

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.01.2020

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.32655 of 2015

and

M.P.No.1 of 2015

Visteon Automotive Systems Pvt. Ltd.,
Represented by its Deputy General Manager
(Indirect Taxation)
T.A.Bhaskaran,
Olymbia Technology Park, Phase - III,
Forteus, Plot No.1, Sidco Industrial Estate,
Guindy, Chennai - 600 032. Petitioner

vs

The Deputy Commissioner (CT) - IV (FAC),
Large Taxpayers Unit,
34 (Old No.123) 'Dugar Towers',
Marshal Road, Egmore,
Chennai - 600 008. Respondent

Prayer: Writ Petition filed under Article 226 of Constitution of India, to issue Writ of Certiorari, calling for the records on the files of the respondent herein in TIN:33910904989/2006-07, dated 18.09.2015, quashing the same in so far as it relates to disallowance of Input Tax Credit beyond 4% on the purchase capital goods on a value of Rs.67,43,848/-, or pass such further other orders as it may deem fit and proper in the facts and circumstances of the case.

For Petitioner : Mr.K.A.Parthasarathy for
Mr.N.Inbarajan

For Respondent : Mr.A.N.R.Jayaprathap
Government Pleader (T)

O R D E R

Heard learned counsel for the petitioner and the respondent Deputy Commissioner of Commercial Taxes, Large Tax Payers Unit.

2.Short point that arises for consideration in the present writ petition is whether the respondent was justified

in directing the petitioner to reverse the input tax credit availed on capital goods in excess of 4% vide the impugned order?

3.The petitioner had purchased "capital goods" as defined in Section 2(11) of the TNVAT Act, 2006 for manufacturing purpose and availed input tax credit in terms of Section 19(3) of the said Act. As per Entry 25, Part B to the I schedule of the said Act, the "capital goods" are liable to VAT at 4%. However, the dealer who sold the "capital goods" to the petitioner charged VAT at 12.5% and passed on the incidence of such tax to the petitioner. The petitioner therefore availed the tax paid and reflected in the invoice at 12.5%.

4.It is the contention of the respondent that since the "capital goods" were liable to VAT only at 4%, the petitioner was liable to reverse input tax credit in excess of 4% and accordingly the petitioner was required to reverse credit availed equivalent to 8.5% VAT paid in excess by the registered dealer who sold the capital goods to the petitioner. A show cause notice dated 26.12.2011 was issued to the petitioner. The petitioner replied to the said notice by its reply dated 30.01.2012. By the impugned order dated 18.09.2015, the respondent has directed the petitioner to reverse the excess credit of Rs.5,73,309/-

5.The learned counsel for the petitioner submits that the issue is no longer res integra and is covered by several decisions of this Court. In this connection, learned counsel for the petitioner relies on the decision of a Division Bench of this Court in Sara Leathers Vs. Commercial Tax Officer, (2010) 30 VST 581 (Mad).

6.It is submitted that the above decision was also followed by this Court in the petitioner's own case and an order dated 29.08.2016 rendered in W.P.No.12459 of 2014. The learned counsel also refers to the decision of this Court rendered in Summer India Textiles Private Limited. Vs. Commercial Tax Officers, (2013) 61 VST 218 (Mad).

7.Per contra, learned counsel for the respondent submits that the decision rendered in the context of Section 18 of the above Act cannot be applied to the facts of the present case. He further submits that the petitioner has an alternate remedy by way of an appeal before the Appellate Deputy Commissioner under Section 51 of the said Act. The learned counsel for the respondent therefore prays for dismissal of the present writ petition by directing the petitioner to approach the Appellate Deputy Commissioner.

8.I have considered the submission of the learned counsel for the petitioner and the respondent. The purpose of allowing input tax credit on capital goods and inputs are to reduce the cascading effect of the tax on the products / goods sold by a

dealer under the provisions of the said Act. Under Section 19 (3) of the Act every registered dealer, is allowed into tax credit in the manner prescribed on the purchase of capital goods for use in the manufacture of taxable goods. The only restriction that is contained under the provision of Sub Section (6) of the Act.

Section 19 Input Tax Credit:-

(3) (a) Every registered dealer, in respect of purchases of capital goods *for use in the manufacture of taxable goods, shall be allowed input tax credit in the manner prescribed.

(b) Deduction of such input tax credit shall be allowed only after the commencement of commercial production and over a period of three years in the manner as may be prescribed. After the expiry of three years, the unavailed input tax credit shall lapse to Government.

(c) Input tax credit shall be allowed for the tax paid under section 12 of the Act, subject to clauses (a) and (b) of this sub-section.

9. The prescribed procedure is in the Rule 10(4)(a) of the TNVAT Rules, 2007 for availing credit. Rule 10(4)(a) and (b) of the Rules reads as under:-

Rule 10(4)(a) The registered dealer who claims input tax credit on capital goods under clause (b) of sub-section (3) of section 19, shall within thirty days from date of commencement of commercial production intimate the said date to the assessing authority under whose jurisdiction his principal place of business is situated.

Rule 10(4)(b) In respect of capital goods purchased within the State, the registered dealer shall be entitled to avail upto fifty per cent of the input tax credit in the same financial year and the balance of the input tax credit before the end of the third financial year, provided the said capital goods are in possession of the dealer. After the expiry of the third financial year, the unavailed input tax credit, if any, shall lapse to Government.

Provided that a registered dealer who makes purchase of parts and accessories for capital goods already purchased and use in manufacture of taxable goods is entitled to input tax credit relating to such goods in the month of

purchase or thereafter.

10.It is noticed that under the scheme of the Act, input tax credit can be availed on the strength of the invoice on the tax paid by the registered dealer who sells such capital goods or input. As a person availing input tax credit, the petitioner had to merely satisfy that the tax reflected in the invoice was paid by the registered dealer who sold the capital goods to it.

11.Even if the registered dealer had deliberately paid tax in excess and passed on the incidence of such tax to the petitioner with a view to liquidate the excess credit of input tax accumulated in their hand, the petitioner cannot be denied of the input tax credit of tax paid and reflected in the invoice.

12.Under those circumstances, the option available to the commercial tax department would be to recover the amount of tax passed on in excess from the registered dealer who sold such capital goods to the petitioner if it facilitated the petitioner to avail credit of such tax if such tax was otherwise not payable.

13.In this case, it is not the case of the respondent that there was deliberate ploy on the part of the dealer who sold the capital goods to the petitioner by charging tax at 12.5% to liquidate accumulated credit. In my view, whether the tax was paid at 4% or 12.5% as the case may be irrelevant as far as the respondent is concerned as the issue is revenue neutral. I therefore see no reason why credit availed by the petitioner should be disallowed particularly in the light of the fact that intention of the legislature is to reduce the cascading effect of the tax the final product.

14.Though the decision in Sara Leathers Vs. Commercial Tax Officer, (2010) 30 VST 581 (Mad) was rendered in the context of Section 18 of the Act, nevertheless it was in the context of refund of the tax paid by the said dealer on the capital goods in excess to the said Sara Leathers. The court allowed refund of the tax under Section 18 of the Act. The operative portion of the said order reads as under:-

5.Given the fact that the choice of an adjustment of the input tax credit is given to the assessee, the question of a suo motu, adjustment by the Revenue, hence, does not arise, more so, when an assessee seeks a refund of the ITC as provided for under subsection (2). It is admitted that the petitioner had in fact paid the tax at 12.5 per cent which could not be refuted by the seller. If there had been a charging of tax by the seller when effected the sale to the purchaser at the rate over and above what is payable under the Act, all that the Revenue

could do is to proceed against the seller of the goods for charging the purchaser at a rate not legally sustainable. Equally so, unlike in the earlier provisions of the Repealed Act, once the purchaser proves as regards the actual payment of tax at a rate which is not as per the provisions of the Act, the question of proving the passing on of the liability does not arise. The provisions contained under section 19 of the Act relating to input tax credit, hence, herein assumes significance in considering the claim of refund under section 18(2) of the Act. In the circumstances, going by the very provisions of section 18(1) of the Act, given the fact that the sale by the petitioner is zero rated and that the petitioner is entitled to the benefit of section 18(2) of the Act for the refund of the input tax paid on the purchase of goods under the stated circumstances, the petitioner's claim for refund of amount paid as per the assessment order has to be given in toto without any adjustment whatsoever.

15. Following the decision rendered in Sara Leathers' case cited supra, the decision of this court in petitioner's own case in W.P.No.12459 of 2014 in order dated 29.08.2016, which allowed relief to the petitioner after referring to the decision rendered in TVL Tata Refractories Ltd Vs. The Commercial Tax Officer in W.P.Nos.5614 and 5615 of 2008 in order dated 17.11.2014 and in the view of the decision contained herein the petitioner is entitled succeed.

16. In the light of the above discussion, I find no reasons to sustain the impugned order. The impugned order dated 18.09.2015 passed by the respondent in TIN:339109TIN:33910904989/2006-07 is quashed with consequential relief to the petitioner.

17. The present Writ Petition is allowed. No cost. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CO)

//True Copy//

Sub Assistant Registrar

Jen

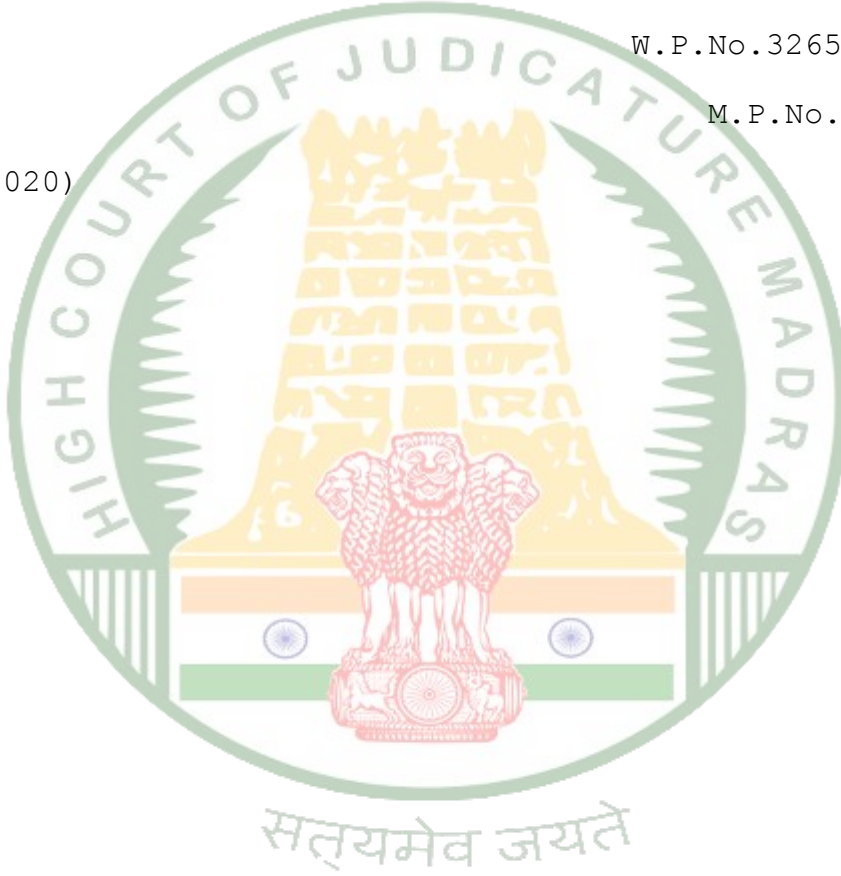
To

The Deputy Commissioner (CT) - IV (FAC),
Large Taxpayers Unit,
34 (Old No.123) 'Dugar Towers',
Marshal Road, Egmore,
Chennai - 600 008.

+lcc to Mr.N.Inbarajan, Advocate, S.R.No. 3070
+lcc to the Special Government Pleader, S.R.No. 3595

MR (CO)
GN (03/03/2020)

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