IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.11.2015

CORAM:

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

W.P.Nos.35043 and 35044 of 2015
and
M.P.Nos.1 and 1 of 2015

M/s.Harita Seating Systems Limited
represented by its Special officer
G.Viswanathan ... Petitioner in WP.35043/2015

M/s.Sundaram Auto Components Limited
represented by its Special officer
G.Viswanathan ... Petitioner in WP.35044/2015

Vs

1.The Commissioner of Commercial Taxes
Chepauk, Chennai 600 005.

2.The Appellate Deputy Commissioner (CT)
Office of the Appellate Deputy Commissioner (CT)
Block No.3, Ward J Survey No.17, Pitchards Road,
Hasthampatty, Salem 636 007.

3.The Assistant Commissioner (CT) (FAC)
Office of the Assistant Commissioner (CT)
Hosur South, Hosur,
Krishnagiri District. ... Respondents

Writ petitions filed under Article 226 of the Constitution of India for the issuance of writ of Certiorari to call for the records comprised in the impugned orders in TIN Nos. 33833361660/2014-2015 and 33690461335/2014-2015 respectively dated 28.01.2015 on the file of the third respondent and quash the same.

For Petitioner : Mr.K.Magesh

For Respondents : Mr.S.Kanmani Annamalai
Addl. Govt. Pleader

COMMON ORDER

By consent, both the writ petitions are taken up for final disposal.

2.Challenging the provisional assessment orders passed by the third respondent dated 28.01.2015 for the period from April 2014 to November 2014, the petitioners have filed the present writ petitions.

3.According to the petitioners, the petitioner in WP.No.35043 of 2015 is engaged in the manufacture and sales of seat assemblies and seat parts for motor vehicles/automobiles/buses and the petitioner in WP.No.35044 of 2015 is carrying on the manufacture and sales of plastic parts and accessories of two wheelers. They duly filed their returns in Form I upto November 2014 under the TNVAT Act and CST Act. Thereafter, the third respondent issued a notice dated 02.01.2015 to both the petitioners, proposing to reverse the input tax credit (ITC) and also levying interest. On receipt of the same, the petitioners submitted their reply on 14.01.2015 and 20.01.2015. However, the third respondent passed the provisional assessment orders dated 28.01.2015 for the period from April 2014 to November 2014, assessing the reversal of ITC under sections 19(2)(v), 19(4) and 19(5)(c) of the TNVAT Act. Aggrieved against the same, the petitioners approached the second respondent Appellate Authority by way of appeals, which were returned for want of jurisdiction. Hence, the petitioners are before this Court, challenging the impugned assessment orders passed by the third respondent.

4.The learned counsel for the petitioners submitted that the petitioners are entitled to avail input tax credit under sections 19(2)(v), 19(4) and 19(5)(c) of the TNVAT Act and hence the impugned orders are arbitrary, illegal and without jurisdiction. It is further submitted that the third respondent has no power to pass the provisional assessment orders under Section 25 of the TNVAT Act, after the expiry of the assessment period in question.

5.The learned Additional Government Pleader appearing for the respondents fairly submitted that the third respondent may be directed to pass final assessment orders, since the period relating to the Assessment Year is already over.

6.In view of the above, since the issue involved herein is relating to reversal of ITC under Sections under sections 19(2)(v), 19(4) and 19(5)(c) of the TNVAT Act, this Court, without going into the same, is inclined to quash the impugned orders dated 28.01.2015 passed by the third respondent. Accordingly, the same are set aside and the matters are remanded back to the Assessing Officer for passing final orders in respect of the assessment year 2014-15, on merits and in accordance with law, after affording due opportunity of hearing to the petitioners. The said exercise shall be completed within a period of four weeks from the date of receipt of a copy of this order.

7.Both the writ petitions are disposed of accordingly. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS-IV)

//True Copy//

Sub Assistant Registrar

msr

To

1.The Commissioner of Commercial Taxes
Chepauk, Chennai 600 005.

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3.The Assistant Commissioner (CT) (FAC)
Office of the Assistant Commissioner (CT)
Hosur South, Hosur,
Krishnagiri District.

+1 cc to Special Government Pleader(T), Advocate, sr.64772
+2 ccs to Mr.K.Magesh, Advocate, sr.64301, 46302

W.P.Nos.35043 and 35044 of 2015

sai co
kra 18.12.2015