In the High Court of Judicature at Madras
Dated : 12.02.2019
Coram
The Honourable Dr.Justice ANITA SUMANTH
W.P.No.30833 of 2018
& WMP No.35979 of 2018

Tvl.Fuso Glass India Pvt. Ltd.,
rep. By its Director
Mr.Ashok Kumar Babulal
Fuso House 4th Floor,
91, P.H.Road, Egmore,
Chennai - 84.

...Petitioner

Vs

The Assistant Commissioner (ST) (FAC)
Kilpauk Assessment Circle,
No.F50, First Avenue,
Anna Nagar East, Chennai - 102.

...Respondent

PETITION under Article 226 of The Constitution of India praying for the issuance a Writ of Certiorarified Mandamus calling for the records on the file of the respondent in CST.No./814964/2015-16 dated 25.07.18 and quash the same being illegal, invalid, and violated the principles of natural justice and contrary to the law and direct the respondent to dispose the petitioner application dated 25.10.2018.

For Petitioner : Mr. D.Vijayakumar
For Respondent : Mrs.G.Dhanamadri,
Govt. Advocate(Taxes)

O R D E R

The petitioner in this Writ Petition challenges an order of assessment dated 25.07.2018 for the period 2015-16.

2. Heard Mr.Vijayakumar, learned counsel for the petitioner and Ms.Dhanamadri, learned Government Advocate (Taxes) for the respondent.

3. Learned counsel for the petitioner assails the impugned order of assessment stating that the pre-assessment notice dated 06.06.2018 did not contain any proposal for denying the exemption claimed on exempted sales amounting to Rs.80,50,771/-. However, the impugned order denies the exemption provided and brings to tax a sum of Rs.15,93,426/- on the ground that the requisite Form 'I' is not filed and therefore, the turnover is liable to be assessed at 14.5%.

4. The balance of the tax liability relates to non-production of 'C' forms. The petitioner has filed an objection dated 27.06.2018 enclosing the report in Form 'WW' and also various declaration forms in Form 'F' 'C' 'H' and 'I' in support of its claims. As far as the shortfall in 'C' declaration forms is concerned, the petitioner stated that it was unable to generate the same on account of a change to GST regime. It, therefore, sought three (3) months time to produce the balance of the 'C' Forms in support of its claim.

5. Though the request for three (3) months for production of 'C' Forms has been made on the objection dated 27.06.2018, the Assessing Authority has proceeded to complete the assessment within a period of one (1) month on 25.07.2018 without either waiting for the elapse of three months as sought for by the petitioner or rejecting the request of the petitioner and putting it to notice of the same.

6. Learned counsel for the petitioner states that pursuant to the impugned order of assessment, some portion of the balance of 'C' forms had been procured by the petitioner.

7. In the light of the position as above, I am inclined to set aside the impugned assessment order in relation to the two issues discussed above alone and accordingly do so. The petitioner shall appear before the Assessing Authority on 05.03.2019 at the first instance along with the 'C' Forms required in support of its claim that shall be presented to the Assessing Officer for due consideration in accordance with law. The petitioner is also permitted to produce evidence in support of its claim for exemption in respect of SEZ sales of an amount of Rs.80,50,771/-, that shall be taken into consideration by the Assessing Authority in accordance with law. The assessment shall be re-framed on the aforesaid two (2) issues alone and the entire exercise shall be completed within a period of six (6) weeks from the date of conclusion of the personal hearing.

8. The Writ Petition is disposed of in the above terms. No costs. Consequently, the connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

The Assistant Commissioner (ST) (FAC)
Kilpauk Assessment Circle,
No.F50, First Avenue,
Anna Nagar East, Chennai - 102.

+1cc to Mr. D.Vijayakumar, Advocate sr.no.12150
+1cc to Special Government Pleader sr.no.1309

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rsv(co)
nr 12/04/2019