



W.P.(MD) No.13785 of 2025

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 02.06.2025

CORAM:

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.(MD) No.13785 of 2025

and

W.M.P.(MD) No.9949 of 2025

Tvl. Global Offset Printers
rep. by its Proprietor P.Murugesan

... Petitioner

Vs

The Assistant Commissioner (ST)(FAC),
Dindigul (Town) Assessment Circle,
Dindigul.

... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari to call for records pertaining to the impugned order passed by the respondent vide order in GSTIN :33BUQPM9110G1ZJ/2017-18 dated 22-01-2025 and quash the same as it is illegal, without jurisdiction and in gross violation of principles of natural justice.

For petitioner : Mr. A. Satheesh Murugan

For respondent : Mr.J.K.Jayaselan
Government Advocate



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ORDER

The petitioner is before this Court against the impugned assessment order dated 22.01.2025 passed for the assessment year 2017-18. It is preceded with an intimation tax liability in DRC 01A *vide* ARN:AD3309230594703, dated 22.09.2023 and DRC 01 Notice in GSTIN : 33BUQPM9110G1ZJ/2017-18 dated 29.09.2023.

2. The petitioner has also replied to the same in DRC 06, dated 18.12.2024 and the petitioner was also heard before the final order was passed. It is specific case of the petitioner that Input Tax Credit has been denied as the supplier has collected the tax from the petitioner and failed to remit the same to the credit of the Government. Therefore, no case has been made out for invoking Section 74 of the respective GST enactments.

3. In this connection, the learned counsel for the petitioner has drawn attention to the decision of this Court rendered in W.P.(MD) No.22420 of 2024 in ***S.S.Communications Vs. The Deputy State Tax Officer-II, Kumbakonam Town***



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vide order dated 20.09.2024, wherein the Court had held as under :

“8. This Court has perused the entire order of assessment and there is not even a whisper about fraud, wilful misstatement or suppression of facts. To a pointed question as to whether the adjudicating authority has anywhere during the course of proceeding indicated that there is fraud, wilful misstatement or suppression of fact, the learned Additional Government Pleader was unable to point out.

9. It is also pointed out by the learned counsel for the petitioner that the impugned proceeding also suffers from procedural infirmities inasmuch as ASMT 10 and DRC 01A has not even been served on the petitioner. However, this Court is not inclined to go into the said aspect.

10. This Court finds that the impugned order of assessment invoking Section 74 of the Act itself is without jurisdiction on the absence of a finding that the evasion of taxes was due to or by reason of fraud, misstatement or suppression of fact. In view thereof, the impugned order dated 10.05.2024 is set aside.

11. This Writ Petition is disposed of on the above terms. No costs. Consequently, connected miscellaneous petitions are closed.”

4. The learned Government Advocate for the respondent, on the other hand, would submit that there is no merits in the Writ Petition as the petitioner has an alternate remedy under Section 107 of the TNGST Act, 2017. He would also submit that the issue also touches on other aspects and there is, admittedly, no violation of the principles of natural justice warranting interference of this Court.



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Therefore, the Writ Petition is liable to be dismissed.

5. I have considered the arguments advanced by the learned counsel for the petitioner and the learned Government Advocate for the respondent.

6. I have also perused the provisions of the TNGST Act, 2017 and also the CGST Act, 2017. During the period in dispute i.e., 2017-18, the Input Tax Credit availed by the recipients was provisional. The said provision reads as under:

“41.Claim of input tax credit and provisions acceptance thereof

(1) Every registered person shall, subject to such conditions and restrictions as may be prescribed, be entitled to take the credit of eligible input tax, as self-assessed, in his return and such amount shall be credited on a provisional basis to his electronic credit ledger.

(2) The credit referred to in sub-section (1) shall be utilised only for payment of self-assessed output tax as per the return referred to in the said sub-section.”

7. It now stands amended with effect from 01.10.2022 vide Finance Act, 2022 (6 of 2022) vide S.O. 4569(E), dated 28.09.2022. The amended provision reads as under:

“41 Availment of input tax credit



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1. *Every registered person shall, subject to such conditions and restrictions as may be prescribed, be entitled to avail the credit of eligible input tax, as self-assessed, in his return and such amount shall be credited to his electronic credit ledger.*
2. *The credit of input tax availed by a registered person under sub-section (1) in respect of such supplies of goods or services or both, the tax payable whereon has not been paid by the supplier, shall be reversed along with applicable interest, by the said person in such manner as may be prescribed:*

Provided that where the said supplier makes payment of the tax payable in respect of the aforesaid supplies, the said registered person may re-avail the amount of credit reversed by him in such manner as may be prescribed.”

8. The argument of the petitioner that there has no case made out for invoking extended period of limitation under Section 74 of the respective GST enactments cannot be countenanced as Input Tax Credit, that was availed, was provisional. The law is settled on this aspect.

9. In fact, the Hon'ble Supreme Court in ***the State of Karnataka vs. M/s.Ecom Gill Coffee Trading Private Limited***, dated 13.03.2023 in Civil Appeal.No.230 of 2023 has held as under:

“Mere production of the invoices or the payment made by cheques is not enough and cannot be said to be discharging the



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burden of proof cast under Section 70 of the KVAT Act, 2003.

...

In fact, the genuineness of the transaction has to be proved as the burden to prove the genuineness of transaction as per section 70 of the KVAT Act, 2003 would be upon the purchasing dealer ”

10. Therefore, there is no merits in the present Writ Petition and this Writ Petition is liable to be dismissed.

11. However, liberty is given to the petitioner to file statutory appeal before the Appellate Authority within a period of 30 days from the date of receipt of a copy of this order, subject to the compliance of the requirements under Section 107 of respective GST enactments.

12. This Writ Petition is dismissed, with above liberty. No costs. Consequently, connected miscellaneous petition is closed.

Index : Yes / No

Internet : Yes / No

apd

To

The Assistant Commissioner (ST)(FAC),

02.06.2025

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Dindigul (Town) Assessment Circle,
Dindigul.

C.SARAVANAN, J.

apd

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