IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **18.10.2023**

CORAM:

THE HON'BLE MR. JUSTICE KRISHNAN RAMASAMY

W.P. Nos.18634, 18639, 18641, 18645 & 18647 of 2021
and WMP Nos.19875, 19878, 19880, 19882 & 19883 of 2021

M/s.ATS ELGI Ltd.,
represented by its Assistant General Manager
Accounts & Finance,
No.S2A Private Industrial Estate,
Kurichi, Coimbatore ... Petitioner in all WPs

vs.

The Assistant Commissioner (ST)
Podanur Assessment Circle,
Coimbatore. ... Respondents in all WPs

Common Prayer : Writ Petitions filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records of the respondent in his proceedings in VAT No.33361803754/2011-12, 33361803754/2014-15, 33361803754/2012 13, 33361803754/2013-14 & 33361803754/2015-16, quash the assessment order dated 14.07.2021 passed therein.

In all WPs

For Petitioner : Mr.R.L.Ramani,
Senior Counsel

For Respondent : Ms.Amrita Dinakaran,
Govt. Advocate (Tax)

COMMON ORDER

All these writ petitions are filed challenging the impugned orders passed by the respondent, pertaining to the assessment years 2011-2012 to 2015-2016 passed by the respondent under the provisions of Tamil Nadu Value Added Tax Act, 2006 (Tamil Nadu No.32 of 2006) (in short, TNVAT Act).

2. The petitioner concern is a manufacturer of automotive garage equipments and components. The petitioner filed returns for the assessment years 2011-12, 2013-14, 2014-15 and 2015-16. The Enforcement Wing Officer had conducted a surprise inspection in the business premises of the petitioner and noticed as many as nine defects. Based on the same, revision of assessment was proposed u/s 27(1) of the TNVAT Act and accordingly, show cause notices dated 20.08.2018 were issued. Pursuant to the same, the petitioner filed detailed objections to the proposals raised therein. However, while rejecting the objections, the respondent passed impugned orders dated 14.07.2021 and confirmed the proposals raised in the show cause notices. Hence, the Writ Petitions.

3. Mr.R.L.Ramani, learned Senior Counsel for the petitioner would mainly contend that after mentioning the defects pointed out by the Enforcement Wing, at the end of the proposals, tax itself has been quantified and without making proper adjudication, demand for payment of tax has also been raised, which cannot be sustained. He would also contend that as regards defect Nos.1, 3 and 8 are concerned, the respondent has referred one particular aspect for which, though the petitioner submitted their reply, but the impugned assessment orders have been passed on different aspect, for which, no prior notice was issued to the petitioner. Therefore, the impugned orders were passed beyond the scope of the show cause notices.

4. The learned Senior counsel would also point out that even though the petitioner submitted their replies along with annexures as regards defect No.3, but impugned orders proceeded on the basis that as if no supporting documents were filed. As regards imposition of penalty under Section 27(4) of TNVAT Act, he would contend that no reasonable opportunity was afforded to the petitioner and that even the amendment to Section 27(4) regarding imposition of penalty came into effect from 29.01.2016, as such, the same can be applied for the period of two

months in respect of assessment year 2015-16, whereas, the respondent erroneously applied the amended provision retrospectively from the assessment years 2014-15 onwards. Therefore, the learned Senior counsel would urge this Court to set aside the impugned orders and remit the matter for fresh consideration after taking into the replies submitted by the petitioner and to deal with the issues raised in the show cause notices, while setting aside the impugned orders.

5. The learned Government Advocate (tax) appearing for the respondent would fairly submit that the show cause notices were issued raising the proposals on certain aspects, while the impugned orders were passed on entirely different aspects, for which, no opportunity was afforded to the petitioner. Therefore, since the impugned orders were passed beyond the scope of the show cause notices, the learned Government Advocate would submit that the matter may be remitted back to the respondent for reconsideration and for passing appropriate orders.

6. The learned Senior Counsel also submitted that still three issues have not been decided by the respondent and the same are pending with

the respondent in which case, the petitioner may be permitted to file additional reply and written arguments in case this Courts directs remittal of the matter to the respondent.

7. Heard the learned Senior Counsel appearing for the petitioner as well as the learned Government Advocate (tax) appearing for the respondent and perused the records.

8. A perusal of the show causes notices, replies submitted by the petitioners and the impugned orders challenged in the present Writ Petitions, would clearly reveal that the respondent referred certain aspects relating to the defect Nos.1, 3 and 8 in the show cause notices, whereas, he has not dealt with the same, but passed the impugned orders on different aspect. It appears that on the issue of replacement of defective spare parts during the warranty period, show cause notice was issued alleging that the petitioner received consideration for annual maintenance and there was transfer of property involved in replacement of goods and hence, the petitioner is liable to pay the tax. The petitioner filed their reply stating that it is not a case of annual maintenance contract, but it is a free replacement of defective parts during the

warranty period and there was no sale involved. But the respondent proceeded to hold that as if the goods are replaced free of cost, the petitioner is not eligible to claim the benefit of input tax credit and on this ground, he reversed the ITC amount, even though the same was not the subject matter of the show cause notice. Therefore, it is a case where the respondent has issued show cause notices on one ground, but confirmed the assessment on a totally different ground. As rightly contended by the learned Senior counsel the impugned orders came to be passed beyond the scope of the show cause notices and without providing opportunity to the petitioner which is clearly in violation of principles of natural justice. Therefore, this Court is of the view that the impugned orders cannot be sustained and the same are liable to be set aside.

9. Accordingly, the Writ Petitions are allowed and the respective impugned orders dated 14.07.2021 are set aside and the matter is remitted to the respondent for *de novo* assessment. The respondent shall deal with the issues referred to in the respective show cause notices including the issues which were not yet decided. The petitioner is at liberty to file their reply and advance arguments. The respondent shall

pass appropriate orders after taking into consideration of the reply as well as arguments to be made on behalf of the petitioner during personal hearing, in accordance with law, within a period of two months from the date of receipt of a copy of this order. No Costs. Consequently, the connected Miscellaneous Petitions are closed.

18.10.2023

Index: Yes/No
Speaking/Non-Speaking Order
Neutral Citation: Yes/No.
Rgr/suk

To

The Assistant Commissioner (ST)
Podanur Assessment Circle,
Coimbatore.

KRISHNAN RAMASAMY, J.

rgr/suk

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