IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 03.11.2016

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The Hon'ble Mr.Justice T.S.Sivagnanam

Writ Petition Nos.11014 to 11016 of 2014
and
M.P.Nos,1,1,1 and 2 of 2014

Visteon Automotive Systems India Pvt. Ltd.,
rep. by its Deputy General Manager,
(Indirect Taxation)
Olympia Technology Park,
SIDCO Industrial Estate,
Guindy, Chennai - 600 032. ...Petitioner in all W.Ps.

Vs.

The Deputy Commissioner (CT)-IV,
Large Taxpayers Unit,
Vth Floor Durga Towers,
No.34, Marshalls Road,
Egmore, Chennai - 600 008. ...Respondent in all W.Ps.

Prayer in W.P.No.11014 of 2014

Writ Petition, filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorari to call for records on the files of the respondent herein in TIN : 33910904989/2008-09, dated 13.03.2014, quashing the same insofar as it relates to Input Credit of Rs.55,27,164/- reversed by the respondent and the penalty of Rs.29,88,635/- levied under Section 27 (4) (i) of TNVAT Act, 2006.

Prayer in W.P.No.11015 of 2014

Writ Petition, filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorari to call for records on the files of the respondent in TIN : 33910904989/2009-10, dated 10.03.2014, quashing the same insofar as it relates to Input Credit of Rs.15,75,447/- reversed by the respondent and the penalty of Rs.10,91,024/- levied under Section 27 (4) (i) of TNVAT Act, 2006.

Prayer in W.P.No.11016 of 2014

Writ Petition, filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorari to call for records on the files of the respondent herein in TIN : 33910904989/2010-2011, dated 28.02.2014, quashing the same insofar as it relates to Input Credit of Rs.1,37,703, reversed by the respondent and the penalty of Rs.2,30,090/- levied under Section 27 (4) (i) of TNVAT Act, 2006.

In all W.Ps.

For Petitioner : Mr.K.A.Parthasarathy for M/s.N.Inbarajan and others

For Respondent : Mr.S.Kanmani Annamalai Additional Government Pleader (Tax)

COMMON ORDER

These Writ Petitions have been filed praying to quash the impugned orders passed by the Respondent/Deputy Commissioner (CT)-IV, under the provisions of Tamil Nadu Value Added Tax Act, 2006, (hereinafter, referred to as 'TNVAT Act') for the assessment years 2008-09 to 2010-11, whereby and whereunder the respondent has reversed the input tax credit and levied penalty under Section 27 (4) (i) TNVAT Act.

2. Mr.K.A.Parthasarathy, learned counsel appearing on behalf of the petitioner submitted that, the issue involved in the present Writ Petitions is covered by the decision of the Court, in the case of (Sara Leathers Vs. Commercial Tax Officer, Chennai) reported in [(2010) 30 VST 581 (Madras)], following which, Writ Petition in W.P.No.12459 of 2014, was allowed by this Court, by order, dated 29.08.2016. The learned counsel also produced the copy of the order passed in W.P.No.12459 of 2014, for reference of this Court, and prays that the present Writ Petitions may be allowed.

3. Heard Mr.S.Kanmani Annamalai, the learned Additional Government Pleader (Tax) for the respondent.

4. On a perusal of the decision rendered in W.P.No.12459 of 2014, it is seen that, in respect of the same assessee for the assessment year, 2007-08, similar order was passed by the respondent/Deputy Commissioner (CT) -IV on 22.04.2014, which was challenged by the assessee/petitioner, and this Court, following the decision rendered in the case of Sara Leathers (supra), allowed the Writ Petition, by order, dated 29.08.2016. The relevant portions from the order, dated 29.08.2016, are extracted herein below:-

"" 2.The petitioner who is a registered dealer on the file of the respondent under the provisions of the Tamil Nadu Value Added Tax Act, 2006 (TNVAT Act) has filed this writ petition challenging the order of assessment dated 22.04.2014 for the assessment year 2007-2008. The petitioner has challenged the order on the ground that reversal of input credit taken on capital goods beyond 4% is contrary to the decision of this Court in the case of Sara Leathers V. Commercial Tax Officer, Chennai, [2010] 30 VST 581 (Mad). It is further pointed out by the learned counsel for the petitioner that the said decision was followed by this Court in the case of Tvl.Tata Refractories Limited V. The Commercial Tax Officer, Omalur in W.P.Nos.5614 and 5615 of 2008 dated 17.11.2014. At this stage, it would be worthwhile to refer to the operative portion of the said order:-

> "5. After hearing the learned counsel for the parties and perusing the materials placed on record, it is clear that the issue in the writ petiton is squarely covered by the decision of this Court in the case of Sara Leathers (cited supra). In the said batch of cases, the question was relating to disallowance of the claim of the petitioner therein in respect of refund of tax paid by the assessee at 12.5% as against 4% chargeable therein. This Court after considering the matter elaborately held as follows:-
>
> "In the circumstances, going by the very provisions of Section 18(1) of the Act, given the fact that the sale by the petitioner is zero rated and that the petitioner is entitled to the benefit of Section 18(2) of the Act for the refund of the input tax paid on the purchase of goods under the stated circumstances, the petitioner's claim for refund of amount paid as per the assessment order has to be given in toto without any adjustment whatsoever.

......"Going by Section 18(2) of the Act, which is very emphatic in its wording, that the dealer referred to therein to claim a refund is one who had paid the tax on purchase of those goods that are exported and such consumed goods used in the manufacture of other goods which are exported and are specified under sub-section (1). Hence, given the fact that the zero rating of tax is as per Section 18 of the Act and the same is only at the hands of a purchasing dealer of goods and not at the hands of the seller, who sells the capital goods, the acceptance of the stand of the Department would only amount to either ignoring Section 18 or cutting down the width of Section 18 of the Act, for that matter, even to overlook Section 19 of the Act ."

3. The learned Additional Government Pleader does not dispute the above legal position. Hence, following the above referred decision in the case of Sara Leathers (cited supra), the Writ Petition is allowed and the impugned order is quashed. No costs. Consequently, connected Miscellaneous Petitions are closed.""

5. Thus, in the light of the order passed by this Court in W.P.No.12459 of 2014, (referred supra), the present Writ Petitions can also be allowed, as they are filed by the very same assessee/petitioner, challenging the impugned orders passed by the same Authority, viz., the Deputy Commissioner (CT)-IV, in respect of the assessment years 2008-09 to 2010-11.

6. Accordingly, the Writ Petitions are allowed, and the orders impugned herein are set aside. No costs. Consequently, connected Miscellaneous Petitions are closed.

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Sd/-
Assistant Registrar

/TRUE COPY/

Sub-Assistant Registrar

To

The Deputy Commissioner (CT)-IV,
Large Taxpayers Unit,
Vth Floor Durga Towers,
No.34, Marshalls Road,
Egmore, Chennai - 600 008.

+1CC to MR.N.INBARAJAN Advocate SR.NO.62389
+1CC to SPL.GOVT. PLEADER [TAXES] SR.NO.63118

Writ Petition Nos.11014 to 11016 of 2014

SK[CO]
MK:09/12/2016