IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.12.2022

CORAM

THE HONOURABLE **DR. JUSTICE ANITA SUMANTH**

W.P.No.30970, 30974, 30977, 30972, 30980, 30971, 30973, 30978, 30979 & 30975 of 2019

WP.No.30970 of 2019

M/s.Daimler India Commercial
Vechicles Pvt. Ltd.
(Represented by its Authorized Signatory)
No. 8-B, SIPCOT Industrial Estate,
Oragadam, Mathur Post,
Sriperumbudur Taluk
Kancheepuram District-602 105 ...Petitioner

Vs.

1.Joint Commissioner (ST)
MoU Cell
SIPCOT Premises
Chennai-600 008.
2.The Managing Director
SIPCOT Ltd.,
Egmore, Chennai 600 008.
3.The Assistant Commissioner (ST)
Oragadam Assessment Circle
Padapai-601 301.
4.Commissioner of State Taxes
Chepauk, Chennai 05.
5.Government of Tamil Nadu
Represented Through its Finance Secretary
Tamil Nadu Secretariat, Chennai 600 009. ...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of certiorari calling for the records relating to the Impugned order in Letter No. 1 / 2018 / Daimler / CG / dated 19.11.2018 passed by the 1st Respondent and quash the same and direct the 1st Respondent to refund the entire VAT paid on Capital Goods by the Petitioner.

For Petitioner : Mr.Raghavan Ramabadran

For Respondent : Mr.Haja Nazirudeen
Additional Advocate General for
: Mr.V.Prasantha Kiran [R1, R2 & R4]
Government Advocate
: Mr.R.U.Dinesh Rajkumar [R5]
Additional Government Pleader
: Ms.A.Suganya [R2]

ORDER

The issue arising in these writ petitions relates to the refund of input tax credit (ITC) under the provisions of the Tamil Nadu Value Added Tax Act, 2006 (in short 'Act'). The petitioner had entered into an memorandum of understanding (MoU) with the Government of Tamil Nadu for setting up of a ultra mega power project in SIPCOT.

2. The MoU provides for various incentives including the refund of ITC. Para 5(f) (ii) of MoU reads as follows:

> *(f) Refund of Input VAT:*
>
> .....
>
> *(ii) For the Proposed Ultra Mega Project: Input VAT for purchase made in Tamil Nadu shall be refunded as Investment Promotion Subsidy for a period concurrent with the period of Output VAT + CST refund. Inputs eligible for VAT refund will*

include raw materials, consumables, spare parts, packing materials, components and accessories (but excluding high speed diesel, light diesel oil and molasses etc.) purchased within Tamil Nadu and used for manufacturing in the Project. This refund of input VAT will be eligible only if the commodity purchased by the project is not a subject matter of any output VAT based incentive for its supplier or manufacturer in the previous VAT Chain since the input VAT is refunded, there will be no set-off or Input Tax Credit. Input VAT refund shall not be subjected to the overall ceiling of 115% Output VAT + CST refund incentive. After the relevant period for refund of Input VAT under the MoU is terminated, the normal procedure with respect to set-off against Output VAT or as Input Tax credit shall apply, in accordance with VAT Law.

3. The petitioner had, as a consequence, sought refund of various amounts and orders had come to be passed by authorities restricting the refund granted. The claim of ITC had been rejected on the ground that such refund would have to be tested on the anvil of Section 19 of the Act that sets out certain conditions there for. In the writ petition filed, the petitioner has conceded to some of the restrictions made.

4. The ultimate analysis of the (i) refund claims put forth by the petitioner (ii) amounts not pursued by the petitioner at the stage of writ petitions are tabulated below:

	W.P.Nos.	*30970 of 2019*	*30972 of 2019*	*30974 of 2019*	*30977 of 2019*	*30980 of 2019*
	Year	*2011-12*	*2012-13*	*2013-14*	*2014-15*	*2015-16*
Sl. No.	*Particulars*	*Amount*				
1	*Refund Claimed*	*2,18,64,400*	*12,08,09,715*	*1,90,95,971*	*4,45,55,430*	*2,41,84,460*
2	*Refund Allowed*	*1,50,38,718*	*7,13,84,889*	*1,50,01,879*	*4,14,76,024*	*1,80,57,148*

3	Refund Rejected (A+B+C+D+E)	68,25,682	4,94,24,826	40,94,092	30,79,406	61,27,312
A	MOU Vendor claim	3,31,060	1,96,35,282	2,02,372	17,24,350	32,46,600
B	Excess claim made than Annexure-I	23,31,252	13,85,594	7,17,430	-	-
C	CST Purchases					50,989
	Refund not contested (A+B+C)	26,62,312	2,10,20,876	9,19,802	17,24,350	32,97,589
D	Ineligible capital goods claim	37,81,685	42,91,084	3,52,029	57,125	12,35,616
E	Ineligible claim beyond 90 days under Section 19(11) of TNVAT Act	3,81,327	2,41,12,866	27,70,975	12,97,931	16,39,107
	Refund Contested (D+E)	41,63,012	2,84,03,950	31,23,004	13,55,056	28,74,723
	References					
	Para Number of the Affidavit	18	18	18	18	18
	Page Number of the Index dated 24.10.2019 (Impugned Order)	71	94	120	142	164

SUMMARY OF DISPUTED REFUND AMOUNT – INPUTS

	Writ Petition Number	30971 of 2019	30973 of 2019	30975 of 2019	30978 of 2019	30979 of 2019
	Year	2012-13	2013-14	2014-15	2015-16	2016-17
Sl.No.	Particulars	Amount				
1	Refund Claimed	7,88,37,909	23,30,96,259	65,37,54,776	71,68,84,544	85,39,41,938
2	Refund Allowed	6,38,49,799	19,80,91,252	39,70,37,667	71,40,83,732	64,70,15,046
3	Refund Rejected (A+B+C+D+E+F+G+H)	1,49,88,110	3,50,05,007	25,67,17,109	28,00,812	20,69,26,892
A	ITC Reversal u/s 192(2)(V) of the TNVAT Act	3,31,060	3,17,23,761	25,44,13,244	-	-
B	Closing Stock	23,31,252	-	-	-	20,68,52,232
C	Input on Capital goods and trading goods	1,10,39,397	-	-	-	-

D	*Purchase from MoU vendor*	39,15,439	-	-	-	-
	Refund not contested (A+B+C+D)	1,76,17,148	3,17,23,761	25,44,13,244	-	20,68,52,232
E	*RC Cancellation*	9,081	5,52,432	1,169	21,606	36,962
F	*Ineligible claim beyond 90 days under Section 19(11) of TNVAT Act*	-	24,83,069	19,13,121	19,04,237	37,698
G	*Vendor paid less tax*	-	1,85,318	2,95,999	8,74,969	-
H	*Reversal u/s 19 5(c) of the TNVAT Act*	-	60,427	93,576	-	-
	Refund Contested (E+F+G+H)	9,081	32,81,246	23,03,865	28,00,812	74,660
	References					
	Para Number of the Affidavit	18	21	19	17	17
	Page Number of the Index dated 24.10.2019 (Impugned Order)	54	79	95	112	126

5. The matter was adjourned on 29.11.2022 after directing the learned Additional Government Pleader, who appears for the State, to produce the records relating to and culminating into MoU dated 07.07.2008, entered into between the State of Tamil Nadu and the petitioner. The direction was given specifically to understand the role played by the Commercial Taxes Department in such matters.

6. Today, letter bearing No.7916/C1/2021-2 dated 01.12.2022 is placed before me wherein the Secretary to Government conveys to the Principal Secretary/Commissioner of Commercial Taxes Department the

position that refund is liable to be granted by the Commercial Taxes Department under MoU dated 07.07.2022, without reference to the provisions of the law relating to ITC. Mr.Prasanth Kiran, learned Government Advocate, would convey that the Commercial Taxes Department accedes to this position.

7. In light of the above, nothing further survives in these matter and these writ petitions are allowed, to the extent as above. Let the refunds be paid over expeditiously. No costs.

02.12.2022

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Index : Yes/No
Speaking Order/Non speaking Order

To
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DR.ANITA SUMANTH,J.
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