IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.08.2016

CORAM

THE HONOURABLE Mr. JUSTICE T.S.SIVAGNANAM

W.P.Nos.27107 to 27111 of 2016
and W.M.P.Nos.23285 to 23289 of 2016

M/s.Faiveley Transport Rail Technologies
India Limited,
Represented by its Sriram Srinivasan -
Joint Director - Finance & Company Secretary,
Post Box. No.39, Harita,
Hosur - 635 109. ..Petitioner in all W.Ps

Vs

The Assistant Commissioner (CT),
Hosur (South),
Hosur. ..Respondent in all W.Ps.

Prayer in W.P.No.27107 of 2016: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, to call for the records of the first respondent in TIN:33703360902/2010-11 dated 12.07.2016, quash the same as illegal, arbitrary, unreasonable and without jurisdiction.

Prayer in W.P.No.27108 of 2016: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, to call for the records of the first respondent in TIN:33703360902/2011-12 dated 12.07.2016, quash the same as illegal, arbitrary, unreasonable and without jurisdiction.

Prayer in W.P.No.27109 of 2016: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, to call for the records of the first respondent in TIN:33703360902/2012-13 dated 12.07.2016, quash the same as illegal, arbitrary, unreasonable and without jurisdiction.

Prayer in W.P.No.27110 of 2016: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, to call for the records of the first respondent in TIN:33703360902/2013-14 dated 12.07.2016, quash the same as illegal, arbitrary, unreasonable and without jurisdiction.

Prayer in W.P.No.27111 of 2016: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, to call for the records of the first respondent in TIN:33703360902/2014-15 dated 12.07.2016, quash the same as illegal, arbitrary, unreasonable and without jurisdiction.

For Petitioner in all W.Ps. : Mr.V.Sundareswaran

For Respondent in all W.Ps. : Mr.S.Kanmani Annamalai Additional Government Pleader (Taxes)

COMMON ORDER

Heard Mr.V.Sundaresan, learned counsel appearing for the petitioner and Mr.S.Kanmani Annamalai, learned Additional Government Pleader (Taxes) accepts notice on behalf of the respondent and with their consent, these Writ Petitions were taken up for final disposal.

2.The petitioner is a registered dealer on the file of the respondent under the provisions of the Tamil Nadu Value Added Tax Act, 2006 (hereinafter referred to as the TNVAT Act) and the Central Sales Tax Act , 1956 (hereinafter referred to as the CST Act) and they have challenged the assessment orders under the TNVAT Act for the years 2010-11, 2011-12, 2012-13, 2013-14 and 2014-15. The issue involved in all these writ petitions are identical and they are two in number based on which the respondent has revised the assessments for all the years.

3.The respondent issued a pre-assessment notice dated 30.05.2016 stating that on verification of the monthly returns filed by the petitioner for the relevant years and on comparison with the Departmental website it was found that the petitioner had claimed excess ITC than the sales reported by the seller to a particular amount and there is a discrepancy. The second issue is that the petitioner has claimed input tax credit for the purchases from the registration cancelled dealers. With regard to the first issue, the petitioner while submitted their objections stated that they have claimed input tax credit as per the conditions stipulated under TNVAT Act and if their seller had failed to report the same, then the Department has to recover the same from the seller and not to deny the input tax credit availed by the petitioner. In this regard, reference was made to the decisions of this Court. With regard to the allegation that the petitioner has claimed input tax credit for the purchases from registration cancelled dealers it was submitted that the petitioner has wrongly furnished incorrect registration numbers of the selling dealers and therefore furnished the correct numbers. While considering the submission, the respondent with regard to the first issue held that the burden of proof of earlier savings of input tax credit lies only with the dealer as per Section 17 of the Act and that the petitioner having failed to prove the same overruled the objections. With regard to the second issue, the respondent accepted the petitioner's explanation verified the new registration numbers of the selling dealers and found the same to be correct and accepted the objections and dropped the proposal.

4.The legal issue which falls for consideration in these writ petitions concerning the first issue which has been decided against the petitioner is whether the input tax credit can be denied to the petitioner for the reason that the seller had not been assessed or the selling dealer has not filed the returns. This issue is no longer res integra and has been decided by this Court in the case of Althaf Shoes (P) Ltd. vs. Assistant Commissioner (CT), Valluvarkottam Assessment Circle, Chennai-6 reported in (2012) 50 VST 179 (Mad) followed in the case of Infiniti Wholesale Limited vs. Assistant Commissioner (CT), Koyambedu reported in (2015) 82 VST 457. These decisions were followed by me in a order passed in W.P.Nos.305 to 308 of 2016 dated 02.06.2016 (M/s.The Computer Consultants vs. The Assistant Commissioner, Hosur (South) Assessment Circle, Hosur and another), wherein it was held as follows:

> 7.......In the case of Infiniti Wholesale Ltd.,, referred above, this Court took into consideration the decision in the case of Althaf Shoes, referred above, and other decisions and held as follows:-
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> > 22. In the case of Althaf Shoes (Pvt) Ltd., cited supra, the petitioner was a dealer and exporter of finished leather and other products, who claimed refund of ITC under Section 18 (2) of the VAT Act in respect of the exports made. Though the refund was granted, subsequently notice was issued seeking to withdraw the relief on the ground that its dealer had not reported the sales turnover and remitted tax and an order was passed, withdrawing the relief granted and levying penalty. While considering the said case, it was held that the circular issued by the Commissioner clearly states that so long as the vendor is found to be a registered dealer on the files of the Revenue, the claim of the assessee for refund could not be rejected nor delayed. Revenue in the said case did not deny, as a matter of fact, that the assessees vendors are all registered dealers on the files of the Revenue and the assessee had also given the TIN number of these vendors. When such particulars

are available, it is for the Revenue to take necessary action against the vendors, who had not remitted tax collected by them to the State. Without taking recourse to that, the Revenue could not deny the claim of the assessee. Going by Rule10(2) of TN Vat Rules read along with section 19(1) of the TN Vat Act, it is clear that so long as the purchasing dealer has complied with the requirements as given under Rule 10(2), the claim of the purchasing dealer cannot, by any length of reasoning, be denied by the Revenue. The mere fact that the Revenue had not made an assessment on the assessees vendor, per se, cannot stand in the way of the assessing officer considering the claim of the assessee under section 19 of the Tamil Nadu Value Added Tax Act. A reading of the circular issued by Commissioner along with the provisions of the Act makes it clear that there is nothing repugnant in the said circular issued by the Commissioner as a head of the Department as regards the provisions of the Act on input-tax credit claim. Holding so, allowed the writ petition.

23. In the case of Sri Vinayaka Agencies, cited supra, the petitioner was dealer in lubricants, purchasing lubricants from a registered dealer. On inspection, it was found that the vendor / dealer had not filed monthly returns nor paid tax to the Department. Though the petitioner had paid tax to the selling dealer, revision notice was issued proposing that the ITC should be reversed on the failure of the selling dealer in paying the tax. Allowing the said writ petition, it was held that at the time of filing the self-assessment return under Section 22 (2), the petitioner-dealer had followed Rule 10 (2) of the Tamil Nadu Value Added Tax Rules, 2007, and therefore, could not be said to have wrongly availed of input tax credit wrongly. Section 19 (1) states that input-tax credit can be claimed by a registered dealer, if he establishes that the tax due on such purchase has been paid by him in the manner prescribed and that was accepted at the time when the self-assessment was made. The pre-revision notices and the orders clearly stated that the petitioner-dealer had paid the tax to the selling dealer. If that be the case, it was held that the

petitioner's case therein squarely fell under the proviso to Section 19 (1) of the Act. Further, it was another matter that the selling dealer had not paid the collected tax. The liability had to be fastened on the selling dealer and not on the petitioner-dealer which had shown proof of payment of tax on purchases made. The orders were thus set-aside.

5.The above decisions would be squarely applicable to the facts of the case and in fact the reasons assigned in the impugned order in the case of M/s.The Computer Consultants (supra) was same as that of the present cases. Therefore, the basis on which the impugned order has been passed denying the entire tax credit on verification of the Departmental website alleging that the petitioner has reported higher purchase and availed ITC in excess cannot be sustained. Accordingly, the writ petitions are allowed and the impugned assessment orders are quashed to the extent indicated. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

To

The Assistant Commissioner (CT),
Hosur (South),
Hosur.

+1 cc to Spl.Govt.Pleader,sr.444455

+1 cc to Mr.V.Sundareswaran,advocate,sr.44412.

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krd 18/8

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