IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.12.2021

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN
and
THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.A. Nos. 2886, 2888, 2900 and 2901 of 2021
and
C.M.P. Nos. 19592, 19415, 19402 and 19585 of 2021

M/s. Hanon Automotive Systems India Pvt. Ltd.
(Formerly known as Visteon Automotive Systems Pvt. Ltd.)
Rep. by its Authorized Signatory
Mr. T.A. Bhaskaran
Keekaranai Village
Malrosapuram Post
Chengalpet – 603 204. .. Appellant in all the appeals/ Petitioner in all WPS

Versus

The Deputy Commissioner (CT) IV
Large Taxpayers Unit
V Floor, Dugar Towers
No.34, Marshalls Road
Chennai – 600 008. .. Respondent in all the appeals/ Respondents in all WPs

Appeals filed under Clause 15 of the Letters Patent to set aside the common order dated 19.07.2021 passed in W.P. Nos. 22198 to 22201 of 2016.

Common Prayer: Writ Petition filed under Article 226 of the constitution of India praying to issue a writ of Certiorarified Mandamus, to call for the records of the Respondent in the impugned Revision order in TIN Nos. 33910904989/2011-12, 33910904989/2012-13, 33910904989/2013-14, and 33910904989/2014-15 respectively, dated 31.05.2016, quash the same as the respondent has passed the impugned order dated 31.05.2016 violating principles of natural justice since input tax credit has been reversed for alleged mismatch between sales reported by the vendors and purchases reported by the petitioner without providing any details of alleged mismatch despite multiple requests and travelling beyond the scope of Entry 138, Part-B, First Schedule, Tamil Nadu Value Added Tax Act 2006 and used cars in insisting upon an industrial input certificate which is not mandated by law for sale of tools and used cars.

For Appellant : Mr. K.Vaitheeswaran
in all the appeals

For Respondent : Mr. V. Prashanth Kiran
Government Advocate (Taxes)
in all the appeals

COMMON JUDGMENT

(Judgment of the Court was delivered by R.Mahadevan, J.)

These intra-court appeals have been filed challenging the common order dated 19.07.2021 passed in W.P. Nos. 22198 to 22201 of 2016.

2. For the sake of brevity, the relief sought in the writ petitions is to issue a writ of certiorarified mandamus to call for the records of the respondent in the impugned revision order in TIN Nos.33910904989/2011-12, 33910904989/2012-13, 33910904989/2013-14 and 33910904989/2014-15.

3. Facts leading to the filing of these writ appeals would run thus:

3.1. The appellant is engaged in the business of manufacture and sale of automobile components. They are registered as dealer with the respondent under the Tamil Nadu Value Added Tax Act, 2006 (in short, 'The Act'). For the assessment years 2011-12, 2012-13, 2013-14 and 2014-15, the appellant availed input tax credit by furnishing all the documentary evidence and filed their return. On receipt of the same, the respondent issued pre-revision notices proposing to impose differential Value Added Tax (VAT) at the rate of 9.5% on the sale of goods to Hundai Motors and Ford India alleging non-production of industrial input certificate.

3.2 . According to the petitioner, scrap fall under Entry 67A, Part B of the First Schedule and tools under Entry 138, Part -B, First Schedule and sale of used cars are subjected to 5% tax, vide G.O.Ms.No.78 dated 11.07.2011 and the rate of tax for scraps, tools and used cars is 5% without any requirement of industrial input certificate. In the pre-assessment notices, it was proposed to impose tax on the ground that there is a mismatch between the purchases reported by the appellant and the corresponding sales reported by the vendors. However, no list was enclosed or details provided in the said notices for the appellant to cross verify and provide necessary information. On receipt of the same, the appellant sent a detailed reply dated 07.10.2015 pointing out several procedural infirmities and requested to furnish the list to enable them to file proper reply. It was also pointed out in the reply that the sale of scrap is eligible for 5% tax without the requirement of industrial input certificate. Notwithstanding such reply, the Assessing officer passed the orders dated 30.05.2016 imposing higher rate of tax on the sale of scrap, tools and used cars on the ground that industrial input certificate has not been produced.

3.3. When it was pointed out by the appellant regarding certain arithmetical error, applicability of the rate of tax for scrap, tools and used cars, etc., the Assessing Officer accepted the same and passed the revised orders on 31.05.2016 concluding that the scrap qualifies only 5% rate without the requirement of industrial input certificate, but confirmed the demand on sale of tools and used cars for non-production of industrial input certificate and also confirmed the input tax credit reversal and alleged mismatch between purchases reported by the appellant and sales reflected in the statement of vendors without providing the details or list of such dealers.

3.4. Challenging the said orders of assessment dated 31.05.2016, the appellant preferred WP.Nos.22198 to 22201 of 2016 before the learned single Judge mainly on the ground that in the absence of the list furnished by the Assessing Officer, the appellant could not file an effective reply with respect to the so-called mismatch between the purchases reported by the appellant and the sales reported by the vendors.

3.5. However, by order dated 19.07.2021, the learned single Judge refused to interfere with the assessment orders dated 31.05.2016 on the ground that there is an alternative remedy available to the appellant and hence, the writ petitions filed by them without exhausting such remedy, are not maintainable and accordingly, all the writ petitions were dismissed. Therefore, these writ appeals by the appellant / assessee.

4.The learned counsel for the appellant would contend that on receipt of the pre-assessment notices, the appellant made a request to furnish the details of the documents, based on which the input tax credit was proposed to be rejected. Despite the same, such details were not furnished to the appellant, which prevented them from submitting an effective reply canvassing both legal and factual aspects. Therefore, the orders dated 31.05.2016 passed by the respondent are in gross violation of principles of natural justice. The learned counsel would further contend that when there is violation of principles of natural justice, invoking the discretionary relief provided under Article 226 of The Constitution of India is proper; and the existence of alternate remedy is not a bar for filing writ petitions. However, the learned Single Judge relegated the appellant to approach the appellate authority by filing appeals by the orders impugned herein, which are arbitrary, erroneous and against the setted principles of law.

5.On the above contentions of the learned counsel for the appellant, we have heard the learned Government Advocate (Taxes) appearing for the respondent, who supported the orders of assessment and also perused the materials placed.

6.It is the specific plea of the appellant that the Assessing Officer, without furnishing the list containing the details of the sales made by the appellant's vendors has concluded that there is a mismatch between the purchases reported by the appellant and the corresponding sales reported by the vendors. Even in the reply to the pre-assessment notices, the appellant specifically requested the Assessing Officer to furnish such a list to enable them to submit an effective representation. However, the respondent, without furnishing the list, has passed the orders dated 31.05.2016 impugned in the writ petitions, levying tax on the appellant, which are arbitrary, illegal and violative of the principles of natural justice, in the opinion of this court. However, the learned Single Judge while disposing of the writ petitions, granted liberty to the appellant to file appeals before the appellate authority. Such course adopted may be an empty formality, especially when the appellant complained of the violation of the principles of natural justice and admittedly, the required details were not furnished by Assessing officer, despite repeated demands. Therefore, on this score alone, we are inclined to set aside the orders passed by the learned single Judge as well as the Assessing Officer and remand the matter back to the respondent for fresh consideration.

7.Accordingly, the order dated 19.07.2021 passed in WP Nos. 22198 to 22201 of 2016 as well as the assessment orders dated 31.05.2016 passed by the respondent, are set aside and the matter is remanded back to the assessing officer/respondent for fresh consideration. The respondent shall furnish all the copies of material documents to the appellant, afford adequate opportunity to submit their reply/objection and thereafter, pass a fresh order on merits and in accordance with law, within a period of eight (8) weeks from the date of receipt of a copy of this judgment.

8.All the writ appeals stand allowed to the extent as indicated above. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

Maya/rsh

To

The Deputy Commissioner (CT) IV
Large Taxpayers Unit
V Floor, Dugar Towers
No.34, Marshalls Road
Chennai - 600 008.

+4cc to Mr.K.Vaitheeswaran, Advocate, S.R.No.64141-64144
+1cc to the Special Government Pleader(Taxes), S.R.No.64742

WA Nos. 2886, 2888, 2900
and 2901 of 2021

AK-II(CO)
SB(31/01/2022)