IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.09.2021

CORAM :

THE HON'BLE MR. JUSTICE T.S. SIVAGNANAM
AND
THE HON'BLE MR. JUSTICE SATHI KUMAR SUKUMARA KURUP

Writ Appeal No.2355 of 2021
and
C.M.P.No.15003 of 2021

M/s. Saint Gobain Glass India Ltd,
(Now known as Saint. Gobin India Private Ltd)
Rep. by Mr.R.Parthasarathy,
Plot A-1, SIPCOT Industrial Park,
Irrungattukottai,
Sriperumbudur,
Kancheepuram – 602105. ...Appellant/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/Respondents

Prayer :Writ Appeal filed under Clause 15 of the Letter Patent, against the order dated 09.07.2021 made in W.P.No.3206 of 2014.

Prayer in W.P.No.3206 of 2014:- Writ Petition filed under Article226 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 Appellant : Mr.K.Vaitheeswaran
For Respondents : Mr.M.Venkateswaran
Government Advocate

J U D G M E N T

(Judgment was delivered by T.S. SIVAGNANAM, J.)

This Writ Appeal filed by the writ petitioner is directed against the order, dated 09.07.2021, in W.P.No.3206 of 2014.

2.The appellant filed the writ petition, challenging the order passed by the 1st respondent, the Appellate Joint Commissioner (CT), Chennai, dated 29.11.2013, in an appeal filed in AP.No.26 of 2013 against the Assessment Order, dated 29.03.2013, for the Assessment Year 2009-10, under Section 9(2) of the Central Sales Tax Act, 1956 ("CST Act" for brevity) read with Section 22(2) of the Tamil Nadu Value Added Tax Act, 2006 ("TNVAT Act" for brevity). The writ petition was disposed of by issuing directions to the appellant to avail the alternate remedy under the provisions of the CST Act by approaching the Tamil Nadu Sales Tax Appellate Tribunal.

3.The appellant has filed this Writ Appeal contending that the learned Writ Court ought to have exercised jurisdiction and interfered with the order passed by the 1st respondent, dated 29.11.2013, as the 1st respondent has exceeded his jurisdiction in exercising his power as the Appellate Authority. It is further pointed out by the learned counsel for the appellant that, in the appellant's case for the Assessment Year 2008-09, the Appellate Authority passed identical orders in A.P.No.39 of 2012, which was challenged in W.P.No.18071 of 2013, which was dismissed by order dated 29.03.2021 and as against which, the appellant filed W.A.No.2139 of 2021, which was allowed on 01.09.2021 and the said judgment would squarely apply to the case on hand.

4.We have heard Mr.M.Venkateswaran, learned Government Counsel, appearing for the respondents.

5.On going through the order impugned in the writ petition as well as the judgment in W.A.No.2139 of 2021, we have no hesitation to hold that the issue involved in this appeal is squarely covered by the judgment in W.A.No.2139 of 2021. The legal issue which was decided in the said appeal was whether, the First Appellate Authority has power to change the character of the transaction and while deciding the appeal in terms of Section 52 of the TNVAT Act, he has power to confirm, reduce, enhance or annul the assessment or the penalty or both; set aside the assessment and direct the Assessing Officer to make a fresh assessment or pass such other orders as he may think fit; or in the case of any other order, confirm, cancel, or vary such order. Taking note of the said provisions, it was held that the Appellate Authority cannot travel beyond the subject matter of assessment. The operative portion of the judgment reads as follows :

> "3.The short ground on which the writ petition was filed challenging the order passed by the First Appellate Authority is by contending that the First Appellate Authority, though accepted the stand of the appellant that freight charges cannot be added to the value of the sale, came to the conclusion that the transaction, which according to the appellant, was an interstate sale should be treated as a local sale. The appellant contended that this finding of the First Appellate Authority is wholly without jurisdiction as he has no power to change the character of the transaction and while deciding the appeal in terms of Section 52 of the TNVAT Act, the First Appellate Authority can either confirm, reduce, enhance or annul the assessment or the penalty or both; set aside the assessment and direct the Assessing Officer to make a fresh assessment after such further inquiry as may be directed; or pass such other orders as he may think fit; or in the case of any other order, confirm, cancel or vary such order. The appellant contended that in terms of Section 52(3) of the TNVAT Act, the powers exercisable by the Appellate Authority qua the Assessment Order cannot travel beyond the same. The learned Single Bench did not agree with the appellant by pointing out that in terms of Clause (b) of Section 52(3), the Appellate Authority in case of any other order, confirm, cancel or vary such order. In our considered view, Clause (b) cannot read in isolation, but it is relatable to Clause (a) in Section 52(3). The Appellate Authority, while considering an appeal filed by Assessee/Dealer does not exercise his suo motu power, which is exercisable in terms of the provisions, by an Officer of the Joint Commissioner. The procedure for such suo motu revision are entirely different and distinct for normal appellate powers conferred on the Appellate Joint Commissioner. Therefore, while reading Clause (a) and (b) of Section 52(3), a harmonious construction has to be given, bearing in mind the legal principle that the Appellate Authority cannot travel beyond the subject matter of the assessment. The Appellate Authority, in the case on hand has precisely done so and while accepting the case of the appellant that the freight charges cannot

be included in the value of the sale transaction, erroneously came to the conclusion that the transaction should be treated as a legal sale which was neither the case of the Assessee nor has decided by the Assessing Officer. In this regard, we are guided by the decision of the Hon-ble Supreme Court in the case of Commissioner of Income Tax (Central), Calcutta Vs. Rai Bahadur Hardutroy Motilal Chamaria, AIR 1968 SC 153, wherein the Court held that the power of enhancement conferred under Section 31(3) of the Income Tax Act is restricted to the subject matter of assessment or the sources of income which have been considered expressly or by clear implication by the Income Tax Officer from the point of view of the taxability of the assessee.

4.In the instant case, the first respondent, the Appellate Authority has ignored the settled legal principle and issued directions to the Assessing Officer to treat the transaction as a local sale, for which, he had no jurisdiction to do so. Thus, we are of the view that the correct interpretation to be given to clause (b) of Section 52(3) is to mean that the power is exercisable in the case of any other order which can be confirmed, canceled or varied, provided it does not change the character of the transaction nor the subject matter which was the issue before the Assessing Officer. Thus, the order passed by the first respondent / Appellate Authority dated 17.05.2013 in the writ petition is without jurisdiction.

5.In the result, the Writ Appeal is allowed and the order passed in the writ petition is set aside and consequently, the writ petition is allowed and the order passed by the first respondent dated 17.05.2013 in A.P.No.39 of 2012 is quashed. No costs. Consequently, connected miscellaneous petition is closed."

As pointed out above, the above decision in the appellant's own case would squarely cover the legal issue which has been raised before us.

6.Thus, by applying the said decision, this Writ Appeal is allowed and the order passed in the writ petition is set aside.

Consequently, the writ petition is allowed and the order passed by the 1st respondent, dated 29.11.2013, is quashed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

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,
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+1 cc to Mr.K.Vaitheeswaran,Advocate Sr.No.48337
+1 cc to the Government Pleader, Sr.49563

Writ Appeal No.2355 of 2021

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NSK 11/10/2021