IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.09.2016

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.Nos.34470 to 34477 of 2016 &
connected WMPs

W.P.No.34470 of 2016

Daon Auto Parts (India) Pvt. Ltd.
(formerly known as Hwseung Autoparts
(India) Pvt.Limited
rep. by its Managing Director Seoyoochul
.. Petitioner in all Petitions

vs.

The Assistant Commissioner (CT)
Sriperambudur Assessment Circle
Varadarajapuram 602 103. .. Respondent in all Petitions

W.P.34470 to 34473/2016:-

Certiorarified Mandamus, or any other appropriate writ, order or direction under Article 226 of the Constitution of India, calling for the records on the files of the respondent-herein in TIN:33701665051 dated 24.08.2016, quashing the same in so far as it relates to the assessment year (i)TNVAT/2009-10 (ii)TNVAT/2010-11 (iii)TNVAT/2011-12 (iv)TNVAT/2012-13 while directing the respondent to reopen the assessment dated 25.02.2016 and accept the Industrial Input Certificates as contemplated by Rule 6(3)(b), filed by the petitioners on 18.04.2016, along with their application dated 12.04.2016 and as reiterated on 30.05.2016.

W.P.No.34474 to 34477/2016:

Certiorari, or any other appropriate writ, orderor direction under Article 226 of the Constitution of India, calling for the records on the file of the Respondent herein in (i)TIN 33701665051/2009-10 (ii)TIN 33701665051/2010-11 (iii)TIN 33701665051/2011-12 (iv)TIN 33701665051/2012-13 dated 25.02.2016, quashing the same.

For Petitioner (in all W.Ps)	: Mr.N.SriPrakash
For Respondents (in all W.Ps)	: Mr.S.Kanmani Annamalai Addl.Govt. Pleader

C O M M O N O R D E R

Heard Mr.N.SriPrakash, learned counsel appearing for the petitioner and Mr.S.Kanmani Annamalai, learned Additional Government Pleader (Taxes) appearing for the respondents. Since the issue involved in all these Writ Petitions lies in a very narrow compass, with the consent of the learned counsel appearing on either side, the Writ Petitions are taken up for disposal.

2.The petitioner-Company, is a registered dealer on the file of the respondent under the provisions of the Tamil Nadu Value Added Tax Act, 2006 [TNVAT Act] and also under the Central Sales Tax Act, 1956 [CST Act]. There are eight Writ Petitions, which can be grouped into two. The first set of Writ Petitions viz. W.P.Nos.34470 to 34473 of 2016, have been filed challenging the intimation given by the Assessing Officer to the petitioner dated 24.08.2016, stating that the Assessing Officer, has no power to revise the assessments and cannot accept the Industrial Input Certificate sought to be produced by the petitioner and the petitioner was requested to file Appeals. The other set of Writ Petitions viz. W.P.Nos.34474 to 34477 of 2016, have been filed challenging the assessment orders dated 25.02.2016, for the assessment years 2009-10 to 2012-13.

3.One of the components under which the petitioner has been taxed, which appears to be the major issue for all the four assessment years, was pertaining to the local sale of Rubber Profile, on which tax has been paid at 4%. The Assessing Officer taxed the same at 12%, in the absence of Industrial Input Certificate. So far as the remaining issues for all the assessment years, appears to be minor issues. One fact that has to be pointed out is, the petitioner did not respond to the pre-revision notices issued by the respondent. In effect in the Writ Petitions filed, more particularly in paragraph No.13, the petitioner sought to explain as to why they did not respond to the pre-revision notices and would in fact state that the respondent was aware of the E-Mail I.D. of the Managing Director and therefore, the intimation could have been sent on him.

4.Prima facie, I am not satisfied with the explanation, but, in any event, since there is a legal issue involved in these Writ Petitions, they are taken up for consideration.

5.In the first set of Writ Petitions, after assessments were completed by orders dated 25.2.2016, the petitioner submitted a letter on 30.05.2016, stating that they are in possession of the Industrial Input Certificate for the relevant transaction and they requested the Assessing Officer to accept the same and revise the orders of assessment. The Assessing Officer opined that after he has passed orders of assessment, he cannot revise the same and advised the petitioner to file Appeals. The correctness of the said Intimation is challenged in the first set of Writ Petitions.

6.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'blel 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. In fact in the impugned Intimation, such is the stand taken by the respondent Assessing Officer.

7.Thus, in the light of the law laid down by the Hon'ble Full Bench of this Court and the Hon'ble Supreme Court and in view of the instructions given by the Commissioner of Commercial Taxes, the respondent/Assessing Officer was not justified in refusing to accept the Industrial Input Certificate, which essentially a document relied on to claim concessional rate of tax. Therefore, impugned intimation reflects an incorrect position of law and therefore, calls for interference. Accordingly, the W.P.Nos.34470 to 34473 of 2016 are allowed and the impugned Intimations dated 24.08.2016, are set aside.

8(i) Now, coming to the other set of four Writ Petitions, which have been filed challenging the orders of assessment, as pointed out earlier, intimation issued for all the four years, is with regard to the rate of tax on sale of Rubber Profile. If the Industrial Input Certificate is produced, then the petitioner is entitled for concessional rate of tax. However, due to non production of the same, the respondent levied tax at 12%. The Intimation given by the Assessing Officer dated 24.08.2016, has been set aside by this Court in W.P.Nos. 34470 to 34473 of 2016, by this Order. Therefore, to that extent, the impugned assessment orders have to be set aside and remanded for fresh consideration.

(ii) With regard to the other heads, the learned counsel for the petitioner would submit that the petitioner is ready and willing to pay the entire disputed tax and they may be granted an opportunity to appear before the Assessing Officer and place the materials to show that it is not a case for revision of assessments.

9.I have heard the learned Additional Government Pleader, on the above submissions.

11.Considering the facts and circumstances of the case and the decision taken by this Court in W.P.Nos.34470 to 34473 of 2016, this is a fit case where the petitioner can be relegated to appear before the Assessing Officer, subject to terms.

12.Accordingly,

(i)W.P.Nos.34470 to 34473 of 2016 are allowed and the impugned Intimations are set aside.

(ii)In the light of the order passed in W.P.Nos.34470 to 34473 of 2016, the findings rendered by the Assessing Officer in so far as it relates to sale of Rubber Profile is set aside and the respondent is directed to take into consideration the Industrial Input Certificate and redo the assessment on the said head. In respect of other heads on which the assessments have been completed, the petitioner is directed to pay the entire disputed tax within a period of two weeks from the date of receipt of a copy of this order, after which, the petitioner is granted fifteen days time to submit their objections and after affording an opportunity of personal hearing to the petitioner, the respondent shall redo the assessments in accordance with law. W.P.Nos.34473 to 34477 of 2016, are allowed on the above terms. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

rpa

To

The Assistant Commissioner (CT)
Sriperambudur Assessment Circle
Varadarajapuram 602 103.

+1cc to Mr.N.Inbarajan, Advocate, S.R.No.55985
+1cc to the Spl.Government Pleader, S.R.No.56134

W.P.Nos.34470 to 34477 of 2016

CTR(CO)
PMK.26.10.2016