IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.10.2016

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.Nos.25596 to 25601 of 2014 and
MP.Nos.1to1 of 2014

W.P.No.25596 of 2014

Schwing Stetter India Pvt.Ltd.,
[rep. by its General Manager-Finance
& Accounts]
Kancheepuram District. .. Petitioner

vs.

The Assistant Commissioner (CT)
Sriperumbudhur Assessment Circle
Varadarajapuram 600 123. .. Respondent

PRAYER : Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of Certiorari to call for the records on the files of the respondent-herein in CST.No.722138/2007-08, CST.No.722138/2008-2009, CST.NO.722138/2009-2010, CST No.722138/2010-2011, CST NO.722138/2011-2012 and CST NO.722138/2012-2013 dated 28.08.2014, and quash the same.

For Petitioner : Mr.N.Prasad
(in all W.Ps)

For Respondent : Mr.S.Kanmani Annamalai
(in all W.Ps) Addl.Govt. Pleader

C O M M O N O R D E R

Heard Mr.N.Prasad, learned counsel appearing for the petitioner and Mr.S.Kanmani Annamalai, learned Additional Government Pleader appearing for the respondent in all Writ Petitions. With the consent of the learned counsel appearing on either side, the Writ Petitions are taken up for disposal.

2.In all these Writ Petitions, the petitioner has challenged the orders of assessment dated 28.08.2014, by which the respondent has imposed interest under Section 42(3) of the Tamil

Nadu Value Added Tax Act, 2006 [TNVAT Act], read with section 9 (2-B) of the Central Sales Tax Act, 1956 [CST Act], for the assessment years 2007-08 to 2012-13.

3.The petitioner's Company is the registered dealer under the provisions of Tamil Nadu Value Added Tax Act, 2006 [TNVAT Act] and also under the Central Sales Tax Act, 1956 [CST Act] ; their factory is situated at Sriperumbudur, and they are engaged in the activity of manufacture and sale of Batching Plan, Concrete mixtures, Concrete pump and its spares. It is the case of the petitioner that they have effected inter-state sales to the registered dealers, who can issue Form -C and in respect of sales effected to non-dealers, the differential rate in the State of Tamil Nadu, as per the TNVAT Act, will be paid by them.

4.In these Writ Petitions, the petitioner among other grounds, have contended that the impugned orders of the respondent dated 28.07.2014, suffer from an error of law apparent on the face of the records and the respondent failed to advert to the relevant provisions of section 42(3) of the TNVAT Act and section 9(2) of the TNVAT Act read with section 9(2) of the CST ACT and therefore the demand for interest is contrary to those provisions. The petitioner has also contented that the impugned orders suffer from non-application of mind. In support of their contentions, they relied on the Judgment of the Hon'ble Supreme Court in the case of EID PARRY (INDIA) LTD., v. ASSISTANT COMMISSIONER OF COMMERCIAL TAXES, [142 STC 543 (SC)], wherein the Hon'ble Supreme Court held that where the differential tax is paid prior to the notice of the assessment and demand, liability for interest does not arise. Therefore, it is submitted that whenever C-Forms are produced, which even at a later date, the Assessing Officer can accept the same and revise the assessment and the Assessing Officer does not become functus officio, merely because, the assessment order has been passed.

5.In this regard it is relevant to point out that based on the decision of the Hon'ble Full Bench of this Court in ARUL MURUGAN AND COMPANY[51 STC 381) and the decision of the Hon'ble Supreme Court, in the case VIPRO FOUNDRY ENGINEERS LIMITED [81 STC 169], the Commissioner of Commercial Taxes issued Circular dated 30.04.1993, as to how the Assessing Officer has to act when Declarations in Form-'E' and Form-'F' are produced after the assessment is completed. After referring to the relevant Rules, the Commissioner directed that the Assessing Officers can allow Form-C, Form E-I, E-II and F-Forms, to be filed after completion of assessment on sufficient cause. This was reiterated in another Circular dated 30.04.1993, after having found that some of the Assessing Officers have taken a stand that they have do not have jurisdiction to accept those Forms, after the assessment is over.

6.In the instant case, the petitioner themselves have preferred a Revision Petition before the First Revisional Authority, as against the earlier assessment order passed under section 53 of the TNGST Act, for the assessment year 2005-2006. However, the said Revision Petition was dismissed, confirming the order of the Assessing Authority. As against said order, the petitioner preferred Second Revision, under section 55 of the TNGST Act, before the Additional Commissioner of Commercial Taxes (Revision Petition), which was taken on file as R.P.No.J2/138/2015 and an order was passed on 24.06.2016, by which the petitioner's Revision Petition was allowed.

7.Since for the identical transaction, the petitioner having succeeded before the Second Revisional Authority, it goes without saying that such a direction and order would bind the Assessing Officer. However, since the order of the Revisional Authority dated 24.06.2016, was passed subsequent to the impugned orders viz.28.08.2014, this Court is inclined to remit the matter back to the respondent to take note of the order passed by the Revisional Authority and redo the entire exercise by following the order passed in R.P.No.J2/138/2015 dated 24.06.2016, as it is stated that the transactions are identical.

8.In the light of the above, there will be a direction to the respondent to keep the impugned proceedings in abeyance, apply the decision in R.P.No.J2/138/2015 dated 24.06.2016, afford an opportunity of personal hearing to the petitioner, verify the records, if C-Forms are produced, the same shall be accepted and redo the entire exercise in accordance with law. Till such orders are passed, the impugned demands shall not be enforced and shall abide by the order to be passed afresh, in terms of the above direction.

The Writ Petitions are disposed of on the above terms. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

rpa

To

The Assistant Commissioner (CT)
Sriperumbudhur Assessment Circle
Varadarajapuram 600 123.

+1cc to M/s. N. Inbarajan, Advocate, S.R.No.57408
+1cc to the Government Pleader, S.R.No.57409

MV(CO)
EU(21/11/2016)

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