BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 20.08.2025

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THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P(MD)No.22746 of 2025
and
W.M.P(MD)Nos.17791 and 17793 of 2025

M/s.New Shivsakthi Traders,
Proprietor of Natarajan Vijayalakshmi,
5B/2A, Sundaravelpuram West,
Tuticorin, Thoothukudi-628002. ... Petitioner

Vs.

The Assistant Commissioner (ST),
Office of the Assistant Commissioner,
Tuticorin – I. ...Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, calling for the records on the files of Respondent in Impugned Order vide GSTIN 33ACQPV8686H1ZN/2021-22 passed by the Respondent in Order dated 17.04.2025 and Consequential order vide FORM-DRC-07 bearing Ref.No ZD3304251285994 dated 17.04.2025 for the tax period April, 2021 to March 2022 and quash the same as arbitrary, against the principles of natural justice.

For Petitioner : Mr.S.Kannan

For Respondent : Mr.S.Suresh Kumar
Additional Government Pleader

ORDER

The petitioner has filed the present writ petition challenging the impugned order dated 17.04.2025 passed under Section 73(1) of the Tamil Nadu Goods and Services Tax Act, 2017, for the tax period between 2021-2022.

2. The impugned order has been preceded by a show cause notice dated 06.12.2024, calling upon the petitioner to show cause as to why late fee under Section 47(2) of the Tamil Nadu Goods and Services Tax Act, 2017 should not be imposed for the violation of Section 44 read with Rule 80 of the Tamil Nadu Goods and Services Tax Act, 2017 for the aforesaid tax period.

3. The petitioner has responded to the same by replies dated 10.02.2025 and 19.02.2025. In the reply the petitioner has stated that the respondents ought to have issued a notice in Form GSTR 3A under Section 46 of the Tamil Nadu Goods and Services Tax Act, 2017 and Central Goods and Services Tax Act, 2017 read with Rule 68 of the respective Tamil Nadu Goods and Services Tax Rules following the guidelines prescribed in Circular No.129/2019 dated 24.12.2019 issued by the Central Board of Indirect Taxes and Customs.

4. It is submitted that without issuance of a notice in Form GSTR 3A under Section 46 of the of the Tamil Nadu Goods and Services Tax Act, 2017 and Rule 68 of the respective Goods and Services Tax Rules and in violation of Paragraph No.4 of the Circular No.129/19-GST issued by the Central Board of Indirect Taxes and Customs, dated 24.12.2019, the show cause notice has been issued and therefore, the amounts imposed towards late fee under Section 47(2) of the respective Tamil Nadu Goods and Services Tax Act, 2017 is liable to be interfered with.

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

6. There is no dispute that the petitioner has not filed the annual returns that is required to be filed in Form GSTR 9 for the tax period as required under Section 44 of the respective Tamil Nadu Goods and Services Tax Enactments, 2017.

7. Section 44 (1) of the Central Goods and Services Tax Act, 2017 contemplates that every registered person, other than an Input Service

Distributor, a person paying tax under Section 51 or Section 52, a casual taxable person and a non-resident taxable person shall furnish an annual return which may include a self-certified reconciliation statement, reconciling the value of supplies declared in the return furnished for the financial year, with the audited annual financial statement for every financial year electronically, within such time and in such form and in such manner as may be prescribed to implement the purpose to Section 44 of the respective Goods and Services Tax Enactments, 2017, Form GSTR 9 has been prescribed, which the petitioner has failed to file in time.

8. As per Rule 68 of the Respective Goods and Services Tax Rules, notice in Form GSTR 3A has to be issued electronically to a registered person who fails to furnish the return under Section 39 or Section 44 or Section 45 or Section 52 of the respective Goods and Services Tax Enactments.

9. As per Section 44(2) of the Act, registered person shall not be allowed to furnish an annual returns under Sub Section 1 for a financial year after the expiry of period of three years from the date of due date for furnishing the said returns.

10. The dispute in the present case pertains to the assessment year 2021-2022.

11. The notice if any to file a return in GSTR 9 at best can be issued within a period of three years. In fact, it is open to the petitioner to have filed such returns voluntarily within the time specified under Section 44(2) of the Act.

12. The petitioner has not come forward to file the return within three years. Even if notice in GSTR 3 was issued to the petitioner to file a return in GSTR 3A as per Rule 68 of the respective Goods and Services Tax Rules the petitioner would still be liable to pay late fee under Section 47 (2) of the Act, as per which any registered person who fails to furnish the return required under Section 44 of the Act by the due date shall be liable to pay a late fee of Rs.100 for every day during which such failure continuous subject to a maximum of an amount calculated at a quarter per cent of his turnover in the State or Union territory.

13. Sections 44 and 47 of the respective Goods and Services Tax Act, 2017 are reproduced below:

Section 44	Section 47
44.Annual return. -(1) Every registered person, other than an Input Service Distributor, a person paying tax under section 51 or section 52 , a casual taxable person and a non-resident taxable person shall furnish an annual return which may include a self-certified reconciliation statement, reconciling the value of supplies declared in the return furnished for the financial year, with the audited annual financial statement for every financial year electronically, within such time and in such form and in such manner as may be prescribed : Provided that the Commissioner may, on the recommendations of the Council, by notification, exempt any class of registered persons from filing annual return under this section: Provided further that nothing contained in this section shall apply to any department of the Central Government or a State Government or a local authority, whose books of account are subject to audit by the Comptroller and Auditor-General of India or an auditor appointed for auditing the accounts of local authorities under any law for the time being in force.] **(2) A registered person shall not be allowed to furnish an annual returns under Sub Section 1 for a financial year after the expiry of a period of three years from the date of due date for furnishing the said returns.**	Section 47. Levy of late fee. -(1) Any registered person who fails to furnish the details of outward supplies required under section 37 or returns required under section 39 or section 45 [or section 52] by the due date shall pay a late fee of one hundred rupees for every day during which such failure continues subject to a maximum amount of five thousand rupees. **(2) Any registered person who fails to furnish the return required under section 44 by the due date shall be liable to pay a late fee of one hundred rupees for every day during which such failure continues subject to a maximum of an amount calculated at a quarter per cent. of his turnover in the State or Union territory.**

14. Therefore, there is no merit in challenge to the impugned order. The writ petition is liable to be dismissed and accordingly, dismissed. No costs. Consequently, the connected miscellaneous petitions are closed.

20.08.2025

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
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To

The Assistant Commissioner (ST),
Office of the Assistant Commissioner,
Tuticorin – I.

C.SARAVANAN, J.

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