IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:02.06.2017

C O R A M

THE HON'BLE Mr.JUSTICE K. RAVICHANDRABAABU

W.P.Nos.4053 and 4054 of 2017
and
W.M.P.Nos.4198 and 4199 of 2017

Hindustan Motor Finance Corporation Ltd.,
represented by its Assistant General Manager (Finance)
A.S.Gopalan,
21-C, (South Phase), 5th Street,
Industrial estate, Guindy,
Chennai - 600 032. ...Petitioner in both the W.Ps.

Vs

The Assistant Commissioner(CT),
Nandambakkam Assessment Circle,
No.17, Loganathan Nagar 2nd Street,
Choolaimedu,
Chennai - 600 004. ... Respondent in both the W.Ps.

Prayer in W.P.No.4053 of 2017: Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari to call for the records on the file of the respondent herein in TIN/33130907746/2014-15, dated 09.01.2017 insofar as it relates to wrong availment of ITC due to mis-match of Rs.21,92,150/- and ITC reversal under Section 19(2)(v) of Rs.80,53,541/- and quash the same.
Prayer in W.P.No.4054 of 2017: Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari to call for the records on the file of the respondent herein in TIN/33130907746/2015-16, dated 09.01.2017 insofar as it relates to wrong availment of ITC due to mis-match of Rs.27,49,397/- and quash the same.

For petitioner ... Mr.Parthasarathy
for Mr.N.Inbarajan

For respondent ... Mr. S.Kanmani Annamalai
Additional Government Pleader

C O M M O N   O R D E R

W.P.No.4053 of 2017 is filed challenging the order of assessment dated 09.01.2017 passed in respect of assessment year 2014-2015 only insofar as it relates to availment of ITC due to mismatch and ITC reversal under Section 19(2)(v) of the Tamil Nadu VAT Act. In other words, the petitioner is not aggrieved against the order of assessment made in respect of the other issues.

2. W.P.No.4054 of 2017 is filed challenging the order of assessment in respect of the assessment year 2015-2016 dated 09.10.2017 only insofar as it relates to availment of ITC due to mismatch. In other words, the petitioner it not aggrieved against the order of assessment made in respect of the above said assessment year in respect of other issues.

3. Heard the learned counsel for the petitioner and the learned Additional Government Pleader appearing for the respondent.

4. Both sides fairly admitted that the issue regarding the mis-match is covered by the decision of this Court made in W.P.No.105 of 2016 etc. dated 01.03.2017. Likewise, it is stated by the learned counsel appearing on either side that the other issue namely, reversal of ITC under Section 19(2)(v) of the Tamil Nadu VAT Act is also covered by the decision of this Court made in W.P.No.7969 of 2014 dated 06.02.2017

5. Insofar as the issue with regard to mis-match is concerned, this Court in W.P.No.105 of 2016 dated 01.03.2017 has stipulated certain guidelines/directions to the Assessing Officer to follow while dealing with such issue. At paragraph Nos.56 to 58 of the above said order, it has been observed as follows:

> "56.The procedure adopted under the Maharastra VAT Act appears to be a more reasonable procedure, the Rules have been so designed to constitute independent authorities, who will in exercise jurisdiction to dispose of the objections etc. However, this Court cannot legislate nor direct the State to legislate in a particular passion and it is for the state to bring about and appropriate rules and set procedures so that when discrepancy is noted while comparing the return with that of the figures available with the Department in their web portal, there should be an exercise carried out by the department within its level before calling upon the dealer to show cause. This can be achieved only if there is a centralised mechanism and if the present practice is allowed to

prevail, it would only result in multiplicity of proceedings with more number of cases pending before the Courts and Appellate forums, thus jeopardizing the interest of revenue. Therefore, it is high time the Principal Secretary and Commissioner of Commercial Taxes in consultation with him officers lays out a detailed procedure as to how to take forward cases of mismatch, evolve a central mechanism, which can go into these aspect and furnish details in full form to the respective Assessing Officers, who can decide for themselves as to whether there is a case made out to call upon their dealer to explain. If this centralized mechanism is not put in place exclusively for such purpose, it would result in notices and orders being issued by the respective action being taken against other end dealer, assuming, he is at fault. Therefore, it is high time the Department wakes up and stops the one way approach and examine the matter in a holistic manner so that the defaulting dealer is brought to books.

57. Hence, for all the above reasons, all the Writ Petitions are allowed and the notices/orders either original or appellate or revisional are set aside and the matters are remanded to the respective Assessing Officers, to undertake a fresh exercise by conducting a thorough enquiry in consultation with the Assessing Officers of the other end dealer for which purpose the Commissioner of Commercial Taxes shall empower the Assessing Officers to seek information from other circles as well and in the mean time to evolve a centralized mechanism to exclusively deal with the cases of mismatch and while doing so, the Principal Commissioner shall take note of the procedures adopted by the other States, more particularly, in Maharastra, Gujarat and Delhi and if any statutory amendments have to be made, make appropriate recommendations to the State Government, and till then to devise a procedure which is fair and reasonable and afford an opportunity to the dealer to putforth his case and establish that he is entitled to the concession/set-off availed.

58. Since these Writ Petitions have been allowed and the impugned orders have been set aside and the matters have been remanded for fresh consideration the petitioners/dealers are not entitled to raise the plea of limitation, when fresh show cause notices are issued and they are directed

to submit their explanation to enable the Assessing Officers to adjudicate their case. The Court places on record the valuable assistance of Ms.R.Charulatha Advocate of M/s.Lakshmikumaran and Sridharan Attorneys. Consequently, connected Miscellaneous Petitions are closed. No costs."

Therefore, it is for the Assessing Officer to follow the said guidelines/directions and re-do the assessment insofar as the issue of mis-match is concerned.

6. In respect of the other issue namely, reversal of ITC under Section 19(2)(v) of the Tamil Nadu VAT Act is concerned, it is an admitted fact that the said issue also has been considered by this Court in W.P.No.7969 of 2014 dated 06.02.2017 in favour of the petitioner and therefore, the Assessing Officer has to re-do the assessment in respect of that issue as well by following the above said decision. Accordingly, both the writ petitions are allowed in part and the impugned orders of assessment are set aside only insofar as it relates to mis-match and reversal of ITC under Section 19(2)(v) of the Tamil Nadu VAT Act are concerned. In other words, the impugned assessment orders stand in respect of other issues. The Assessing Officer shall re-do the assessment as directed herein by following the above decisions of this Court and pass final order of assessment after giving due opportunity of hearing to the petitioner. Such exercise shall be done by the Assessing Officer within a period of eight weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

To

The Assistant Commissioner(CT),
Nandambakkam Assessment Circle,
No.17, Loganathan Nagar 2nd Street,
Choolaimedu,
Chennai – 600 004.

+1cc to Mr.N.Inbarajan, Advocate in Sr.No.39739
+1cc to Government Pleader in Sr.No.39656

W.P.Nos.4053 & 4054 of 2017

NR(13/06/2017)