IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.12.2019

CORAM:

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.Nos.3284, 3290 & 3324 of 2017
and
W.M.P.No.3255 of 2017, 3264/17, 3296/17

Schneider Electric India Pvt.Limited,
Represented by its Manager-Finance
Mr.B.Suresh,
No.25-S-2A, Dairy Road,
Sidco Industrial Estate, Ambattur,
Chennai - 600 098.

presently at
No.172, Poonamallee Byepass Road,
Poonamallee,
Chennai - 600 056. ... Petitioner in all W.Ps

Vs.

1.The Assistant Commissioner (CT)(FAC),
Villivakkam Assessment Circle,
No.5, High Court Colony,
Villivakkam,
Chennai - 600 049.

2.Appellate Deputy Commissioner (CT),
Chennai (South),
3rd Floor, PAPJM Building Annexe,
No.1, Greams Road,
Chennai - 600 006. ... Respondents in all W.Ps.

Prayer in W.P.No.3284 of 2017: Writ Petition is filed under article 226 of the Constitution of India, writ of Certiorari, to call for the records relating to the Assessment Order TIN 33641363220/2008-09 dated 30.05.2013 passed by the 1st respondent, and consequential order in A.P.No.145/2014/VAT-2008-09 dated 25.11.2016 passed in Appeal by the 2nd respondent, quash the both orders.

Prayer in W.P.No.3290 of 2017: Writ Petition is filed under article 226 of the Constitution of India, writ of Certiorari, to call for the records relating to the Assessment Order TIN

33641363220/2007-08 dated 30.05.2013 passed by the 1st respondent, and consequential order in A.P.No.144/2014/VAT-2007-08 dated 25.11.2016 passed in Appeal by the 2nd respondent, quash the both orders.

Prayer in W.P.No.3324 of 2017: Writ Petition is filed under article 226 of the Constitution of India, writ of Certiorari, to call for the records relating to the Assessment Order TIN 33641363220/2009-10 dated 30.05.2013 passed by the 1st respondent, and consequential order in A.P.No.146/2014/VAT-2009-10 dated 25.11.2016 passed in Appeal by the 2nd respondent, quash the both orders.

For Petitioner : Mr.Joseph Prabakar
in all W.Ps.

For Respondents : Mr.V.Haribabu
in all W.Ps.

C O M M O N O R D E R

The petitioner is aggrieved against the order passed by the Appellate Deputy Commissioner (CT), in impugned order dated 25.11.2016 considered by the said order, the Appellate Deputy Commissioner (CT) as dismissed the order filed by the petitioner against the order passed by the 1st respondent on 30.05.2013, original order of assessment to remanded a sum of Rs.12,26,067/-.

2.Aggrieved by the said order the petitioner was filed before the 2nd respondent/Appellate Deputy Commissioner (CT), after the discussing the submission of the order has been passed reads as follows:-

> "4.The only dispute in the appeal is for the ineligible reversal of ITC of Rs.12,26,057.00. The verification of the records and the impugned assessment order reveals that the Assessing Authority reversed the ineligible ITC on industrial input, after issuing pre revision notice to the appellants and their reply were also considered. Whereas, the appellant would argue that they have purchased sum input materials at the rate of 12.5% from the sellers and claimed ITC but the learned Assessing Officer came to the conclusion that there is a reduced rate of tax at 4% on the industrial input and hence the claim of ITC @ 12.5% is not correct and restricted the claim to 4% and reversed the balance of

8.5% and also submitted basically this not correct because Sec 19 of VAT Act talks about the tax paid or payable and it is not taking about the rate of tax. In rival the Departmental Representative would argue that the rate of tax on industrial input is only 4% but the appellants have wrongly claimed ITC @ 12.5% for the turnover of Rs.1,44,24,451.00. I considered both the arguments and also the connected records. The Assessing Authority has rightly assessed the purchase turnover of Rs.1,44,24,451.00 @ 4% as this turnover relates to purchase of industrial input. The appellants have also not objected that the purchase turnover of Rs.1,44,24,451.00 relates to industrial input. Hence, in my consider view that the restriction of ITC at 4% on RS.1,44,24,451.00 on industrial input by the Assessing Authority is correct and hence the reversal of excess claim of ITC for Rs.12,26,078.00 is in accordance with the provisions of the Act and hence the order of Assessment on this turnover is sustained. Thus, the appeal fails and this portion of appeal is dismissed."

3.The present Writ Petitions are confined only to the Input Tax Credit (ITC) availed by the petitioner on the inputs received by the petitioner on payment of higher tax at 12.5%.

4.The petitioner had purchased inputs from the dealer who charged 12.5% tax and paid the same to the credit of the Government and passed on the incidence of such tax to the petitioner in their invoice.

5.The amount which was borne by the petitioner and paid on the output tax to the dealer, w2as availed as input credit by the petitioner. The original Authority namely the Assistant Commissioner (CT) (FAC)/ 1st respondent upheld the demand by restricting the credit to 4.0% of the tax borne by the petitioner and has accordingly held that the petitioner was liable to reverse the proportionate credit availed in excess of 4% (12.05%-8.5%).

6.Aggrieved by the same, the petitioner had preferred an appeal before the 2nd respondent Appellate Deputy Commissioner (CT) Chennai (South). By the impugned order dated 25.11.2016, the Appellate Authority Deputy Commissioner has dismissed the appeal filed by the petitioner and has held that the petitioner was entitled to only restricted credit at 4.0% and was therefore liable to reverse the balance. The operative portion of the order reads as under:-

> "I considered both the arguments and also the connected records. The Assessing Authority has rightly assessed the purchase turnover of Rs.1,44,24,451.00 @ 4% as this turnover relates to purchase of industrial input. The appellants have also not objected that the purchase turnover of Rs.1,44,24,451.00 relates to the industrial input. Hence, in my consider view that the restriction of ITC at 4% on Rs.1,44,24,451.00 on industrial input by the Assessing Authority is correct and hence the reversal of excess claim of ITC for Rs.12.26,078.00 is in accordance with the provisions of the Act and hence the order of Assessment on this turnover is sustained. Thus, the appeal fails and this portion of appeal is dismissed."

7.It is the contention of the petitioner that the issues squarely covered by two decisions of this Court rendered in M/s.Sara Leathers Vs.The commercial Tax Officer, in W.P.Nos.10736 to 10739, 17313 to 17316 and 20185 of 2009 and M/s.Summer India Textile Mills (P) Ltd. Vs. The Commercial Tax Officer in W.P.Nos.5258 and 5259 of 2009. The decision rendered in the first mentioned case was also noted.

8.The learned counsel for the petitioner submits that though he had submitted the issue is covered by a decision of this Court rendered in M/s.Sara Leathers Vs. The Commercial Tax Officer on 19.10.2009 in W.P.Nos.20736 to 10739, 17313 to 17316 and 20185 of 2009. The issue has been in favour of the dealers/petitioners against the respondent. This view is followed back in another decision of this Court rendered in M/s.Summer India Textile Mills Vs The Commercial Tax Officer on 21.03.2013 in W.P.Nos.5258 and 5259 of 2009.

9.Per contra, the learned counsel for the respondents submits that the impugned orders are well reasoned and require no interference. He further submits that the petitioner in any event has alternate remedy against the impugned orders and therefore, the writ petitions deserve to be dismissed.

10.Heard the learned counsel for the petitioner and the learned counsel for the respondent (Revenue).

11.I have considered the impugned orders. There is no discussion as to why the two decisions cited by the petitioner are applicable or not applicable to the facts of the case. Therefore, the impugned orders passed by the 1st respondent are liable to be quashed and are hereby quashed as they non speaking orders.

12.Therefore, to meet the ends of justice, the cases are remitted back to the 1st respondent to pass speaking orders within a period of six months from the date of a receipt of a copy of this order.

13.Accordingly, the Writ Petition stands disposed of in terms of the above observations. In case the petitioner succeeds in the respondent proceedings, the respondent shall refund the amount which was pre-deposited by the petitioner at the stage of filing in appeal before the Appellate Assistant Commissions (CT). No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-I)

//True Copy//

Sub Assistant Registrar

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To

1.The Assistant Commissioner (CT)(FAC),
Villivakkam Assessment Circle,
No.5, High Court Colony,
Villivakkam, Chennai - 600 049.

2.The Appellate Deputy Commissioner (CT),
Chennai (South),
3rd Floor, PAPJM Building Annexe,
No.1, Greams Road, Chennai - 600 006.

+1cc to Mr.Joseph Prabakar, Advocate, S.R.No. 101536
+1cc to the Government Pleader, S.R.No. 102259

W.P.Nos.3284, 3290 & 3324 of 2017
and
W.M.P.No.3255 of 2017, 3264/17, 3296/17

PVS(CO)
GN(03/02/2020)