IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.09.2024

CORAM

THE HON'BLE **MR.JUSTICE C.SARAVANAN**

W.P.Nos.5548 and 5554 of 2022
and
W.M.P.Nos.5653, 5654, 5656 and 5659 of 2022

Howden Solyvent India Private Limited,
Represented by its authorized representative,
Mr.V.Kalyanaraman,
No.147, Poonamallee High Road Village,
Numbal Kancheepuram,
Chennai – 600 077. ... Petitioner in both W.Ps.

Vs.

The Income Tax Officer, Corp Ward 2(3),
Income Tax Department,
Chennai-Wanaparthy Block No.121,
Mahatma Gandhi Road,
Nungambakkam,
Chennai – 600 034. ... Respondent in both W.Ps.

Prayer in W.P.No.5548 of 2022: Writ Petition filed under Article 226 of Constitution of India, for issuance of a Writ of Certiorari to call for the records to the Impugned Order dated 17 February 2022 bearing Letter No.ITBA/RCV/F/17/2021-2022/1039856283(1) and the Notices dated 18 February 2022 bearing Notice No.ITBA/COM/F/17/2021-22/1039888560(1) and 23 February 2022 bearing Notice No.ITBA/COM/F/17/2021-22/1040033835(1) issued by the Respondent to the Hongkong and Shanghai

Banking Corporation and the Notice dated 24 February 2022 bearing Letter No.ITBA/COM/F/17/2021-22/1040083226(1) issued by the Respondent to the Petitioner.

Prayer in W.P.No.5554 of 2022: Writ Petition filed under Article 226 of Constitution of India, for issuance of a Writ of Mandamus to permit the petitioner to withdraw the undertaking dated 24 February 2022 issued to the Respondent.

For Petitioner	:	M/s.E.N.Hareepriya (in both WPs.)
For Respondent	:	Mr.B.Ramana Kumar Senior Standing Counsel (in both WPs.)

COMMON ORDER

By this common order both these writ petitions are being disposed of. Earlier an Assessment Order came to be passed on 21.04.2021 for the Assessment Year 2018-2019 under Section 143(3) of the Income Tax Act, 1961. The computation of the amount payable by the Petitioner for the Assessment Year was Rs.34,92,30,530/-.

2. It appears that for the other Assessment Years 2013-2014 and 2014-2015 also the Petitioner had suffered adverse Assessment Orders which were in appeal against which appeals were filed either before the CIT (Appeal) or ITAT. The Petitioner appears to have given an undertaking on 24.02.2022 to pay 20% of the amount due and payable in terms of the Circular of the Central Board of Direct Taxes for stating of all further proceedings pending disposal of the appeal. Details of undertaking given by the Petitioner are as under:-

> *"This is with reference to the Undertaking of payment of arrears of taxes submitted by the following company on 24th February 2022.*
>
> *M/S.HOWDEN SOLYVENT (INDIA) P LTD [AAACF6153G]*
> *TLT BABCOCK INDIA P LTD [AADCT4221E]*
>
> *(since merged with M/s.Howden Solyvent (India) P Ltd)*

AY	*TAX RAISED*	*APPEALS*	*% PAYABLE*	*PAYABLE*	*AMT PAID*	*BALANCE PAYABLE*
2013-14	*6,88,60,920*	*CIT(A)*	*20%*	*1,37,72,184*	*1,37,72,184*	*0*
2014-15	*3,41,46,180*	*ITAT*	*100%*	*3,41,46,180*	*3,41,46,180*	*0*
2018-19	*34,92,50,530*	*CIT(A)*	*20%*	*6,98,50,106*	*1,20,81,636*	*5,77,68,470*

> *You are required to adhere to the terms and conditions of the Undertaking dated 24.02.2022 submitted by you to the undersigned. You are directed to pay the balance of*

demand in equal monthly installments as under:-

First Monthly installment on or before 10 March, 2022 – Rs.1,77,68,470/-

Followed by monthly installment of Rs.1 Crore for the following 4 installments on or before 10th of the month.

Failure to adhere to the date of payment of installment will result in coercive action for recovery of the taxes due."

3. As far as Assessment Year 2018-2019 is concerned, Petitioner had also approached the authorities under Section 226(6) of the Income Tax Act, 1961 which was rejected vide proceedings dated 24.02.2022. These proceedings were subject matter of W.P.No.5548 of 2022.

4. It appears that for the Assessment Year 2018-2019, the Petitioner has paid a paltry amount of Rs.54,794/- only. The Petitioner cannot expect the appeal to be heard without mandatory pre-deposit of the amount as is required as per the Office Memorandum issued by the Central Board of Direct Taxes issued from time to time. Unless the Petitioner pre-deposits the amount the Petitioner cannot expect any protection from recovery of tax dues confirmed against the Petitioner.

5. Under these circumstances, these Writ Petitions are dismissed.

However liberty is given to the Petitioner to move suitable application for waiver in terms of the decision of the Hon'ble Supreme Court in Principal Commissioner of Income Tax 5 and Others vs. M/s.LG Electronics India Private Limited, rendered in Civil Appeal.No.6850 of 2018. No costs. Consequently, connected Miscellaneous Petitions are closed.

19.09.2024

Index : Yes/No
Speaking/Non-speaking Order
Neutral Citation :Yes/No
rgm

C.SARAVANAN, J.

rgm

To

The Income Tax Officer, Corp Ward 2(3),
Income Tax Department,
Chennai-Wanaparthy Block No.121,
Mahatma Gandhi Road,
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