IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 08.07.2019

CORAM:

THE HONOURABLE MR. JUSTICE M.S. RAMESH

W.P.No.32293 of 2016
& MP.Nos.28023 & 28024 of 2016

M/s. Faively Transport Rail Technologies India Limited,
Rep. by its Managing Director,
Mr.Sheshadri Srinivasan,
Post Box.No.39, Harita,
Hosur - 635 109. ...Petitioner

Vs

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

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, calling for the records of the respondent in CST.No.446263/2014-15 dated 30.05.2016 reversing the Input Tax Credit u/s.19 of the Tamil Nadu Value Added Tax Act, 2006, quash the same as illegal, arbitrary, unreasonable and passed without jurisdiction.

For Petitioner : Mr.V.Sundareswaran
For Respondent : Mrs.Dhanamadhri,
Govt.Advocate

O R D E R

The order impugned in the present writ petition is for non-filing of Form-C. The grounds raised by the petitioner is that, the reversal of the Input Tax Credit u/s.19 of the Tamil Nadu Value Added Tax Act, 2006, on inter-state sales, is not covered by Form-C.

2. Pending writ petition, this issue has been dealt with by the Hon'ble Apex Court decision, reported in (2018) 59 GSTR 1, in the case of TVS Motor Company Ltd Vs. State of Tamil Nadu others, the relevant of the said order is reads here under:-

> "48. Thus, wherever the State Government buys, sells, supplies or distribute goods, it shall be deemed to be the dealer for the purposes of TNVAT Act. At the same time, TNVAT Act does not require registration by the

State Government inasmuch as Section 38 which deals with registration of dealers explicitly provides, under sub-section (8) thereof, that this provision shall not apply to any State Government or Central Government. A conjoint reading of the aforesaid two provisions would show that when a sale is made to the State of Karnataka, it is made to a dealer but that dealer is under no obligation to get itself registered under the TNVAT Act. Because of this exemption, no State Government does that and since it is not a registered dealer, it would not be in a position to issue any Form C. But for that, the genuineness of sales made to a State Government cannot be doubted. This situation puts those dealers who are making sales to the State Government in disadvantageous position, even when it is clear that there is no possibility of tax evasion as there cannot be any such apprehension in case of sales to the State Government. We may point out here that benefit of ITC is given whenever sale is made to a dealer outside State of Tamil Nadu and the said dealer is a registered dealer.

49. Having regard to the above, we are of the opinion that the provisions of Section 19(5)(c) are to be read down by construing that those dealers who are making sales exclusively to the other State Governments (i.e. outside the State of Tamil Nadu), the said States would be deemed as registered dealers for the purposes of availing benefits of ITC. Otherwise, in such a situation, it would be difficult to hold that test of reasonable classification is met in this limited context. It becomes unnecessary to deal with other contentions of Mr. Bagaria."

3. In view of the above said pronouncement, the present impugned order cannot be sustained. The extract above is self-explanatory and as such, the dealers who are making sales exclusively to other State Governments would be deemed to be registered dealers of such States for the purpose of benefit of ITC.

4. In the light of the decision of the Hon'ble Apex Court in the case of TVS Motor Company Ltd Vs. State of Tamil Nadu others, the impugned order dated 30.05.2016 on the file of Assistant Commissioner (CT), Hosur (South) is set aside. Consequently, the matter is remanded back to the respondent herein for a fresh consideration in the light of the pronouncement of the Hon'ble Apex Court in the case of TVS Motor Company Ltd Vs. State of Tamil Nadu others and the observations made in the present writ petition. The respondents shall endeavor to conclude the assessment proceedings as expeditiously as possible.

5. Accordingly, the writ petition is disposed of. No Costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar (CS-V)

//True Copy//

Sub Assistant Registrar

Pkn.

To

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

+1 cc to Mr.V.Sundareswaran, Advocate, S.R.No.57156

+1 cc to the Government Pleader, S.R.No.57668

W.P.No.32293 of 2016

NRL(CO)
SSM(27/08/2019)