IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.02.2019

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THE HON'BLE Dr. JUSTICE ANITA SUMANTH

W.P.No.31746 & 31749 of 2018

& W.M.P.No.36968 & 36969 of 2018

M/s.Mod Forge P.Ltd.
Rep.by its director
No.104, SIDCO Aiema Tower, First Main Road,
Ambattur Industrial Estate-Chennai.
Anna Nagar,
Chennai-600 058 .. Petitioner in both WP's

--Vs--

1. State of Tamil Nadu,
Rep. by its Secretary,
State of Tax Department,
Fort St. George,Chennai-600 009

2. Assistant Commissioner (ST)
Anna Nagar Assessment Circle,
1B, Lakshmipuram 2nd street,
Villivakkam,
Chennai-49. .. Respondents in both WP's

COMMON PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for a writ of Certiorari, calling for the records relating to the impugned orders issued by the 2nd respondent in order dated 30.07.2018 in order TIN/33671320766, 2013-14 and 2014-15 for a sum of Rs.2,32,697,00/- and 7,29,289.00/- respectively and to quash the same.

For Petitioner : Mr.M.E.V.Thulasi

For Respondents : Mr.M.Hariharan, AGP

ORDER

The petitioner in this writ petition challenges an order passed by the Assistant Commissioner (ST), Anna Nagar Assessment Circle, dated 30.07.2018 for the periods 2013-14 & 2014-15.

2. The main issue relates to reversal of Input Tax Credit (ITC) claimed under Section 19(5)(C) of the Tamil Nadu Value Added Tax Act, 2006 (in short the Act). The basis of reversal is that the required 'C' forms have not been produced or filed before the Assessing Authority and as such, in the absence of 'C' form, the Official was not inclined to accept the claim for input tax credit, as claimed.

3. The Madras High Court, in the case of The State of Tamil Nadu and others V. M/s.T.V.S.Motor Company Ltd. (WP Nos.29017 of 2013 etc. Batch dated 29.10.2014) had considered the validity of Section 19(5) (c) of the Tamil Nadu Value Added Tax Act, 2006 and Rule 10(9)(a) of the Tamil Nadu Value Added Tax Rules upholding the same. The aforesaid decision was carried in special leave to the Supreme Court and, in the case of M/s.T.V.S. Motor Company LTD. Vs. The State of Tamil Nadu and Others [C.A.Nos.10560-10564 of 2018], the Bench upheld the decision of the Madras High Court however reading down the statutory provision in the case of transactions inter se dealers and State Governments. Paragraph 49 of the judgment holds as follows:

> 49. Result of the aforesaid discussion would be to uphold the judgment of the High Court with one rider, namely, that in those cases where a dealer makes sales exclusively to the other State Government(s), benefit of ITC would be allowed without insisting on the furnishing of Form 'C'. However, in order to avail this benefit, a certificate from said the State Government to whom the supplies are made would be obtained by the dealer claiming ITC and submitted to the VAT authorities.

4. Thus, where the entire supplies by an assessee have been made to Government Departments, the condition of obtaining of 'C' forms stands relaxed and the assessee is permitted to obtain a certificate from the purchaser, which would then be placed before the Authorities for due consideration and grant of ITC claimed.

5. In the light of the aforesaid judgment, this writ petition is disposed of granting the petitioner twelve(12) weeks to produce the requisite certificate from the Government Departments and place the same before the Authorities for due

consideration, in accordance with law. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To
1. The Secretary,
State of Tax Department,
Fort St. George, Chennai-600 009

2. Assistant Commissioner (ST)
Anna Nagar Assessment Circle,
1B, Lakshmipuram 2nd street,
Villivakkam, Chennai-49.

+1 cc to Mr.M.e.V.Thulasi, Advocate Sr.No.9955
+1 cc to The Special Government Pleader,(Taxes) Sr.No.10330

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CSL/15.03.2019