IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.10.2025

CORAM :

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No. 39894 of 2025
and
W.M.P.Nos.44829 and 44830 of 2025

Allwin Cargo Services,
Rep. by its Partner R.Sureshkumar
New No.12, Old No.9, 2nd Floor,
Seaview Tower, Krishnan Koil Street,
George Town, Chennai 600 001. ... Petitioner

Vs.

The Assistant Commissioner (CT),
Muthialpet Assessment Circle,
Integrated Commercial Taxes Office Complex,
Chennai 600 003. ...
Respondent

Writ Petition is filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari calling for the records of the respondent in Reference Number:ZD 330 823 076 985U/2022-23 dated 14.08.2023 and quash the same as arbitrary, illegal.

For Petitioner : Mr.S.Ramanan

For Respondent : Mrs.K.Vasanthamala
Government Advocate

O R D E R

This Writ Petition is disposed of at the time of admission with the consent of the learned counsel for the Petitioner and the learned Government Advocate, who takes notice on behalf of the Respondent.

2. Heard the learned counsel appearing for the petitioner and learned Government Advocate appearing for the respondent.

3. In this Writ Petition, the Petitioner has challenged the impugned order dated 14.08.2023. By the said impugned order, the demand proposed in DRC-01 dated 20.06.2023 has been confirmed. In the preamble and body of the aforesaid show cause notice DRC-01 dated 20.06.2023, it has been alleged that Section 73 was invoked. However, in the detailed notice (annexed to DRC-01), it has been stated Section 74 has been invoked. The allegation against the petitioner is that the petitioner has availed input tax credit in violation of Section 17 (5) of the TNGST Act.

4. The learned counsel for the petitioner submits that the petitioner failed to respond to the said notice, and therefore, the impugned order has been

passed. It is further submitted that the petitioner has paid the disputed tax and interest between 19.02.2024 to 20.04.2024. The learned Counsel further submits that the petitioner is engaged in the transportation of cargo and, therefore, had availed input tax credit on the purchase of vehicles used for the said Cargo business. It is contended that the respondent has wrongly invoked Section 74, and hence, the impugned order is liable to be interfered with. The petitioner also submits that since the business is related to cargo transportation, the input tax credit is allowable under Sections 16 and 17 of the Act, and the embargo under Section 17 (5) is not applicable.

5. The learned Government Advocate appearing for the respondent submitted that, by the impugned order dated 14.08.2023, the petitioner has been directed to pay the disputed tax along with interest, and a penalty has been imposed under Section 74 of the GST Act. It is further submitted that the affidavit filed in support of the writ petition indicates that the petitioner has not furnished the particulars of the vehicle purchased, which are relevant for considering whether the provisions of Section 17(5) was applicable to the facts and circumstances of the case.

6. However, the fact remains that the impugned order has been passed by imposing a penalty under Section 74 for the alleged violation of Section 17(5) of the GST Act. Since the affidavit does not disclose complete particulars, it cannot be construed that the department acted arbitrarily in issuing the show cause notice in DRC -01 dated 20.06.2023.

7. At the same time, considering that the dispute pertains to the tax period relevant to 20.06.2023, the imposition of penalty under Section 74 appears to be unjustified. Under such circumstances, it is to be construed that the order ought to have been passed under Section 73 of the GST Act, read with Section 75(2) of the said Act. Therefore, liberty is granted to the petitioner to work out the remedy available under Section 128A of the GST Act insofar as the penalty and interest are concerned.

8. Accordingly, this Writ Petition stands disposed of. No costs. Connected Writ Miscellaneous Petitions are closed.

24.10.2025

Index : Yes/No
Neutral Citation : Yes/No
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To

The Assistant Commissioner (CT),
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C.SARAVANAN, J.

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