IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.04.2022

CORAM :

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

WRIT PETITION NO.22277 OF 2011
&
M.P.NO.1 OF 2011

BRAKES INDIA LIMITED,
M.T.H. Road, PADI,
Chennai - 600 050,
Rep. by its Executive Director
(Operations & Finance),
Mr.S.Kesavan. ... Petitioner

.Vs.

The Sub Registrar,
Office of the Sub Registrar,
Sholingur, Walaja Taluk,
Vellore District. ... Respondent

PRAYER:-

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari, calling for the records of the Respondent, culminating in the the impugned notice dated 12.8.2011 relating to the Sale Deed dated 4.2.2011, registered as Doc.No.4/2011 (pending), in so far as it relates to the inclusion of the value of the machineries and other movable items like Generator, workstations, interiors, furniture, water motor, transformer etc. for the purpose of Stamp Duty and Registration, and quash the same.

For Petitioner : Mr.V.Kuberan
For M/s.Rank Associates

For Respondent : Mr.Tippu Sultan
Government Advocate

ORDER

Petitioner challenges the notice issued under Form 1 dated 12.08.2011 on the grounds of non application of mind.

2. The Petitioner entered into a lease of running a factory from 01.08.2010 on a fixed lease rent from M/s.Real Talent Engineering Limited, Chennai. For the purpose of running the industry, he purchased certain machineries to the tune of Rs.2,46,38,100/- which were borne out by invoice dated 28.08.2010. Thereafter, lessee purchased the land and building from the lessor by virtue of a registered sale deed dated 04.02.2011. At the time of presenting the sale deed, the value of the land and building alone was fixed at the market value of Rs.4,46,00,000/- excluding the value of the machineries purchased and erected by him for running his business as lessee. According to the Assistant Executive Engineer, the valuation of the property was Rs.3,98,26,384/- without depreciation.

3. By his field inspection report No.160/AEE/11 dated 24.02.2011, he would report that Sub-Registrar shall value the machineries and plants existing within the building and impose the stamp duty. Pursuant to that a valuer was deputed to value the plant and machinery available within the building. He submitted a report dated 01.03.2011 wherein, he assessed the fair market value of the machinery at Rs.2,46,38,100/-. A perusal of the report dated 01.03.2011 shows that the petitioner has produced purchase invoices of machineries in the name of M/s. Midrange Components (Unit of Brakes India) petitioner unit at the time of assessment. However, without adverting to the invoices produced by the petitioner, the impugned Show Cause Notice came to be issued on 12.08.2011.

4. Admittedly, the factory and its buildings were leased by the petitioner on 01.08.2010 on a fixed monthly lease rent. The invoices produced before the valuer of the respondent discloses the date of purchase as 28.08.2010, which means after taking the factory on lease, the petitioner has purchased all the machineries to the tune of Rs.2,46,38,100/-. The bills and invoices were produced before the valuer but, without applying the mind, the respondent has issued a show cause notice as if there is under valuation and thereby deficit of stamp duty to the tune of Rs.31,52,376/- and non payment of registration charges to the tune of Rs.3,94,050/- totaling to a sum of Rs.35,46,426/-. The show cause notice issued in spite of production of the purchase invoices for the machineries and

plants, is absolutely without application of mind.

5. The learned counsel appearing on behalf of the respondent would contend taking support from the counter affidavit filed in the writ petition, that all the plants machineries which are attached to the ground shall be construed as property conveyed by the building owner and purchased by the petitioner. But the factum that the factory was taken on lease with effect from 01.08.2010 is not disputed. The fact that the lessee has purchased machineries to the tune of Rs.2,48,38,100/- and erected the same for running his factory, is not disputed. What was actually conveyed on 04.02.2011 was only the land and building which was in possession of the lessee already. The purchaser shall not be compelled to pay stamp duty for the property purchased and owned by him. The land owner has conveyed only the land and building and not the plant and machineries and therefore inclusion of Rs.2,46,38,100/- which is borne out by bills and invoices is not sustainable. Accordingly, the same is set aside.

6. As per the valuation made by the Assistant Executive Engineer, the land and building and its appurtenants were valued only at Rs.3,98,26,384/- whereas the Petitioner has given the market value of the property as Rs.4,46,00,000/- and paid stamp duty and registration charges for the same. In that event there could not be any deficit of stamp duty or registration charges for the property conveyed. In fact, they paid in excess of the valuation amount made by the Assistant Executive Engineer of the Public Works Department. Therefore, show cause notice issued without application of mind is not sustainable and accordingly set aside.

7. However, it is open to the respondent to value the machineries which were not included in the bills and invoices produced by the petitioner. The Writ Petition is disposed of with the above directions. There shall be no order as to costs. Consequently connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

sha/kpr

To

The Sub Registrar,
Office of the Sub Registrar,
Sholingur, Walaja Taluk,
Vellore District.

+1cc to M/s.Rank Associates, Advocate, S.R.No.23580
+1cc to the Government Pleader, S.R.No.23400

W.P.NO.22277 OF 2011 &
M.P.NO.1 OF 2011

RSI(CO)
PBS/31/05/2022