IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :29.08.2016

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.12459 of 2014 and
M.P.Nos.1 & 2 of 2014

Visteon Automotive Systems India Pvt. Ltd.,
Represented by its Deputy General Manager
(Indirect Taxation) - T.A.Bhaskaran,
Olympia Technology Park,
SIDCO Industrial Estate, Guindy,
Chennai - 600 032. ... Petitioner

Vs

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

Prayer: Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari calling for the records on the files of the respondent herein in TIN:33910904989/2007-08, dated 22.04.2014, quashing the same in so far as it relates to input credit of Rs.60,61,321/- reversed by the respondent and the penalty thereon, levied under Section 27(4)(i) of the VAT Act, 2006.

For petitioner ... Mr.N.Inbarajan

For respondent ... Mrs.Vasudha Thiagarajan
Additional Government Pleader

ORDER

Heard Mr.N.Inbarajan, learned counsel for the petitioner and Mrs.Vasudha Thiagarajan, learned Additional Government Pleader for the respondent.

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:-
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> > "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.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

Sgl

To

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

1 cc to The Special Government Pleader,(Taxes), sr.48947
1 cc to Mr.N.Inbarajan, Advocate, sr.48700

W.P.No.12459 of 2014

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kra 14.09.2016