the total demand of Rs.3,26,45,146/- towards tax liability. Taking all these aspects in to consideration, this Court passes the following order:

(i) This Court permits the petitioner to file an appeal before the appropriate Appellate Authority within a period of 30 days from the date of receipt of a copy of this order. On such filing, the concerned Appellate Authority is directed to take up the appeal on file without insisting upon the aspect of the limitation and also without insisting upon the payment of 25% of the demand, since the petitioner has already deposited a sum of Rs.1.5 crores out of the total demand of Rs.3,26,45,146/-

(ii) The concerned Appellate Authority shall hear the matter after providing an opportunity of personal hearing to the petitioner and pass orders in accordance with law, within a period of three month time.

Accordingly, with the above observations, the Writ Petitions stand disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

30.11.2023

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Internet:Yes
Index : Yes / No
Speaking order/Non-Speaking order
Neutral Citation : Yes / No

KRISHNAN RAMASAMY, J.

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