BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : **06.09.2021**

CORAM

THE HON'BLE MR.JUSTICE R.SURESH KUMAR

W.P.(MD)No.15924 of 2021

and

W.M.P(MD)Nos.12847 & 12849 of 2021

J.K. Engineering And Electro Platers
Rep. by its Proprietrix Natarajan Bharathi,
3/317, Fourway Track, Tharanganendal,
Aviyoor (PO),
Kariapatti, Virudhunagar - 626 106. : Petitioner

-Vs-

The Assistant Commissioner (ST)-II,
Virudhunagar II Assessment Circle,
Commercial Taxes Buildings,
Virudhunagar. : Respondent

Prayer: Writ Petition filed under Article 226 of Constitution of India, to issue a Writ of Certiorarified Mandamus, call for the records on the file of the respondent in GSTIN 33ALDPB3684K1Z6 dated 18.11.2020 and to quash the same as illegal, arbitrary and in violation of the principles of natural justice, without jurisdiction and clear violation of Section 140(1) of the Tamil Nadu Goods and Services Act, 2017 and direct the respondent to pass assessment order afresh by considering the reply dated 14.10.2020 after affording an opportunity of personal hearing as contemplated under Section 75(4) of the Tamil Nadu Goods and Services Tax Act, 2017 within such time as may be directed by this court.

For Petitioner : Mr.N.Sudalaimuthu
For Respondents : Mr.R.Sureshkumar
Government Advocate

O R D E R

The prayer sought in this Writ Petition is for a Writ of Certiorarified Mandamus, to call for the records on the file of the respondent in GSTIN 33ALDPB3684K1Z6 dated 18.11.2020 and to quash the same as illegal, arbitrary and in violation of the principles of natural justice, without jurisdiction and clear violation of Section 140(1) of the Tamil Nadu Goods and Services Act, 2017 and direct the respondent to pass assessment order afresh by considering the reply dated 14.10.2020 after affording an opportunity of personal hearing as contemplated under Section 75(4) of the Tamil Nadu Goods and Services Tax Act, 2017.

2.The petitioner is an electroplates manufacturing unit and a registered dealer under Tamil Nadu Goods and Service Tax Act, 2017 (hereinafter referred to as "the Act"), vide registration GST No.33ALDPB3684K1Z6 in the State of Tamil Nadu.

3.While so, in respect of returns pertaining to June 2017, there has been a show cause notice issued by the respondent on 21.05.2019, stating that the petitioner had availed excess ITC to the extent of Rs. 11,19,929/-. In response to the said show cause notice, the petitioner had given a reply on 08.10.2020. However, in the meanwhile, it seems that another notice was issued by the respondent dated 21.02.2020. Therefore, almost in the similar line of the reply dated 08.10.2020, another reply was given by the petitioner on 14.10.2020 to the respondent.

4.However, the impugned assessment order dated 18.11.2020 has been issued, wherein, a specific stand has been taken by the respondent that on receipt of the DRC-01 notice, the taxable person has not filed any reply. Therefore, as per the documents available before the Assessment Officer, orders of assessment has been passed. Felt aggrieved over the said order of assessment dated 18.11.2020, the present writ petition has been filed by the petitioner.

5.Heard, Mr.N.Sudalaimuthu, learned Counsel appearing for the petitioner, who would submit that, initially a show cause notice was given by the Assistant Commissioner, Aruppukottai on 21.05.2019 and that has been promptly responded by way of reply dated 08.10.2020 with necessary annexures, which runs about more than 30 pages. But, in the meanwhile, once again show cause notice was issued by the present respondent, ie., the Assistant Commissioner, Virudhunagar II Assessment Circle, which became necessitated for the petitioner to give one more reply, of course, reiterating the contention of the earlier reply and accordingly, the second reply dated 14.10.2020 has been filed in person, which having been received and acknowledged by the respondent, the Assessment Officer himself by putting his signature in the office copy of the assessee. When that being so, the stand now taken by the respondent through the impugned order as if the petitioner has not given any reply to the show cause notice is absolutely unsustainable and therefore, the reply of the petitioner has not been considered, which is a fit case where, this court can show indulgence against the impugned order on the sole ground of non-considering the reply and therefore, the petitioner seeks indulgence of this court.

6.Per contra, Mr.R.Suresh Kumar, learned Government Advocate appearing for the respondent would submit that, the earlier authority, ie., the Assistant Commissioner (ST), Aruppukottai, might have issued a show cause notice on 21.05.2019, whether the same has been responded by the petitioner or not is immaterial and in this regard, the learned Government Advocate would rely upon the online notice given in Form DRC-01 under rule 142(1) of the Rules under the GST Act and such online notices, since was sent on 19.10.2020, the same according to the respondent since has not been replied by the petitioner, the respondent has proceeded to pass the impugned order of assessment stating that, the DRC-01 notice having been received by the petitioner, he has not chosen to respond by filing a reply and therefore, on that footing, by considering the documents available with the assessing officer, he has proceeded to issue the assessment order dated 18.11.2020, confirming the show cause notice and the same is sustainable, he contended.

7. I have considered the submissions made by the learned Counsel for the parties and have perused the materials placed before this court.

8. It is a fact that the Assistant Commissioner, Aruppukottai, by proceeding dated 21.05.2019, has issued a show cause notice and a copy of the same has been filed by the petitioner in this petition. This fact has been accepted by the respondent and a copy of the said notice has also been filed by the learned Government Advocate. The said notice has been responded by the petitioner assessee by reply dated 08.10.2020, with documents. In the meanwhile, since another notice has been issued by the present authority, probably, the case of the petitioner has been transmitted to the present authority, on 21.02.2020, in order to respond the same, the petitioner has given a reply once again on 14.10.2020 and the said reply was submitted to the respondent Assessment Officer in person and he having received the same has acknowledged by putting his signature and date and this is the evidence from the photocopy of the same filed in the typed set of documents, where the signature of the Assessment Officer can be compared with the signature in the impugned order. Therefore, *prima facie,* the stand taken by the petitioner has to be accepted.

9. However, the learned Government Advocate appearing for the respondent, by relying upon rule 142(1) of the Act has submitted that as per Rule 142(1), notice in summary shall be transmitted through online in Form GST DRC-01 and this kind of notice has been sent through online to the petitioner on 19.10.2020 and the same, since has not been responded, the respondent has proceeded to conclude the proceedings which culminate in the impugned order of assessment.

10. No doubt, the rule states that show cause notice in DRC-01 Form under Rule 142(1) can be sent through online, but in this case, before such DRC-01 notice sent through online, already a detailed show cause notice had been given, which had been responded towards both the authorities ie., the erstwhile authority as well as the present authority, ie., the Assessment Officer, since they had issued notice one time each and both the notices has been responded promptly by the petitioner. The second notice issued by the present

Assessment Officer, who is the respondent herein dated 21.02.2020, since has been responded on 14.10.2020 and the said reply having been received by the Assessment Officer, as it was acknowledged by him. Though, Form GST DRC-01 notice has been subsequently issued, even if reply for such notice has not been made by the petitioner, the respondent could have considered the earlier reply dated 14.10.2020, which he received only 5 days before the Form DRC-01 notice was issued through online. Therefore, the statement made by the Assessment Officer in the impugned order dated 18.11.2020, as if the petitioner has not replied to DRC-01 notice is a total non-application of mind, as the very detailed reply having been received by the respondent just 5 days prior to the said DRC-01 notice, the said reason ought not to have been stated by the respondent in the impugned order. Therefore, on that ground, this Court feels that the impugned order can very well be interfered with.

11.Accordingly, this Writ Petition is disposed of, with the following direction:

> *"that the impugned order is quashed and the matter is remanded to the respondent / Assessment Officer for reconsidering the same. While reconsidering the same, the reply submitted by the petitioner with documents dated 08.10.2020 as well as 14.10.2020, shall be taken into account and in this regard, if any personal hearing is required, the same can also be provided to the petitioner and after providing these opportunities, it is open to the respondent to proceed further and pass final orders of assessment as early as possible".*

12.With the above directions, this writ petition is disposed of. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (T & P)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

PNM/MR

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate/litigant concerned.

To

The Assistant Commissioner (ST)-II,
Virudhunagar II Assessment Circle,
Commercial Taxes Buildings,
Virudhunagar.

+1 CC to M/s.S.KARUNAKAR, Advocate (SR-28281[F] dated 06/09/2021)

+1 CC to M/s.GP (SR-28360[F] dated 07/09/2021)

Order made in
W.P.(MD)No.15924 of 2021
06.09.2021

DJ(CO)
RS/PM (01.11.2021) 5P 4C