IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:06.06.2017

CORAM

THE HONOURABLE MR.JUSTICE RAVICHANDRABAABU

W.P.Nos.23250 & 23251 of 2015

Gamesa Wind Turbines (P) Ltd,
Represented by its General Manager - Finance,
Dharmala Venkata Ramana Murthy,
489, G.N.T. Road,
Thandalkalani, Redhills,
Chennai 600 052. ... Petitioner
(in WP Nos.23250 & 23251 of 2015)

Vs.

The Assistant Commissioner (CT),
O/o.The Assistant Commissioner (CT),
Madhavaram Assessment Circle,
No.170, GNT Road, Puzhal,
First Floor, Behind Indian Bank,
Chennai - 600 066. ... Respondent
(in WP Nos.23250 & 23251 of 2015)

PRAYER :

Writ Petition No.23250 of 2015 filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records on the files of the Respondent herein in TIN:33080905979/2013-14 dated 18.06.2015, quashing the same, while directing the Respondent herein to restore the Input Tax Credit of Rs.4,62,56,863/- being input tax in excess 2% reversed by the petitioners under protest on their inter-state sales falling under section 8(1) of the Central Sales Tax Act, 1956 during the period between 11.11.2013 to 31.03.2014 as prayed for by the petitioners in their application dated 13.05.2015.

Writ Petition No.23251 of 2015 filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records on the files of the Respondent herein in TIN:33080905979/2014-15 dated 18.06.2015, quashing the same, while directing the Respondent herein to restore the Input Tax Credit of Rs.7,61,60,823/- being input tax in excess 2% reversed by the petitioners under protest on their inter-state sales falling under section 8(1) of the Central Sales Tax Act, 1956 during the period between 01.04.2014 to 31.03.2015 as prayed for by the petitioners in their application dated 13.05.2015.

For Petitioner : Mr.N.Prasad

For Respondent : Mr.K.Venkatesh,
Government Advocate

COMMON ORDER

In both these writ petitions, the petitioner is aggrieved by the order dated 18.06.2015 passed by the respondent rejecting the request for refund of the amount referred to in the respective proceedings relevant to the assessment years 2013-2014 and 2014-2015.

2. Heard the learned counsel appearing for the petitioner and the learned Government Advocate appearing for the respondent.

3. The petitioner in both the cases had taken Input Tax Credit under Section 19(2)(v) of the Tamil Nadu Value Added Tax, Act, 2006 and however, on receipt of the notice of proposal for reversal of such ITC, they reversed such credit under protest by specifically claiming that they are entitled to such credit under Section 19(2)(v) of the said Act. Consequently they sought for refund of the amount so credited by them. It is not in dispute that the adjudication has not been completed so far. It is also not in dispute that the issue involved in this case viz., the reversal of ITC under Section 19(2)(v) of the TNVAT Act is covered by the decision of this Court reported in [2017] 100 VST 158 (Mad) in favour of the petitioner. Therefore, it is for the Assessing Authority to adjudicate the said issue in the light of the said order passed by this Court in the above said reported case and pass the final order of assessment. Consequently, the request for refund of the amount as sought for by the petitioner, will have to be considered by the Assessing Authority, after finalization of the assessment as stated supra.

4. Accordingly, both the writ petitions are disposed of, only by directing the respondent to pass the final order of assessment in respect of assessment years 2013-2014 & 2014-2015, more particularly, in respect of the issue viz., reversal of ITC under Section 19(2)(v) of TNVAT Act, by taking into consideration the above said decision of this Court reported in [2017] 100 VST 158 (Mad). Needless to say that when once such

an order is passed, the petitioner can work out their remedy for refund thereafter. The Assessing Officer shall pass the final order within a period of four weeks from the date of receipt of a copy of this order, after providing an opportunity of hearing to the petitioner. No costs.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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To

The Assistant Commissioner (CT),
O/o.The Assistant Commissioner (CT),
Madhavaram Assessment Circle,
No.170, GNT Road, Puzhal,
First Floor, Behind Indian Bank,
Chennai - 600 066.

+1cc to Mr.N.Inbarajan, Advocate Sr.40015
+1cc to the Special Government Pleader Sr.40228

W.P.Nos.23250 & 23251 of 2015

nm i[co]
srg 08/06/2017