

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.07.2021

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.No.3206 of 2014
and M.P.No.1 of 2014

M/s.Saint Gobain Glass India Ltd.,
Rep. By Team Leader-Finance,
Plot A-1, SIPCOT Industrial Part,
Irrungattukottai,
Sriperumbudur,
Kancheepuram 602 105.

..Petitioner

Vs.

1.The Appellate Joint Commissioner (CT),
CT Annexe Building, III Floor,
Greams Road,
Chennai 600 006.

2.The Deputy Commissioner (CT)-IV,
Large Taxpayers Unit,
No.34 (Old No.123),
“Dugar Towers”,
5th Floor, Marshal Road,
Egmore, Chennai 600 008.

..Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, to
issue a Writ of Certiorari, calling for the records of the First Respondent in

the impugned order dated 29.11.2013 in A.P.No.26/2013, quash the same as it is passed without jurisdiction and in violation of the provisions of Section 3 of the Central Sales Tax Act, 1956 and other settled principles of law.

For Petitioner : Ms.G.Varshitha
for M/s.K.Vaitheeswaran

For Respondents : Mr.V.Nanmaran
(Government Advocate)

ORDER

The order passed by the 1st respondent in A.P.No.26 of 2013 dated 29.11.2013 is under challenge in the present Writ Petition. The petitioner is a registered dealer under the provisions of the Tamil Nadu Value Added Tax Act, 2006 (hereinafter referred to as, the 'TNVAT Act') and under the provisions of the Central Sales Tax Act, 1956 (hereinafter referred to as, the 'CST Act'), engaged in the manufacture and sale of Float Glass, mirror and Automotive Glasses, which are fragile in nature and also having customers all over India. The assessment for the Assessment Year 2009-10 (CST) was completed under Section 9(2) of the CST Act r/w Section 22(2) of the TNVAT Act, accepting the returns filed by the petitioner. For the

Assessment Year 2009-10, the petitioner had paid CST at a concessional rate of tax, wherever the turnover is covered under Form C declaration. C-Form is a statutory declaration to be issued by the buyer for the purpose of concessional rate, in terms of Section 8 of the CST Act. If the dealer fails to give the declaration in 'Form C', he shall be assessed at the CST of a higher rate to the extent of turnover not covered by such declaration. The petitioner filed a statutory appeal before the First Appellate Authority/1st respondent, challenging the inclusion of freight in the taxable turnover and levy of higher rate of tax for want C-Form.

2.The learned counsel for the petitioner states that on behalf of the petitioner, grounds for appeal were elaborately canvassed, as well as the legal positions. The petitioner relied on number of decisions in support of their submissions. The 1st respondent was pleased to give an opportunity of being heard and the petitioner, through their authorised representative, appeared and established their case, based on the legal and factual grounds, produced documentary evidence and produced Form C declaration to the extent of Rs.2,01,20,416/- for concessional rate of tax. However, the 1st

respondent, without considering any of the legal grounds, as well as the factual aspects raised, passed the impugned order, ignoring the decisions relied upon by the petitioner.

3.Perusal of the order impugned dated 29.11.2013, would reveal that the First Appellate Authority has considered the merits and passed an order. The correctness or otherwise of the order is to be tested before the Tamil Nadu Sales Tax Appellate Tribunal, under the provisions of the Act. Admittedly, the petitioner has not preferred an appeal as contemplated under the Act.

4.The Tamil Nadu Sales Tax Appellate Tribunal is a specialized institution created to deal with the Sales Tax Appeals, under the provisions of the Act. Thus, the Tribunal is an appropriate authority for redressal of the grievances, if any exist, through the writ petitioner. Contrarily, certain disputed facts which deserves an adjudication with reference to the documents and evidences, cannot be done by the High Court, under Article 226 of the Constitution of India.

5.The power of judicial review under Article 226 of the Constitution of India is to be exercised to scrutinise the processes through which a decision is taken by the competent authority in consonance with the provisions of the Act, but not the decision itself. Thus, the petitioner is bound to prefer an appeal before the Tamil Nadu Sales Tax Appellate Tribunal, under the provisions of the Act, in a prescribed format, by complying with the procedures contemplated. The petitioner has also raised certain factual disputes in this Writ Petition and the findings of the Tribunal would be of assistance to the High Court for the purpose of exercising the power of judicial review under Article 226 of the Constitution of India. Thus, the importance of the appellate remedy, at no circumstances, be undermined. In view of the facts and circumstances, the petitioner is at liberty to prefer an appeal before the Tamil Nadu Sale Tax Appellate Tribunal and in the event of preferring any such appeal by the petitioner, the Tribunal may condone the delay, taking note the period of pendency of the Writ Petition before this Court, and entertain the appeal and decide the same on merits and in accordance with law, by affording opportunity to the writ petitioner.

With this direction, the Writ Petition stands disposed of. No costs.

Consequently, connected Miscellaneous Petition is closed.

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Index : Yes

Speaking Order : Yes

Note: Registry is directed to handover
the original impugned order to
the learned counsel on record.

To

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S.M.SUBRAMANIAM, J.

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