

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :05.08.2019

CORAM

THE HON'BLE MR.JUSTICE M.SUNDAR

W.P.No.5977 of 2018
and
W.M.P.No.7354 of 2018

Bray Controls India Private Limited,
Represented by Mr.D.Baalaji, DGM Finance,
No.73, Industrial Estate,
Perungudi,
Chennai - 600 096.

..Petitioner

vs

The Assistant Commissioner(ST),
Poonamallee Assessment Circle,
Varadharajapuram,
Chennai - 602 123.

..Respondent

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records in the proceedings of the Respondent in CST/1299058/2015-2016 dated 12.02.2018, issued by the Respondent and quash the same as arbitrary and illegal or pass any other Writ, order or direction which this Hon'ble Court may deem it fit and proper in the facts and circumstances of the case and thus render justice.

For Petitioner : Mr.Joseph Prabakar

For Respondent : Ms.G.Dhanamadhri
Government Advocate

O R D E R

Mr.Joseph Prabakar, learned counsel on record for writ petitioner and Ms.G.Dhanamadhri, learned Government Advocate on behalf of lone respondent are before this Court.

2. With consent of learned counsel on both sides, main writ petition itself is taken up, heard out and is being disposed of.

3. Subject matter of the instant writ petition is an assessment made with regard to 'Assessment Year 2015-2016' ['said AY' for brevity] and the same is the genesis of this matter. After the aforesaid order, 'Goods and Services Tax' ['GST' for brevity] Regime started operating on and from 01.07.2017, which is the appointed day.

4. It is not in dispute that prior to 01.07.2017, writ petitioner was a registered dealer under 'Tamil Nadu Value Added Tax Act 2006 (Tamil Nadu Act 32 of 2006)' [hereinafter 'TNVAT Act' for brevity]. Writ petitioner was filing monthly returns under Section 21 and there was deemed assessment under Section 22(2) of TNVAT Act.

5. When things stood as above, it is the case of the writ petitioner that writ petitioner resorted to transition / migration of 'Input Tax Credit' ['ITC' for brevity] under TNVAT Act, into the GST Regime by resorting to Section 140 of 'Tamil Nadu Goods and Services Tax Act, 2017' ['TNGST Act' for brevity]. Though according to e-Return filed under TNVAT Act on 20.07.2017, the writ petitioner verily believed that it had ITC to the tune of Rs.2,14,79,109/- (little over 2.14 crores), it later realized that it does not have the requisite Forms to support this and therefore, the transition under Section 140 of TNGST Act sought was scaled down to Rs.38,51,900/- only (little over 38.51 lakhs). The scaling down of ITC from 2.14 crores to 38 lakhs is not scaling down of ITC itself, but scaling down of ITC which is capable of migration / capable of transition into the GST Regime. Therefore, the writ petitioner gave up ITC transition request to the tune of Rs.1,76,27,209/- (little over 1.76 crores).

6. The scenario now shifts to the assessment made under CST Act on 31.05.2017, which has been referred to above. With regard to the CST assessment made on 31.05.2017, writ petitioner filed certain 'C' Forms regarding concessional rate of tax and 'H' Forms regarding exemptions. On this basis, assessment made under CST Act was reopened in what according to the department is exercise of powers under Section 84 of TNVAT Act and the revised assessment order dated 12.02.2018 came to be passed [hereinafter 'impugned

order' for brevity]. Vide impugned order, the CST assessment made on 31.05.2017 to the tune of little over 33.71 lakhs was scaled down to little over 13.92 lakhs by accepting the 'C' and 'H' forms filed by the writ petitioner pertaining to concessional rate of tax and exemption respectively.

7. Though the impugned order has accepted 'C' and 'H' forms filed by the writ petitioner, the same has been assailed, as according to the writ petitioner, writ petitioner's request to adjust part of the aforesaid little over 1.76 crores ITC that was given up towards this liability has not been acceded to.

8. Respondent has filed a counter affidavit and Revenue counsel adverting to the counter affidavit submits that ITC sought to be made subject matter of migration by writ petitioner by filing Tran-1 is provisional and in this regard, Section 19(16) of TNVAT Act is pressed into service.

9. Learned counsel for writ petitioner submits that as far as the quantification of tax vide the impugned order namely little over 13.92 lakhs is concerned, there is no disputation. It is submitted that the disputation is only with regard to the respondent not acceding to the writ petitioner's request to adjust part of little over 1.76 crores ITC, which was given up as Tran-1 has been filed only for 38.51 lakhs. Writ petitioner submits that Tran-1 has been filed on 26.12.2017.

10. The question now is when will ITC claim of writ petitioner become final and what is the development if any in this direction.

11. With regard to the aforesaid pointed question, learned Revenue counsel on instructions, submitted that in the facts and circumstances of the instant case, adjustment sought for by the writ petitioner is permissible but subject to quantification / verification as adumbrated in Rule 121 of 'Tamil Nadu Goods and Services Tax Rules, 2017' ['TNGST Rules' for brevity]. What is adjustable will also be subject matter of the verification.

12. If that be the case, the aforesaid verification process has to be completed and the outcome of the verification process will obviously impact the impugned

order being given effect to. To be noted, as already mentioned above, writ petitioner accepts tax liability under the impugned order and what is put in issue in the instant writ petition is only the adjustment plea.

13. Therefore, the respondent shall do the verification exercise under Rule 121 of TNGST Rules as expeditiously as possible and until this exercise is completed, the impugned order will be kept in abeyance.

14. Post outcome of the verification process in the aforesaid manner, depending on the outcome, tax liability under the impugned order shall either be treated as paid, part-paid or unpaid.

15. Post verification, outcome of the verification process together with its impact on the impugned order shall be communicated to the writ petitioner within ten (10) working days from date of completion of verification / quantification as above under due acknowledgement. To be noted, it is submitted by Revenue counsel, on instructions, that the aforesaid verification under Rule 121 of TNGST Rules also has to be done by the respondent in the instant writ petition.

16. This writ petition is disposed of with the above directions. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

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To

The Assistant Commissioner(ST),
Poonamallee Assessment Circle,
Varadharajapuram, Chennai - 602 123.

+1cc to Mr. Joseph Prabakar , Advocate SR.No. 67151

+1 cc to Spl Government Pleader Sr.No. 67253

W.P.No.5977 of 2018

and

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ks (CO)

A.SK(10/09/2019)