

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.07.2017

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.13380 of 2017

Brakes India Private Limited,
Rep. By its Executive Director - Operation
and Finance Mr.S.Kesavan,
No.21, Patullos Road,
Chennai - 2. ... Petitioner

Vs.

Deputy Commissioner (C.T.) IV,
Large Taxpayers Unit,
34, Marshall Road,
Chennai - 600 008. ... Respondent

PRAYER: Writ Petition filed under Article 226 of Constitution of India praying to issue Writ of certiorari to call for the impugned proceedings of the respondent passed in CST/31706/2015-16, dated 11.05.2017 and quash the same.

For Petitioner : Mr.N.Murali

For Respondent : Mr.S.Kanmani Annamalai, AGP

ORDER

Heard Mr.N.Murali, learned counsel for the petitioner and Mr.S.Kanmani Annamalai, learned Additional Government Pleader, who accepts notice for the respondent, and with the consent of either side, the writ petition itself is taken up for final disposal.

2. This writ petition has been entertained by this Court for the only reason that the Assessing Officer has passed the impugned order without due application of mind and has in fact travelled beyond the allegation contained in the show cause notice dated 06.02.2017.

3. The petitioner, who is a registered dealer on the file of the respondent, the large taxpayer, is aggrieved by the order of assessment dated 11.05.2017 for the year 2015-16. The assessment was completed by the Officer by passing an order

dated 13.01.2017. The petitioner filed an application for rectification dated 02.02.2017 and among other things, they pointed out that they have not filed the Form H under the Auto parts category for the value of Rs.23,66,307.00/- and the same need to get included in the assessment order. Considering the same, the Assessing Officer passed a rectified order dated 06.02.2017 and re-determined the turnover under the Pre-Export sale, for which Form H has not been filed. However, on the same day i.e. 06.02.2017, a notice has been issued. It is not clear as to whether this notice was prior to the rectified order dated 06.02.2017 and if that is so, notice dated 06.02.2017 cannot be given effect to as it has culminated in the rectified order dated 06.02.2017.

4. Be that as it may, in the notice dated 06.02.2017, the allegation was, on cross verification of the sale of Form-H export certificates with profiles of the purchasers, it could not be ascertained about the final disposal of the goods sold under Section 5(3) of CST Act, 1956. Further, it was stated that as per Section 5(3) of the CST Act, to be eligible for exemption under the said Section, the goods purchased from a supplier should be exported as such without any further process of the goods. However, in the case of the petitioner, the purchasing dealer used to sell the Motor Vehicles manufactured utilizing the Automobile Spares purchased from the petitioner against Form H both locally and abroad.

5. The petitioner submitted their objections dated 17.02.2017 and on receipt of the objections, the respondent passed the impugned order and from the operative portion of the order, which is at paragraph No.6, this Court finds that in respect of 17 items, Form H declaration has been produced and the same has been received and verified by the respondent and found to be in order and has granted the benefit. With regard to remaining 11 forms, the respondent has stated that on verification of the supportive documents, there is no connectivity between the purchase and sales transactions in those 11 forms. The finding rendered by the respondent in the impugned assessment order has absolutely no correlation to the allegation levelled in the show cause notice dated 06.02.2017 nor there is any reference to the rectified order dated 06.02.2017. Thus, the Assessing Officer has misdirected himself in proceeding in a totally different direction and completing the assessment stating that there is no connectivity between the purchases and sales transactions.

6. If that be the case, nothing prevented the respondent from directing the petitioner to reconcile those details. Without doing so, the impugned order has been passed, that too by an Officer, who is an Assessing Officer of the large taxpayers unit. Furthermore, one among the dealers, whose name

finds place in the tabulated column, namely, Diamler India Commercial Vehicles Private Limited, is a registered dealer on the file of the respondent. Therefore, the respondent ought to have conducted a proper enquiry by directing the petitioner to appear in person through authorized representative, reconcile the figures and then should have passed the speaking order. Thus, the manner in which the impugned assessment order has been passed is wholly untenable.

7. For the reasons stated above, the writ petition is allowed and the impugned order dated 11.05.2017 is set aside and the matter is remitted to the respondent for fresh consideration. The respondent is directed to redo the assessment after affording an opportunity of personal hearing to the petitioner and after the verification of all the records as well as taking note of the rectified order dated 06.02.2017. Since the petitioner has paid 10% of the tax as computed in the impugned assessment order dated 11.05.2017, the same shall be retained and adjusted as against the revised assessment orders, that shall be passed. In the light of the above order, no coercive action shall be initiated against the petitioner for recovery of any tax and penalty. No Costs. WMP.No.14413 of 2017 is closed.

Sd/-
Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

To

Deputy Commissioner (C.T.) IV,
Large Taxpayers Unit,
34, Marshall Road,
Chennai - 600 008.

+2ccs to Mr.N.Murali,Advocate sr.48899

+1cc to Special Government Pleader, sr.48684

W.P.No.13380 of 2017

nm(co)
ss(27/7/2017)