IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.09.2019

CORAM

THE HON'BLE MR. JUSTICE K.RAVICHANDRABAABU

W.P.No.26792 of 2019

Orix Auto Infrastructure Services Ltd.,
Represented by its Assistant Vice President
Mitul Malaviya
SP-4, Thiruvika Industrial Estate
Block No.5, Ekkatuthangal
Chennai-600 032. ...Petitioner

vs.

The Assistant Commissioner (CT)
Royapettah Assessment Circle
46, Greenways Road,
Chennai-600 028. ...Respondent

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, directing the respondent herein to transfer the input tax credit lying un-utilized (excess input tax credit) of a sum of Rs.69,18,202/- to M/s.Orix Auto Financial Services Limited (OAFSL) as claimed in the application dated 01.08.2013 (modified on 24.10.2013) as per Section 19(4) of the TNVAT Act, 2006 read with Rule 10(8) of the TNVAT Rules 2007.

For Petitioner : Mr.N.Inbarajan

For Respondent : Mrs.G.Dhana Madhri
Government Advocate

O R D E R

Mrs.G.Dhana Madhri, learned Government Advocate takes notice for the respondent. By consent of the parties, the main writ petition is taken up for final disposal at the admission stage itself.

2. The petitioner seeks for a mandamus directing the respondent herein to transfer the input tax credit lying unutilized (excess input tax credit) of a sum of Rs.69,18,202/- to M/s.Orix Auto Financial Services Limited (OAFSL) as claimed in the application dated 01.08.2013 (modified on 24.10.2013) as per Section 19(4) of the TNVAT Act, 2006 read with Rule 10(8) of the TNVAT Rules 2007.

3. Heard the learned counsel for the petitioner and the learned Government Advocate for the respondent.

4. The petitioner is a registered dealer. It is claimed that under the demerger plan, followed by sanctioning of the Scheme of Arrangement by the Hon'ble High Court, Bombay, all the assets and the liabilities pertaining to finance lease business has been transferred from Orix Auto Infrastructure Services Ltd., (for brevity "OAISL") to Orix Auto Financial Services Ltd., (for brevity "OAFSL"), which is 100% subsidiary of OAISL, with effect from 01.04.2011. Section 19(14) of the Tamil Nadu Value Added Tax Act, 2006 (for brevity "TNVAT Act") provides that where the business of a registered dealer is transferred on account of change in ownership or on account of sale, merger, amalgamation, lease or transfer of the business etc., the registered dealer shall be entitled to transfer the input tax credit lying unutilized to such merger, amalgamated or transferred concern. Accordingly, OAISL has reversed the ITC of Rs.69,18,202/- in its return of September 2013. Further, OAISL has intimated to the respondent through letter dated 15.10.2013 about the above reversal. The petitioner has submitted necessary documents to the respondent for approval of transfer of ITC from OAISL to OAFSL, so that OAFSL can claim credit of such ITC in its VAT returns and books of accounts to off-set the same against VAT payable on lease rentals of vehicles transferred from OAISL to OAFSL. Though the application was filed as early as on 01.08.2013, followed by recent reminder dated 12.11.2018, the respondent has not considered the request of the petitioner so far. Hence, the present writ petition is filed with the relief as stated supra.

5. The learned counsel for the petitioner has reiterated the above contentions.

6. On the other hand, the learned Government Advocate for the respondent submitted that the request of the petitioner will be considered and appropriate orders will be passed on merits and in accordance with law within the time stipulated by this Court.

7. Considering the above stated facts and circumstances, without expressing any view on the merits of the claim made by the petitioner, this Writ Petition is disposed of, only by directing the respondent to consider the application filed by the petitioner on 01.08.2013 and pass orders on the same on merits and in accordance with law, within a period of three weeks from the date of receipt of a copy of this order. No costs.

-s/d-
Assistant Registrar(CS-IV)

True Copy

Sub-Assistant Registrar

mk

To

The Assistant Commissioner (CT)
Royapettah Assessment Circle
46, Greenways Road,
Chennai-600 028.

+1 CC to The Spl. Govt.Pleader(T) sr 77611
+1 CC to Mr.N.Inbarajan, Advocate sr 77126.

W.P.No.26792 of 2019

BS(CO)
SP(26/09/2019)