IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.10.2017

CORAM

THE HONOURABLE Mr.JUSTICE T.S.SIVAGNANAM

W.P.No.3629 of 2017
and
W.M.P.No.3667 of 2017

Bajaj Electricals Limited,
Represented by its Branch Sales
Support Manager
C.Srinivasan, 195, Anna Salai,
Presently at:
No.103A, Naveens' Presidium,
Nelson Manickam Road,
Aminjikarai, Chennai – 600 029. ... Petitioner

Vs

The Assistant Commissioner (CT),
Anna Salai I Assessment Circle,
'Sire Mansion' 621, Anna Salai,
Chennai – 600 006. ... Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus calling for the records on the files of the Respondent herein in TIN No.33580600002/2011-12 dated 23.12.2016 and quash the same and direct the respondent to consider the application dated 25.1.2017 in so far as it relates to sales return for which the sales took place in the year 2010-11.

For Petitioner : Mr.N.Inbarajan
For Respondents : Mr.K.Venkatesh
Government Advocate

ORDER

Heard Mr.N.Inbarajan, learned counsel appearing for the petitioner and Mr.K.Venkatesh, learned Government Advocate appearing for the respondent and with the consent on either side, the writ petition is taken up for final disposal, as counter has been filed by the respondent.

2.The petitioner is a registered dealer on the file of the respondent under the provisions of the Tamil Nadu Value Added Tax Act, 2006 and the Central Sales Tax Act, 1956 and carrying on business of buying and selling home appliances, electrical goods etc. The respondent issued notice dated 28.10.2016 stating that on verification of the monthly return, it revealed that the petitioner had claimed deduction on sales return for a sum of Rs.68,08,32,565.00, but have not filed documents in support of claim of deduction. Therefore, the respondent proposed to assess part of that said turnover to tax at 4% and the remaining part at 5%. Apart from the above allegation, there were other allegations in the show cause notice over which we are not concerned in this writ petition.

3.The petitioner submitted their objections dated 11.11.2016 pointing out that the total sales return during the year 2011-2012 was Rs.5,72,03,671/- and the corresponding tax amount refunded was Rs.74,54,978/-. Enclosing the details of the sales return for the period 2011-2012. The petitioner requested the respondent to drop the proposal in the notice dated 28.10.2016. Apart from the above, the other issues which were pointed out in the notice were also duly confronted in the objections. While completing the assessment by passing the impugned order, I find that the respondent has proceeded totally on a different direction as noticed above. The assessment pertains to the financial year 2011-2012 and the allegation was the petitioner claimed sales return for a sum of Rs.68,08,32,565.00. However, I find in the impugned assessment order, the figure has not been dealt with or rather has been given up in toto.

4.On going through the details of the sales return filed by the petitioner for the period from April 2011 to March 2012, the respondent has rejected part of the claim to the tune of Rs.88,25,131/- stating that it pertains to the previous year i.e. 2010-

2011. However, before doing so, the respondent did not issue any notice to the petitioner nor did the respondent afford an opportunity of personal hearing to the petitioner especially when the respondent has rejected part of the sales return and assess the turnover to higher rate of tax. This could not have been done without due opportunity to the petitioner.

5.In the counter affidavit, there is no averment with regard to why opportunity of personal hearing was not afforded to the petitioner and the only stand that appears to have been taken is that the order of reversal of the credit is in accordance with Rule 10(6) of the Tamil Nadu Value Added Tax Rules, 2007. On going through the impugned order, it is evidently clear that the petitioner did not have due opportunity to put forth their objections and the impugned order has proceeded on totally a different basis than the proposal contained in the show cause notice dated 28.10.2016. Thus, for the above reasons, the impugned order is liable to be interfered with.

6.In the result, the Writ Petition is allowed. The impugned order is set aside and the matter is remanded to the respondent for fresh consideration. The respondent shall fix a date for personal hearing, examine the documents pertaining to the sales return furnished by the petitioner and if any further clarification is required, the same shall be obtained from the petitioner and thereafter the assessment shall be redone in accordance with law. No costs. Consequently, connected miscellaneous petition is closed.

04.10.2017

Speaking order

Index : Yes/No

Internet : Yes/No

Sgl

To

The Assistant Commissioner (CT),
Anna Salai I Assessment Circle,
'Sire Mansion' 621, Anna Salai,
Chennai – 600 006.

T.S.SIVAGNANAM, J.

Sgl

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