IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.07.2025

CORAM :

THE HONOURABLE DR.JUSTICE ANITA SUMANTH
and
THE HONOURABLE MR.JUSTICE N.SENTHILKUMAR

W.A.Nos. 2329, 2331 & 2330 of 2025
and
C.M.P.Nos. 17683, 17679, 17680, 17678 & 17684 of 2025

W.A.Nos. 2329 & 2331 of 2025

Assistant Commissioner,
Ambur, Vellore. .. Appellant

vs

Comfort Shoe Components,
Rep. by its Proprietor Rafeeque Ahmed,
5/1, Aerikarai,
Ambur, Thirupathur – 635 802. .. Respondent

W.A.No. 2330 of 2025

Deputy Commercial Tax Officer,
Ambur, Vellore – 635 802. .. Appellant

vs

Comfort Shoe Components,
Rep. by its Proprietor Rafeeque Ahmed,
5/1, Aerikarai,
Ambur, Thirupathur – 635 802. .. Respondent

Prayer in W.A.No. 2329 of 2025: Appeal filed under Clause 15 of Letters Patent against order dated 14.12.2023 made in W.P.No. 34770 of 2023.

Prayer in W.A.No. 2330 of 2025: Appeal filed under Clause 15 of Letters Patent against order dated 14.12.2023 made in W.P.No. 34777 of 2023.

Prayer in W.A.No. 2331 of 2025: Appeal filed under Clause 15 of Letters Patent against order dated 14.12.2023 made in W.P.No. 34774 of 2023.

For Appellant	:	Ms.Amrita Dinakaran Government Advocate (in all WAs)
For Respondent	:	Ms.Jyoshna For Mr.Aditya Reddy (in all WAs)

COMMON JUDGMENT

(Delivered by Dr. ANITA SUMANTH.,J)

The State is in appeal as against an order passed on 14.12.2023 wherein the challenge was as against orders dated 28.03.2023 and 10.04.2023 passed by the assessing authorities in Ambur and Vellore.

2. The brief facts that are germane to decide these writ appeals are as follows. The respondent is an assessee on the file of the assessing authorities under the provisions of the Tamil Nadu Goods and Services Tax Act, 2017 (in short, 'TNGST Act' / 'Act'). For the months of

December, 2022, January 2023 and February, 2023 returns had not been filed under Section 39 of the Act and hence orders of assessment came to be passed on 28.03.2023 and 10.04.2023 in terms of Section 62(1) of the Act which is entitled *'assessment of non-filers of returns'*. The assessee has, thereafter, filed returns on 30.04.2023 for the months of December, 2022 and January, 2023 & on 24.06.2023, for the month of February, 2023.

3. The argument of the assessee before the writ court was that the period of 30 days that had been prescribed under Section 62(2) for filing of returns belatedly, was directory in nature. Accepting that argument, the assessee was directed to file application seeking condonation of delay within a period of 15 days from date of receipt of a copy of the writ order and upon filing of the application for condonation, the assessing authority was directed to consider the reasons seeking condonation and pass orders within 30 days and thereafter permit the assessee to file returns.

4. Section 62 contains a proviso permitting the filing of returns within a period of 30 days on payment of additional late fee. It is an admitted position that the late fee has been remitted in the present case and hence that statutory requirement stands complied. The proviso to

Section 62 has been amended by Finance Act, 2023 (8 of 2023) with effect from 01.06.2023 such that the period for filing of bleated return along with payment of additional late fee, has been extended to 60 days from date of service of assessment order, as against 30 days as it stood prior to amendment.

5. There has been yet another development in the interim, as two Amnesty Schemes had been announced by the Commercial Taxes Department vide (i) Notification No.7/2023 dated 31.03.2023 and (ii) Notification No. 25/23 dated 17.07.2023.

6. These notifications provide that registered persons who have failed to furnish valid returns within 30 days from date of service of assessment order issued on or before 28.02.2023 shall be granted a one-time amnesty if the registered person furnishes the return on or before 30.06.2023, accompanied by payment of interest under Section 50(1) of the Act and late fee under Section 47 of the Act.

7. The relevant dates, in this matter, such as the dates of issuance of notice, service of order under Section 62 and the expiry of limitation along with actual dates of filing of returns have been tabulated as follows:-

Month & Year	Due date for return filing as per section 39	Date of issue of notice	Return / reply if any filed	Date of service of order under Section 62	Date of expiry of 30 day's time	Actual date of filing of Return
Dec – 2022	20.01.2023	21.03.2023	No	28.03.2023	27.04.2023	30.04.2023
Jan – 2023	20.02.2023	25.02.2023	No	28.03.2023	27.04.2023	30.04.2023
Feb – 2023	20.03.2023	25.03.2023	No	10.04.2023	10.05.2023	24.06.2023

8. We find that, if the position pre-amendment is taken note of, the delay in filing of returns is 3 days, as far as the months of December, 2022 and January, 2023 are concerned, and approximately six weeks for the month of February, 2023.

9. Had the assessment orders being passed prior to 28.02.2023, the assessee would have been entitled to the Amnesty as the returns have been filed prior to 30.06.2023 as provided under the Amnesty Scheme. However, the assessment orders have been passed only post 28.02.2023 and hence the assessee is not entitled to the benefit.

10. The assessee is also not entitled to the extended period provided under the proviso to Section 62, as that has been made effective only from 01.10.2023. Hence this is an unfortunate case, where the assessee falls within the period of 01.03.2023 to 30.09.2023, a sort of a no-man's land, where it is neither entitled to the benefit of the Amnesty Schemes nor the extended limitation under the proviso to Section 62 of the Act.

11. In such circumstances, and on the basis of the unique facts that are present before us, we are of the considered view, that the assessee is entitled to condonation of delay of 3 days as far as filing of returns for the months of December, 2022 and January, 2023 is concerned and of 46 days (10.05.2023 to 24.06.2023) as far as February, 2023 is concerned, with all consequences to follow.

12. With this, there is no necessity to relegate the assessee to file an application for condonation etc., as directed by the writ court.

13. The State is specifically aggrieved with the interpretation of law as set out under paragraph 14 of the impugned order, extracted below:-

> *"14. Further, the respondent can make the best judgement assessment order within a period of 5 years from the end of financial year, for which the registered person is liable to file the annual returns. In the present case, the relevant financial year is pertaining to 31.03.2023, in which case, the petitioner is liable to file the annual returns on or before 31.12.2023. Therefore, the said period of 5 years to make the best judgement assessment order for the respondent will start on 01.01.2024 and ends on 31.12.2029. In such case, if the best judgement assessment order is passed by the respondent on 31.12.2029, which is permissible under Section 74 of the GST Act, the petitioner can file his returns within a period of 30 days therefrom i.e., on or before 30.01.2030. Hence, the time limit is available up to 30.01.2030 for the*

petitioner to file their returns. When such being the case, since the best judgement assessment order has been made by the respondent at the earliest point of time, the legal right of the petitioner to file the returns, which is available under Section 62 of the Act, cannot be taken away. If the best judgement assessment order has not been passed on the earlier date, the petitioner can file his returns even without paying any interest or penalty."

14. Section 62 along with proviso reads as follows:-

"62. Assessment of non-filers of returns:-

(1) Notwithstanding anything to the contrary contained in section 73 or section 74, where a registered person fails to furnish the return under section 39 or section 45, even after the service of a notice under section 46, the proper officer may proceed to assess the tax liability of the said person to the best of his judgement taking into account all the relevant material which is available or which he has gathered and issue an assessment order within a period of five years from the date specified under section 44 for furnishing of the annual return for the financial year to which the tax not paid relates.

(2) Where the registered person furnishes a valid return within thirty days of the service of the assessment order under sub~section (1), the said assessment order shall be deemed to have been withdrawn but the liability for payment of interest under sub section (1) of section 50 or for payment of late fee under section 47 shall continue."

15. The learned Judge has interpreted Section 62 to say that the period of 5 years from date of furnishing of annual return, would be available to a non-filer of return and the 30 days provided under the proviso would stand triggered only after the expiry of the 5 year period

as aforesaid.

16. We do not agree with that interpretation which appears contra to the scheme under Section 62 of the Act. The scheme of assessment in the case of a non-filer of returns is set out in Section 62 and the ingredients are as follows:

(i) Section 62 applies notwithstanding anything to the contrary contained in Sections 73 or 74.

(ii) It applies in a case where a registered person fails to furnish a return under Section 39 or Section 45.

(iii) Section 39 refers to furnishing of regular returns and section 45 relates to furnishing of final return.

(iv) Section 62 does not address a non-filer of annual return under Section 44 of the Act.

17. Section 46 states that where a registered person fails to furnish a return under Section 39 or Section 44 or Section 45, notice shall be issued requiring him to furnish such return within 15 days in such form and manner as may be prescribed. Such notice is mandatory, to be issued prior to passing of the order of assessment.

18. Thus, a notice under Section 46 may be issued in 2 scenarios.

(a) One, where a registered person fails to furnish a return under Sections 39 or 45, where the officer must issue a notice under section 46 and then proceed to pass a best judgment assessment

(b) Second, where a registered person does not file an annual return under Section 44.

19. The present case falls under scenario (a) above. The department has issued notices under Section 46 on 27.01.2023, 25.02.2023 and 25.02.2023 for defaults under section 39 for non-filing of regular returns for the months of December 2022, January and February 2023. The assessee has been asked to file returns within 15 days under threat of completion of assessment to the best of the officers' judgment.

20. We hence find nothing untoward in the passing of the impugned assessment orders as Section 62 (1) of the Act enables the assessment authority to pass an assessment order '*within a period of five years from the dates specified under Section 44 for furnishing of annual return for the financial year to which the tax not paid relates.'*

21. Under 62(1), there is only an upper limit/limitation prescribed for passing of the assessment order, within 5 years from the date specified under Section 44 for furnishing of annual return and the language used in the provision does not indicate any embargo placed

upon the officer to wait till the completion of the period provided. Hence, it is open to an assessing officer to pass an assessment order at any time within a period of 5 years from the dates specified under Section 44.

22. In scenario (b) above, the officer is required to issue notice under section 46 for default in filing an annual return, for which purpose time till the thirty-first of December following the end of that financial year is provided to the assessee. Hence such a notice can evidently be issued only after the completion of the period as aforesaid. The procedure set out under section 62 is inapplicable to defaults in filing an annual return, as section 44 has consciously not been mentioned therein. The two scenarios in, (a) and (b), are hence distinct and different.

23. These writ appeals are disposed in light of the order as above. No costs. Connected miscellaneous petitions are closed.

[A.S.M., J] [N.S., J]
30.07.2025

Index:Yes
Neutral Citation:Yes
ssm

To

1.The Deputy Commercial Tax Officer,
Ambur, Vellore – 635 802.

2.The Assistant Commissioner,
Ambur, Vellore.

DR. ANITA SUMANTH, J.
and
N.SENTHILKUMAR, J.

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