

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.06.2016

Date of Reserving the Order	Date of Pronouncing the Order
13.06.2016	29.06.2016

CORAM

THE HON'BLE MR. JUSTICE T.S. SIVAGNANAM

W.P.Nos.31164 to 31168 of 2015

M/s.Saint Gobain Glass India Ltd.,
(Now known as M/s.Saint Gobain India Pvt Ltd.,)
Rep., by its Team Leader - Finance & Accounts,
No.7, 18/3, Rukmani Lakshmipathy Road,
Egmore, Chennai - 600 008. ... Petitioner in W.Ps

Vs

1. The Principal Secretary/
Commissioner of Commercial Taxes
Ezhilagam, Chepauk,
Chennai - 600 005.
2. The Deputy Commissioner (CT) LTU IV,
V Floor, Dugar Towers,
No.34, Marshalls Road,
Chennai - 600 008. ... Respondents in all W.Ps.

Common Prayer :- These Writ Petitions are filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorarified Mandamus to call for the records of the second respondent herein in his proceedings in TIN/33511662391/2007-08, TIN/33511662391/2008-09, TIN/33511662391/2009-10, TIN/33511662391/2010-11, TIN/33511662391/2011-12, and quash the order dated 31.08.2015, passed therein and further direct the first respondent to appoint a higher official to personally inspect and decide the eligibility of the petitioner to avail the benefit of input tax credit in respect of the disputed items which are used directly in the manufacture of goods including furnace oil and then decide the issue in accordance with law and facts of the case.

For petitioner : Mr.R.L.Ramani Senior counsel for
Mr.B.Raveendran

For Respondents : Mr.Manokaran Sundaram
Additional Government Pleader

C O M M O N O R D E R

Heard Mr.R.L.Ramani, learned Senior counsel assisted by Mr.B.Raveendran, learned counsel appearing for the petitioner and Mr.Manokaran Sundaram, learned Additional Government Pleader appearing for the respondent and with consent on either side, the Writ Petitions are taken up for final disposal.

2. The petitioner is a registered dealer on the file of the second respondent under the provisions of the Tamil Nadu Value Added Tax, 2008, (TNVAT Act) and the Central Sales Tax Act, 1956, (CST Act). The petitioner is engaged in the manufacture of glass and have been filing their monthly returns claiming Input Tax Credit (ITC), in respect of the tax paid on goods purchased within the State of Tamil Nadu. The petitioner were assessed on self assessment basis on the total and taxable turnover and the assessment was completed by the Assistant Commissioner, Sriperumbathur Circle, after which the place of business of the petitioner was audited by the enforcement wing officials on 18.01.2012, from 20.02.2012 to 25.02.2012, 03.05.2012 to 05.05.2012 and 14.05.2012 to 16.05.2012. Based on the report submitted, the second respondent issued notices to the petitioner pointing out several aspects such as disallowance of ITC claim of ineligible commodities, disallowance of ITC claim on capital goods, reversal of ITC for inter-state sale at higher rate under Section 19(5)(c) of the TNVAT Act, reversal of ITC for interstate sale to SEZ unit against form-I under Section 19 of TNVAT Act, reversal of ITC on breakages under 19(9) of TNVAT Act, reversal of ITC claim on furnace oil used in gen-set, tax on sale of assets tax on freight, which forms part of sale. Apart from the above, the second respondent also proposed to levy penalty under the provisions of the TNVAT Act. The petitioner submitted their objections on 20.02.2015, stating that individual details like name of commodity, invoice number and quantum of ITC had not been given and only some abstract and consolidated figures had been furnished and the petitioner sought for individual details. Further, with regard to the claim for ITC on tube lights and bulbs, batteries etc., the petitioner contended that they are entitled to avail the same, as the manufacturing process cannot be carried on without those commodities. Further, the petitioner's case is that they have not availed ITC on item-wise like ink-toner, paper -hand towel etc., unless, they were furnished those

details, they would not be in a position to contest the same. The second respondent after considering the objections given by the petitioner for each of the aspects pointed out in the pre-revision notice, has passed the impugned orders of assessments enhancing the taxable turnover and demanding tax as well as penalty. The orders of assessments are impugned in these Writ Petitions.

3. The learned Senior counsel appearing for the petitioner submitted that the revision of assessment was solely based upon the VAT Audit report submitted by the Enforcement Wing officials without conducting any enquiry. Further, the learned counsel elaborately referred to the factual details pointed out by the petitioner in their objections to the pre-revision notice and submitted that the second respondent failed to take note of the definition of input as defined under Section 2(3) of the TNVAT Act, which means any goods including capital goods purchased by a dealer in the course of his business and Section 19(2) of the TNVAT Act, contemplates use of goods as inputs in the manufacture or processing of goods and the electrical goods as well as personal safety equipment have been purchased by the petitioner in the course of business and are absolutely necessary in the factory and therefore, are inputs used in the manufacture of goods. It is further submitted that furnace oil is an important input used in the manufacture of glass and this input has to be kept at a temperature of 1600°C all throughout the year and this is an input that is used in the manufacture of goods.

4. With regard to the use of furnace oil for operation of the gen-set on which Input Tax Credit was denied, the learned counsel submitted that they are entitled to avail ITC in the light of the decision of the Hon'ble Supreme Court in Maruthi Suzuki Ltd., vs. Commissioner of Central, Delhi-III, reported in 2009-240-ELT 641 (SC), and the decision of the Hon'ble Division Bench of the Orissa High Court in the case of Reliance Industries Ltd., vs. Assistant Commissioner of Sales Tax & Ors., reported in 2008 15 VST 228 (Orissa). Therefore, it is submitted that huge demands have been raised without proper verification of the objections raised by the petitioner and the assessment has been made in a very summary manner and therefore, it is submitted that this Court exercising jurisdiction under Article 226 should interfere with the impugned order.

5. The learned Additional Government Pleader on the other hand pointed out that each of the objections raised by the petitioner on the various aspects pointed out in the pre-revision notice have been considered by the Assessing Officer and reasons have been assigned. Therefore, if the petitioner is

aggrieved by the impugned order, they have to prefer an appeal before the Appellate Authority and they may not be permitted to by-pass the appeal remedy.

6. I have heard the submissions of the learned counsels for the parties and given my anxious consideration to the facts and circumstances of the case.

7. The first issue to be addressed is whether the petitioner should be permitted to agitate the correctness of the impugned assessment orders under the TNVAT Act before this Court without exhausting the appellate remedy provided under the TNVAT Act.

8. It is a settled legal principle that existence of an alternate remedy is not an absolute bar under all circumstances for a person to approach the High Court under Article 226 of the Constitution of India. However, there has been a slight departure from this legal principle in cases where such remedies are provided in taxation statutes. It is one thing to say that alternate remedy is a rule of convenience and not a rule of law, but that cannot be stated as a thumb rule, especially when the matter arises under special enactments and in particular matters arising under tax laws. The TNVAT Act as well as the CST Act is a complete code by itself. The TNVAT Act provides hierarchy of remedies to an assessee.

9. Section 51 of the TNVAT Act deals with appeal to appellate Deputy Commissioner and in terms of sub-section (1) thereof any person objecting to an order passed by an appropriate authority under Sections 22, 24, 26, 27(1) to (4), 28, 29, 34, or 40 (2) other than an order passed by the Deputy Commissioner (Assessment) may, within 30 days from the date on which the order was served on him, in the manner prescribed appeal to the appellate Deputy Commissioner having jurisdiction. Proviso under sub-section (1) of Section 51 stipulates the outer time limit given to the appellate authority while considering appeal petitions filed beyond the period of limitation. The second proviso makes it mandatory to effect pre-deposit of 25% of the disputed tax to enable the dealer to prosecute the appeal. The form of appeal, the form in which the appeal should be presented has been stipulated and the fee has also been prescribed; Section 51(3), enumerates the types of orders, the appellate authority is entitled to pass; Section 52 deals with appeal to appellate Joint Commissioners and appeals to the said authority are maintainable against the orders passed by the Deputy Commissioner (Assessment) and it is in pari materia with Section 51 of the Act; Section 53 confers special power of the Joint Commissioner who is entitled to exercise suo-moto power to

examine the correctness of an assessment made under the provisions of the Act; Section 54 is the revisional power of the Joint Commissioner against the orders over which no appeal has been provided for under Section 51 or Section 52. Section 55 deals with special powers of the additional Commissioner to revise, modify or set aside the assessments or orders or proceedings. Section 58 deals with appeal to appellate Tribunal constituted under Section 50 of the Act consisting of a Chairman and two other members of which the Chairman is a judicial officer not below the rank of a District Judge. Any person objecting to an order passed by the Additional Commissioner under Section 55, is entitled to prefer an appeal to the High Court in terms of Section 59 of the Act. Against the orders passed by the Appellate Tribunal under Section 58(4), (5) or (7) or an order of the Joint Commissioner is entitled to prefer a revision before the High Court in accordance with Section 60 of the Act and these petitions and appeals before this Court have to be heard by a Bench of not less than two Judges in terms of Section 61 of the Act. Thus, having seen the hierarchy of remedies available under the Act, undoubtedly the remedies are effective remedies provided to a dealer. The Appellate Authority while considering correctness of the orders of assessment passed is entitled to confirm, reduce, enhance or annul the assessment or the penalty or both, set aside the assessment and direct the assessing officer to make fresh assessment after conducting enquiry. Thus, the appellate powers conferred on the appellate authority is efficacious. That apart, the statute mandates that the appellant should be heard in person. Rule 14 of the TNVAT Rules deals with the manner in which the appeals and revisions have to be filed and how they have to be dealt with by the authority concerned.

10. Having noticed the scheme of the Act with particular reference to the hierarchy of remedies provided therein and having held that the remedy is not only effective, but efficacious, we move on to consider as to whether the extraordinary jurisdiction of this Court should be invoked in the facts and circumstances of the cases on hand.

11. On a perusal of the objections given by the petitioner, it is evidently clear that every issue pointed out in the pre-revision notice involves examination into facts, for example with regard to the disallowance of the input tax credit claim on certain commodity on the ground that they are ineligible, the Assessing Officer issued the pre-revision notice, calling upon the petitioner to reverse the ITC claimed on purchases of electrical items like tube-lights, bulbs, battery torchlight, fuse, etc., from electrical dealers ink toner, computer peripherals, paper-hand towels, banyan waste,

stickers, reflective stickers, chart stickers etc., from other dealers, the stand taken by the petitioner was that these goods are used in the core activity of manufacturing their product and without usage of these goods, the product cannot be manufactured and they will not be able to maintain the quality standard specification. Further, the petitioner stated that there is no specific finding as to how these goods are not usable in the process of manufacture. The finding recorded by the Assessing Officer is that on verification of the document filed by the dealer, it is noticed that the commodities are not used as inputs in manufacturing or processing of goods as per Section 19 (2)(ii) of TNVAT Act. Thus, essentially this issue is a question of fact to be considered as to what is the nature of the manufacturing activity, what goes into the process of manufacture and whether these items mentioned are eligible for Input Tax Credit and whether they would fall within the definition of "Input", which has been defined under Section 2 (23) to mean goods including capital goods purchased by a dealer in the course of his business. Therefore, the disputed questions of fact have to be necessarily agitated before the appellate authority, who is entitled to not only examine the manufacturing process of the petitioner, but has sufficient powers to even direct the assessing officer to re-do the entire assessment proceedings by issuing pointed direction on specified issues. Thus, this Court does not propose to examine disputed questions of fact and it is best, it is relegated to the appellate authority provided under the Act, who will be able to re-appreciate the factual details placed by the petitioner.

12. For all the above reasons, it is held that this is not a fit case where this Court should exercise its extra ordinary jurisdiction and interfere in the impugned order and assessment. Accordingly, the Writ Petitions are held to be not maintainable and they are dismissed. However, the petitioner is at liberty to prefer appeals before the appellate authority, if so advised and if such an appeal is presented, within a period of 30 days from the date of receipt of a copy of this order, the appellate authority shall not reject the appeal petition on the ground of limitation as these Writ Petitions have been filed well before the expiry of 30 days from the date of receipt of the impugned assessment orders. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

pbn

To

1. The Principal Secretary/
Commissioner of Commercial Taxes
Ezhilagam, Chepauk,
Chennai - 600 005.

2. The Deputy Commissioner (CT) LTU IV,
V Floor, Dugar Towers,
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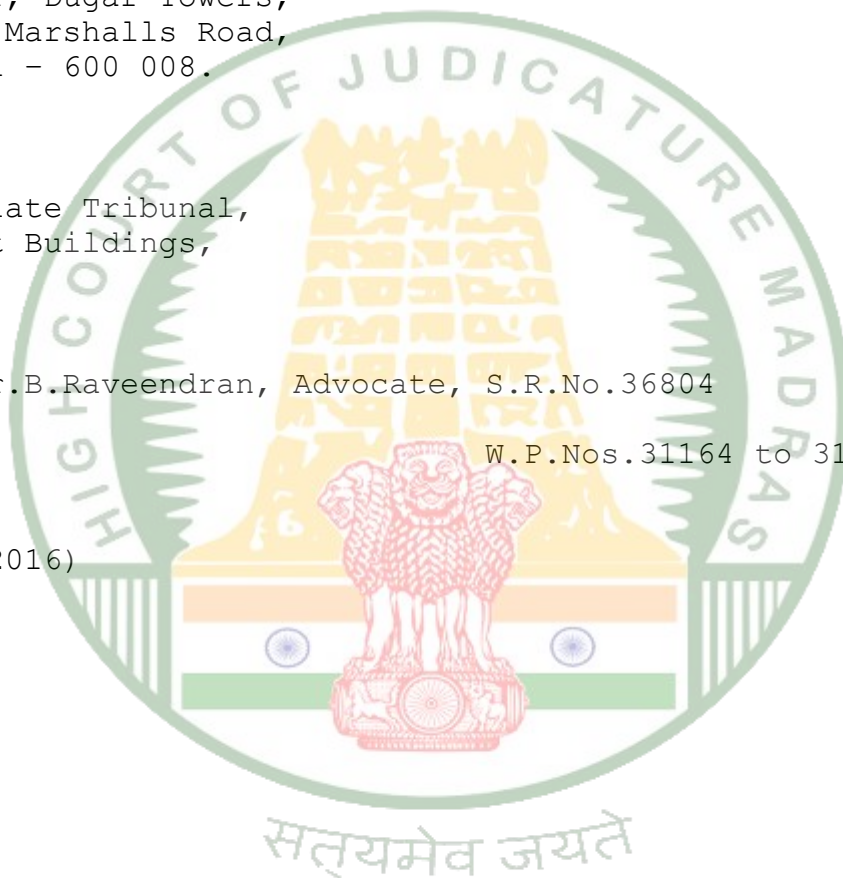
Copy To

The Appellate Tribunal,
High Court Buildings,
Chennai.

+lcc to Mr.B.Raveendran, Advocate, S.R.No.36804

W.P.Nos.31164 to 31168 of 2015

PPA(CO)
CA(19/07/2016)



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