

Bombay High Court

Asahi India Glass Limited vs The State Of Maharashtra Through ... on 17 December, 2020

Bench: Ujjal Bhuyan, Abhay Ahuja

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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO.2923 OF 2019

Asahi India Glass Ltd. ... Petitioner
Vs.
State of Maharashtra & Others ... Respondents

Mr. Sriram Sridharan, for the Petitioner.
Mr. V. A. Sonpal, Special Counsel with Mr. S. B. Gore, AGP for
Respondent Nos.1 and 2-State.
Mr. Mohamedali Chunawala for Respondent No.3.

CORAM : UJJAL BHUYAN &
ABHAY AHUJA, JJ.

Reserved on : DECEMBER 03, 2020
Pronounced on: DECEMBER 17, 2020

P.C. : (Per Ujjal Bhuyan, J.)

Heard Mr. Sriram Sridharan, learned counsel for the petitioner; Mr. V. A. Sonpal, learned special counsel with Mr. S. B. Gore, learned AGP for respondent Nos.1 and 2; and Mr. Mohamedali Chunawala, learned counsel for respondent No.3.

2. This case was heard on 03.12.2020 on the interim prayer.

3. By filing this petition under Article 226 of the Constitution of India, petitioner has prayed for the following reliefs:-

1) to declare that petitioner is eligible to issue declarations in 'C' Forms to its sellers for the inter-state purchase of natural gas which is consumed by the petitioner in the manufacture of commodities no longer defined as 'goods' with effect from 01.07.2017 under section 2(d) of the Central Sales Tax Act, 1956;

2) for a direction to the respondents to issue 'C' forms to the petitioner;

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3) to set aside and quash the letter / order dated 22.08.2019 issued by respondent No.2; and

4) for a direction to the respondents to refrain from taking any steps against the petitioner following the order / letter dated 22.08.2019.

3.1. Petitioner has also prayed for interim reliefs in the above terms till final hearing and disposal of the writ petition.

4. Petitioner is a company incorporated under the Companies Act, 1956. It is engaged in the manufacture of float glass in its factory situated at MIDC Industrial Area, Taloja in the district of Raigad, Maharashtra. For the purpose of manufacturing of float glass petitioner purchases natural gas on inter-state basis from the State of Gujarat. The purchased natural gas is utilized as a fuel in the furnace of the petitioner for the purpose of carrying out its manufacturing process. The natural gas is used by the petitioner as a fuel to heat the furnaces to melt the raw materials.

4.1. Petitioner got registration certificates under the Maharashtra Value Added Tax Act, 2002 and the Central Sales Tax Act, 1956.

4.2. Be it stated that grant and cancellation of registration certificates under the Central Sales Tax Act, 1956 is dealt with in section 7 thereof.

5. Since the petitioner was using purchased natural gas in the manufacture of goods for sale, petitioner was duly providing 'C' forms to its vendors which practice was followed for many years without dispute.

6. Section 8 of the Central Sales Tax Act, 1956 (briefly 'the CST Act' hereinafter) as it stands today provides for rates of tax to be levied on inter-state sales. As per sub-section (1), every dealer who in the course of inter-state trade or commerce, sells to a registered dealer goods WP2923_19.doc of the description referred to in sub-section (3) shall be liable to pay tax under the CST Act at the rate of two percent of its turnover or at the rate applicable to the sale or purchase of such goods inside the appropriate State under the sales tax law of that State, whichever is lower. In terms of sub-section (3)(b), the goods referred to in sub-section (1) are goods of the class or classes specified in the certificate of registration of the registered dealer purchasing the goods as being intended for resale by him or subject to any rules made by the Central Government in this behalf, for use by him in the

manufacture or processing of goods for sale or in the telecommunications network or in mining or in the generation or distribution of electricity or any other form of power. Sub-section (4) says that to avail the concessional rate of tax, the dealer selling the goods must furnish to the prescribed authority in the prescribed manner a declaration duly filled up and signed by the registered dealer to whom the goods are sold containing the prescribed particulars. This declaration is in form 'C' as per rule 12 of the Central Sales Tax (Registration and Turnover) Rules, 1957.

6.1. Sub-section (3)(b) of section 8 being relevant, the same is extracted hereunder:

"8. Rates of tax on sales in the course of inter-State trade or commerce.-

(1) * * * *

(2) * * * *

(3) The goods referred to in sub-section (1) -

(a) * * * *

(b) are goods of the class or classes specified in the certificate of registration of the registered dealer purchasing the goods as being intended for re-sale by him or subject to any rules made by the Central Government in this behalf, for use by him in the manufacture or processing of goods for sale or in the tele-communications network or in mining or in the generation or distribution of electricity or any other form of power;

* * * * *

6.2. Thus, section 8(3)(b) allows concessional rate of CST when the goods bought and sold are goods of the class or classes specified in the WP2923_19.doc certificate of registration of the registered dealer purchasing the goods and are:-

i. intended for resale by him (registered dealer); or ii. for use by the registered dealer in the manufacture or processing of goods for sale; or iii. used in telecommunications network; or iv. used in mining; or v. used in the generation or distribution of electricity or any other form of power.

6.3. Therefore, meaning of the word 'goods' as appearing in section 8(3)(b) of the CST Act becomes relevant.

7. When the CST Act was first enacted, the definition of the word 'goods' as appearing in section 2(d) was as under:-

"2(d) 'Goods' include all materials, articles, commodities and all other kinds of movable property, but does not include actionable claims, stocks, shares and securities."

7.1. Be it stated section 2 defines various words and expressions used in the CST Act. The section starts with the following words:-

"In this Act, unless the context otherwise requires, ----"

7.2. There was an amendment in the definition of 'goods' in the year 1958. By the amendment, the word 'newspapers' was inserted after the words 'does not include'. Thus, the definition of 'goods' in section 2(d) after the said amendment read as follows:-

"2(d) 'Goods' include all materials, articles, commodities and all other kinds of movable property, but does not include newspapers, actionable claims, stocks, shares and securities."

8. In Printers (Mysore) Limited Vs. Assistant Commercial Tax WP2923_19.doc Officer, 1994 STC (SC) 95, Supreme Court considered the question as to whether publishers of newspapers were entitled to the benefit of section 8(3)(b) read with section 8(1)(b) of the CST Act. This question arose because of amendment to the definition of the word 'goods' in section 2(d) by insertion of the word 'newspapers' as noticed above. In that context, Supreme Court held that section 2 which defines certain expressions occurring in the CST Act opens with the words 'in this Act, unless the context otherwise requires' and explained that wherever the word 'goods' occurs in the enactment i.e., the CST Act it is not mandatory that one should mechanically attribute to the said expression the meaning assigned to it in clause (d). It was held that where the context does not permit or where the context requires otherwise, the meaning assigned to it in the definition need not be applied. Keeping the above consideration in mind, it would be evident that the expression 'goods' occurring in the second half of section 8(3)(b) cannot be taken to exclude newspapers from its purview. The context does not permit it. It could never have been included by the Parliament. Therefore, Supreme Court held that the expression 'goods' occurring in the words 'for use by him in the manufacture or processing of goods for sale" in section 8(3)

(b) of the CST Act does not exclude 'newspapers'.

9. After implementation of the Goods and Services Tax (GST) regime, the definition of 'goods' in section 2(d) of the CST Act was substituted vide the Taxation Laws (Amendment) Act, 2017. Now the definition of 'goods' in section 2(d) of the CST Act reads as under:-

2. Definitions - In this Act, unless the context otherwise requires,-

* * * *
(d) 'goods' means-
(i) petroleum crude;
(ii) high speed diesel;

(iii) motor spirit (commonly known as 'petrol');

(iv) natural gas;

(v) aviation turbine fuel; and

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(vi) alcoholic liquor for human consumption.

10. After the aforesaid change in the definition of 'goods' post introduction of GST, petitioner was not able to provide 'C' forms to its selling dealers to avail the concessional rate of tax in respect of inter- state purchase of goods as it was not issued such forms by the authority.

11. It is stated that Deputy Commissioner of State Tax, Raigad Division, Navi Mumbai had issued show cause notice to the petitioner on 20.06.2018 to show cause as to why its registration under the CST Act should not be cancelled with effect from 01.07.2017. Though petitioner submitted reply on 10.08.2018, nothing happened thereafter. However, in the course of personal hearing, representative of the petitioner was orally informed that petitioner's registration certificate under the CST might have been cancelled; but petitioner has not received a copy of any such cancellation. As stated above, following the amendment post GST, petitioner was not issued 'C' forms. Petitioner made representation before respondent No.2 on 24.08.2018 followed by reminder dated 13.11.2018 asserting that it satisfied the requirement of section 8(3)(b) of the CST Act and thus, requested for issuance of 'C' forms. There was no response. At that stage, petitioner filed Writ Petition No.4 of 2019 before this Court. The said writ petition was disposed of vide order dated 07.06.2019 by directing respondent No.2 to dispose of petitioner's representation after granting personal hearing.

12. Thereafter, personal hearing was granted to the petitioner on 19.08.2019. By the letter / order dated 22.08.2019, respondent No.2 held that in the case of the petitioner, only natural gas is used as fuel for furnace in the manufacturing of float glass which does not fall under the amended definition of 'goods' in section 2(d) of the CST Act. Therefore, petitioner's prayer to issue form 'C' to purchase natural gas for manufacturing of float glass could not be accepted.

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13. This has led to filing of the writ petition.

14. Respondent Nos.1 and 2 have filed affidavit supporting the stand taken by respondent No.2 to which petitioner has filed affidavit in rejoinder.

15. This petition was heard along with three other writ petitions i.e., Writ Petition No.932 of 2018, Writ Petition (L) No.2534 of 2020 and Writ Petition (L) No.4556 of 2020 on 03.11.2020 whereafter the following order was passed:-

"1. Heard learned counsel for the parties.

2. Mr. Sriram Sridharan submits that issue raised in the above four Writ Petitions is identical to the one raised in Writ Petition (Stamp) No.93160 of 2020 which is pending before this Court with an interim order and therefore prays for a similar interim order.

3. On the other hand, Mr. V. A. Sonpal, learned counsel for the Respondents submits that granting of an interim order would amount to granting of final relief and therefore he submits that the Writ Petitions may be heard finally.

4. We find that Writ Petition (Stamp) No.93160 of 2020 is listed for further consideration on 01.12.2020.

5. In that view of the matter, above Writ Petitions be listed together with Writ Petition (Stamp) No.93160 of 2020 on 01.12.2020.

6. We make it clear that if the Writ Petitions cannot be heard on that day, prayer of the Petitioners for interim relief may be considered."

16. Writ Petition (St.) No.93160 of 2020 has since been adjourned to 06.01.2021. In that view of the matter, this writ petition was heard along with the other three writ petitions on 03.12.2020 on the interim prayer.

17. While Mr. Shridharan, learned counsel for the petitioner submits that after the Supreme Court's decision in Printers (Mysore) Limited WP2923_19.doc (supra), the issue has been clarified and there was no necessity for the respondents to withhold issuance of 'C' forms to the petitioner on the ground that the finished product of the petitioner is not included in the definition of 'goods' in section 2(d). His submission is that Jharkhand High Court in Tata Steel Limited Vs. State of Jharkhand, 2019 VIL 446 JHR followed the decision of the Supreme Court in Printers (Mysore) Limited (supra) and has held that the word 'goods' appearing in the second half of section 8(3)(b) of the CST Act may not necessarily mean the goods as defined under section 2(d) of the CST Act. Further it has been held that registration of the dealer under section 7(2) of the CST Act is not subject to any liability of the dealer to pay tax or not. That was a case where some of the petitioners were engaged in mining activities while some others in power generation. They had purchased high speed diesel which was used in manufacturing, mining or generation of the goods which were the end products. Such products did not come within the definition of 'goods' under section 2(d) of the CST Act. Therefore, they were denied 'C' forms. It was in that context that Jharkhand High Court directed issuance of 'C' forms to the petitioners. As a matter of fact by interim orders 'C' forms were directed to be issued which was confirmed by the final order. He also submits that this Court in M/s. Tata Steel BSL Limited Vs. Union of India, Writ Petition (St.) No.93160 of 2020 had passed interim order directing the respondents to issue 'C' forms to the petitioner. Therefore, similar interim order may be passed in this case.

18. Per contra, Mr. Sonpal, learned special counsel submits that no interim relief should be granted as granting of interim relief would virtually amount to grant of final relief to the petitioner. His

submission is that no interim relief should be granted for issuance of 'C' forms; rather the writ petition may be heard. Referring to the judgment of the Supreme Court in Printers (Mysore) Limited (supra), he submits that the said judgment has to be read in the context in which it was passed. It was passed in the case of 'newspapers' keeping in mind the fundamental WP2923_19.doc right of freedom of speech and expression; that cannot be extrapolated and applied in a case of manufacturing of float glass by using natural gas purchased by way of inter-state sale. In so far the Jharkhand High Court judgment is concerned, he submits that an S.L.P. has been filed by the State against the said judgment before the Supreme Court. On a query by the Court as to whether any notice has been issued in the S.L.P. or any stay granted, he submits that he has no instructions to that effect.

19. Submissions made by learned counsel for the parties have been considered.

20. Impugned decision of respondent No.2 contained in letter / order dated 22.08.2019 reads as under:-

" In your case the natural gas is used as fuel for furnace in the manufacturing of float glass, which does not fall under the amended definition of 'goods' under section 2(d) of the CST Act 1956. Therefore, your prayer to issue Form-'C' to purchase natural gas for manufacturing of Float Glass cannot be accepted."

20.1. Thus, petitioner has been denied 'C' forms on the ground that natural gas purchased by it in the course of inter-state sale is used for manufacturing of float glass which is not covered by the definition of goods under section 2(d) of the CST Act.

21. In Carpo Power Limited Vs. State of Haryana, 2018 (12) GSTL 248 (P&H), Punjab & Haryana High Court dealt with the challenge made by the petitioner to refusal of the respondents to issue 'C' forms in respect of natural gas purchased by it in the course of inter-state sale and used by it for generation of electricity. After referring to the definition of 'goods' in section 2(d) as well as the provisions of sections 7 and 8, it was held as under:-

"26. The provisions of Section 8 of the CST Act, Rule 12 of CST (R&T) Rules and declaration Form C have not undergone any amendment after the implementation of the GST laws. There cannot be any occasion to restrict the usage of 'C' Form WP2923_19.doc only for the purposes of re-sale of the six items mentioned in the amended definition of 'goods' in Section 2(d) of the CST Act. The purchase of the said goods for purposes of re-sale, use in the manufacture or processing of goods for sale, in the tele- communications network or mining or in generation or distribution of electricity or any other form of power would qualify the purchaser for registration under Section 7 (2) of the CST Act. Section 7 (2) does not stipulate that only a dealer liable to pay tax under the sales tax law of the appropriate State in respect of any particular goods is entitled to apply for registration. Nor does section 7 (2) stipulate that an application for registration can be made or 'C' Form can be issued only in respect of the sale of the same goods prescribed in the course of an inter-state sale. A

dealer liable to pay tax under the sales tax law of the appropriate State in respect of any goods would be covered by Section 7 (2) of the Act."

21.1. While allowing the writ petition, it was held that the respondents were liable to issue 'C' forms in respect of the natural gas purchased by the petitioner from Gujarat and used in the generation or distribution of electricity at its power plants in Haryana.

22. As already noticed above, before the Jharkhand High Court similar question was raised following denial of 'C' forms. Some of the petitioners were engaged in manufacturing process, some in mining activities and some others in power generation. They had purchased high speed diesel by way of inter-state sale which is used in the manufacturing, mining and generation of end product goods. Admittedly, their end products do not come within the definition of 'goods' under section 2(d) of the CST Act. In that context, Jharkhand High Court referred to the case of Printers (Mysore) Limited (supra) and held that the reasonings given therein were fully applicable. The word 'goods' appearing in the second half of section 8(3)(b) of the CST Act may not necessarily mean the goods as defined under section 2(d) of the CST Act. Further, registration of a dealer under section 7(2) of the CST Act is not subject to any liability of the dealer to pay tax. Jharkhand High Court approved the view taken by the Punjab & Haryana High Court in Carpo Power Limited (supra). Jharkhand High Court, therefore, WP2923_19.doc affirmed the interim orders whereby directions were issued for issuance of 'C' forms to the petitioners.

23. It may be mentioned that against the decision of Punjab & Haryana High Court in Carpo Power Limited (supra), State had filed S.L.P. before the Supreme Court but the S.L.P. was dismissed by the Supreme Court by holding that there was no legal and valid ground for interference.

24. In an identical case before us i.e., Writ Petition (St.) No.93160 of 2020 (M/s. Tata Steel BSL Limited Vs. Union of India), we had passed an interim order on 01.10.2020 by following the decision of the Punjab & Haryana High Court in Carpo Power Limited (supra). We have held as under:-

" Heard Mr. Nankani, learned senior counsel for the petitioners and Ms. Vyas, learned AGP for respondent Nos.2, 3 and 4. We have also heard Mr. Mishra, learned counsel for respondent Nos.5.

2. On 25.09.2020, Ms. Vyas, learned AGP for the State sought time to obtain instructions on the prayer of the petitioner for stay of impugned order dated 05.03.2020.

3. Today when the matter is called upon, she submits that State would like to file a detailed affidavit. However, she opposes the prayer for stay and submits that she has a preliminary objection as to maintainability of the writ petition as petitioner has statutory remedy of appeal. When the decision of the Punjab and Haryana High Court in the case Capro Power Limited Vs. State of Haryana, CWP No.29437 of 2017, decided on 28.03.2018, was brought to her notice, she submits that the said case may

not be applicable to the facts of the present case. She has drawn our attention to paragraph 27 of the said judgment to contend that in that case the registration certificate of the petitioner was not cancelled.

4. Issue notice, returnable four weeks.

5. Parties may file affidavit by the returnable date.

6. Petitioner was granted certificate of registration by the State of Maharashtra under the Central Sales Tax (Registration and Turnover) Rules, 1957 whereby petitioner was registered as a dealer under section 7(1) / 7(2) of the WP2923_19.doc Central Sales Tax Act, 1956. By the impugned order dated 05.03.2020, the said registration certificate has been cancelled. Ground for cancellation of registration certificate is that petitioner had not sold any of the products covered by the Maharashtra Value Added Tax Act, 2002 during the relevant period. Consequently, the certificate was cancelled with effect from 01.07.2017. Consequence of such cancellation is that the dealer i.e., the petitioner would not be entitled to use any 'C' forms for transactions after 01.07.2017.

7. Mr. Nankani had elaborately taken us to the provisions of the Central Sales Tax Act, 1956 as well as the provisions of the Maharashtra Value Added Tax Act, 2002. He has also taken us to the judgment of Punjab and Haryana High Court in Carpo Power Limited (supra).

8. After examining the case of the petitioner vis-a-vis the judgment in Carpo Power Limited (supra), we are of the prima facie view that the aforesaid decision may be applicable to the case of the petitioner. That apart, Special Leave Petition filed by the State of Haryana against the aforesaid decision was dismissed by the Supreme Court holding that there was no legal and valid ground for interference.

9. In view of the above, there shall be stay of the impugned order dated 05.03.2020 till the returnable date and as a consequence respondents are directed to issue the necessary 'C' forms on the basis of the registration certificate.

10. Stand over to 27.10.2020."

25. Thus having regard to the above and upon due consideration, we feel that a case for interim relief has been made out. Further, we are of the view that there should be uniformity in orders in similar matters.

26. Accordingly, as an interim measure, we stay operation of the letter / order dated 22.08.2019 issued by respondent No.2 and direct the respondents to issue necessary 'C' forms to the petitioner.

27. It goes without saying that being an interim order, the same would be subject to such final order that may be passed in the writ petition.

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28. Stand over to 06.01.2021.

29. This order will be digitally signed by the Private Secretary of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.

(ABHAY AHUJA, J.)

(UJJAL BHUYAN, J.)

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