



Tax Case (Revision) No.9 of 2026

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On: 07.04.2026

Delivered On: 21.04.2026

CORAM

**THE HONOURABLE DR JUSTICE G. JAYACHANDRAN
AND
THE HONOURABLE MR.JUSTICE SHAMIM AHMED**

**Tax Case (Revision) No.9 of 2026
& C.M.P.No.7345 of 2026**

M/s.Grace Infrastructure Private Limited,
RS.Nos.31/4 Tindivanam Road,
Tiruchitrambalam, Vanur Taluk,
Tindivanam – 605 111.

... Petitioner/Appellant

vs.

State of Tamil Nadu

Represented by Sales Tax Officer (Commercial Tax Officer),
Tindivanam.

... Respondent/Respondent

Prayer: Tax Case Revision filed under Section 60 of the TNVAT Act, 2006 to revise the order dated 09.01.2026 passed in T.A.No.10 of 2025 by the Hon'ble Tamil Nadu Sales Tax Appellate Tribunal (Main Bench), Chennai by setting aside the order of the Deputy Commissioner (ST), Cuddalore passed in A.P.No.1 of 2025 (VAT) dated 11.09.2025 and the order dated 16.08.2024 passed by the State Tax Officer, Tindivanam, relating to the Assessment Year 2011-2012 under the Tamil Nadu Value Added Tax Act, 2006 and allow the said appeal.



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For Petitioner
in both cases

: Mr.K. Ravi, Senior Counsel,
for Mr.R.Murugan,
M/s.Rugan & Arya

For Respondent
in both cases

: Mr.C.Harsha Raj
Special Government Pleader

ORDER

The Petitioner herein is a private limited company engaged in the manufacture of wind electric generators and the generation of electricity. It is a 'dealer' registered under the TNVAT Act. During the assessment years 2010-2011 and 2011-2012, the Revision Petitioner purchased windmill parts and assembled eight windmills. It also sold ten (10) old windmills that had been purchased prior to the VAT regime. The Input Tax Credit (ITC) availed for purchase of spare parts for assembling windmills were adjusted against the VAT payable for the sale of old windmills. The said ITC claimed by the Revision Petitioner was reversed by the Assessing Officer on the ground that the inputs (spares for windmills) were used exclusively for generating electricity. Since electricity is a commodity exempted from tax, adjustment of ITC is not permissible. Therefore, the State Tax Officer levied tax of Rs.51,90,117/- under Section 27(2) of the Act, along with an equal amount as penalty under Section 27(4)(ii).



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2. The reversal of input tax credit was challenged by the Revision Petitioner in W.P.No.8505 of 2017. The writ petition was allowed with a direction to the Assessing Authority for fresh consideration and pass speaking order within a period of three months. The petitioner was given liberty to file an additional representation and participate in the personal hearing.

3. The Assessing Officer completed the assessment and passed fresh assessment order, reiterating the earlier assessment by recording, 'the dealer (Revision Petitioner) failed to respond in spite of repeated opportunities. The input tax credit claimed by the dealer has to be reversed since the output being electricity, which is exempted under Section 15, being a commodity (Code No:725) covered under Part B/25 of the Fourth Schedule to the TNVAT Act. Accordingly, the input tax credit on purchases relating to windmill machinery is not admissible as per Sections 19(5)(a), 19(6) and 19(12) of the TNVAT Act and the Circular No.41598/2007 (VCC No:1113) dated 28.03.2007. In the fresh assessment order (2011-12) dated 16.08.2024, in addition to the tax and penalty, interest at the rate of 2% per month was levied under Section 42(3) of the Act.



4. Aggrieved by the assessment order dated 16.08.2024, the dealer

filed first appeal filed before the Appellate Deputy Commissioner (ST), Cuddalore. The Appellate Authority confirmed the assessment order and dismissed the appeal. The dealer, being aggrieved, challenged the appellate authority's order before the TNSTAT in T.A.No.10/2025 on the ground that the High Court, in W.P.No.8505 of 2017 by order dated 24.03.2021, remitted the matter to the Assessing Officer with direction to make a fresh assessment after affording an opportunity to the dealer and to pass speaking order within three months. However, the assessment order passed on 16.08.2024 was not a speaking order as directed by the High Court. The fresh assessment order is only a reproduction of the earlier order. The order was conspicuously silent about the reply given by the Trader. Further, the reason stated in assessment order for the reversal of ITC claimed by the dealer is different from the reason stated in the show cause notice for the proposal to reverse the ITC claimed. Without issuing fresh show cause notice, on an entirely new ground, the assessment order was passed in gross violation of natural justice principle. The assessee contended that the observation of the appellate authority that the dealer failed to participate in the appeal hearing is false and contrary to records. The dealer has submitted reply and also participated in the personal hearings. However, to avoid adverting to the grounds of appeal, the Appellate Authority



has falsely recorded that the dealer failed to participate in the hearing.

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5. The TNSTAT, formulated the following point for consideration:

1. Whether the reversal of Input Tax Credit of Rs.51,90,117/- under Section 27(2) of the TNVAT Act, 2006, made by the Assessing Authority and confirmed by the First Appellate Authority, calls for interference?

2. Whether the penalty of Rs.51,90,117/- levied by the Assessing Authority under Section 27(4)(ii) of the TNVAT Act, 2006, and confirmed by the First Appellate Authority, calls for interference?

6. The Tribunal, after considering the materials, held that the assessment order is not barred by limitation. It is the continuation of the assessment order dated 27.02.2017 for the year 2011-2012. Subsequently, pursuant to the direction of the High Court in W.P.No.8505 of 2017 dated 24.03.2021, fresh assessment order passed on 16.08.2024. The Tribunal observed that the limitation commences on the actual date of assessment and not on the deemed date of assessments. The plea of the Revision Petitioner that the order is a non-speaking order was also rejected by the Tribunal. However, the matter was remitted back to the Assessing Officer for fresh consideration, on



being satisfied that the assessment order reversing the ITC was passed on the ground not found in the show cause notice. Further, the Tribunal opined that the assessment had been completed without proper appreciation of the appellant's replies, without recording essential factual findings and without affording an effective opportunity of hearing. Also, the Tribunal held that the while the reply of the dealer dated 26.03.2014 and its letters dated 13.02.2023 and 06.04.2024 were very well found on records, the finding of the Assessing Authority that the dealer failed to participate in the proceedings is factually unsustainable.

7. In the above factual background, the dealer (Revision Petitioner herein) is before this Court contending that, having found that the assessment order is not in consonance with the show cause notice and reason for reversal of ITC claimed are unconnected to the reason stated in the show cause notice, there cannot be fresh assessment without issuing fresh show cause notice. For issuing fresh show cause notice in respect of assessment years 2010-11 and 2011- 12, the limitation period of six years as prescribed under the statute is expired. The Tribunal, having found that the reply of the dealer not considered inspite of it being available on record, the order remitting back again for fresh assessment tantamount to unnecessarily vexing the dealer for the fault of the



Assessing Officer.

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8. The first assessment order dated 27.02.2017 for the assessment year 2010-2011 arose from the pre-revised notice dated 12.03.2014. The High Court, in W.P.No.8505 of 2017, quashed this order by holding that this assessment order passed is in violation of principles of natural justice. The Court directed the Assessing Officer to pass fresh assessment order within three months from the date of receipt of the copy of the order. However, the Assessing Officer passed the assessment order only on 16.08.2024. To consider the plea of limitation as well as the alleged infirmity in the show cause notice in which deeper deliberate on facts is required.

9. Following the inspection conducted by the Enforcement Wing of the Commerical Tax Department from 05.02.2014 to 08.02.2014, certain irregularities were noticed in the monthly returns filed in Form-I under TNVAT Act, 2006 for the assessment year 2011-2012. Therefore, notice dated 12.03.2014 was issued, indicating that the input tax credit (ITC) claimed on purchases during 2010-2011 and 2011-2012 been adjusted to the output tax during the month of April 2011. The windmills and spares purchased during 2010-2011 worth of Rs.11,90,09,876/-, for which ITC claimed was



Rs.51,90,117/-. In the month of April 2011, ten old windmills purchased before introduction of TNVAT Act and when two ITC adjustment available, were sold for Rs.5,39,30,000/- and Rs.21,57,200/- charged as VAT. The Department held that as per Section 2(1) of TNVAT Act, windmills are not capital goods and therefore, these are entitled for ITC for the production of electricity.

10. The operative portion of the proposal reads as below:-

As per Section 2(11) of the TNVAT Act. It is clarified that the wind mills are not capital goods and therefore there are not entitled for Input Tax Credit for production of Electricity.

You are owing Wind Mill and it is an asset to the company. The generation of power is exempt from tax. The Wind Mill is not a Raw material (or) consumable (or) packing material for generation of power. Hence the ITC on purchase of Wind Mill will remain with the owner. As the sale of power generated is exempted from tax, the tax due on any other transaction relating to you cannot be adjusted from the ITC.

Hence, the ITC claimed and accrued on purchase of Wind Mill during 2010-11 & 2011-12 and



still remain with the company could not be adjusted towards any other VAT due.

Taking into consideration of the above facts, it is proposed to reverse the Input Tax Credit and Collect the excess availment of Input Tax Credit for the Assessment year 2011-12 as under Section 27(2) of the TNVAT Act 2005 as detailed below:

SALES OF WIND MILL	Rs.53.93,00,000/-
TAX DUE	Rs. 2,15,72,000/-
TAX PAID	Rs.1,63,81,883/-
BALANCE of TAX PROPOSED	Rs. 51,90,117/-

PENALTY UNDER SECTION 27(3)

It is also proposed to levy penalty at 150% on the Tax Proposed above for the wrong availment of Input Tax Credit under Section 27(3) of the TNVAT Act.

<i>Balance of Tax Proposed</i>	<i>Rs.51,90,117/-</i>
<i>Penalty at 150% under Section 27(3) of the Act</i>	<i>Rs.77,85,175/-</i>

11. In response to the above notice, reply given by the dealer, mainly questioning the action of revision of the best judgment assessment that had been accepted long ago, contending that the required ingredients under Section 27(2) of the Act not available. After receipt of the reply, the Assessing Officer overruled the objections raised by the dealer, confirmed the proposal and



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revised the assessment for the year 2010-2011 under Section 23(2) and the tax

payable was determined as below:-

Total turnover determined	Rs. 56,43,11,467/-
Exemption allowed	Rs.31,93,11,467/-
Taxable turnover determined	Rs.24,50,00,000/-
Reversal of input tax credit determined	Rs.49,53,098/-

Since you have carry forwarded the ITC of Rs.49,53,098/- to the year 2011-12 and already adjusted the same to the tax due during the month of April 2011, it becomes due for the year 2010-11.

ITC brought forward	Nil
ITC claimed during the year	Rs.49,53,098/-
Total	Rs.49,53,098/-
Reversal of ITC	Rs.49,53,098/-
Net ITC	Nil
Less: ITC carry forwarded to next year	Rs.49,53,098/-
Deficit ITC due to excess carry forward	Rs.49,53,098/-
Output Tax due	Rs.98,00,000/-
Add: Deficit ITC due to excess c/f	Rs.49,53,098/-
Net Tax payable	Rs.1,47,53,098/-
Tax paid	Rs.98,00,000/-
Balance	Rs.49,53,098/-

Penalty under Section 27(4)(i) due	Rs.24,76,549/-
Paid	Nil
Balance	Rs.24,76,549/-

Notices in Form 'O' and 'RR' are issued.



12. Following the above assessment order, notices under Form-O and

Form-R2 were issued separately on 09.01.2017. A Similar order was passed for the Assessment Year 2011-2012, overruling the objections raised by the dealer.

The Assessing Officer assessed the tax and penalty as follows:-

<i>Taxable sales of wind mill upto 11.07.2011</i>	<i>Rs.53,93,00,000 @ 4% 2,15,72,000/-</i>
<i>After 11.07.2011</i>	<i>Rs.48,65,00,000 @ 5% Rs.2,43,25,000/-</i>
<i>Total Taxable turnover Determined.</i>	<i>Rs.1,02,58,00,000 Rs.4,58,97,000/-</i>
<i>Exemption on sales of Electricity</i>	<i>Rs.258411321/-</i>
<i>Total turnover redetermined</i>	<i>Rs.1284211321/-</i>
<i>Output tax due</i>	<i>Rs.45897000/-</i>
<i>Tax paid</i>	<i>Rs.40706883/-</i>
<i>Balance due to reversal of ITC</i>	<i>Rs.5190117/-</i>

Notice in Form O is issued

Penalty: Wrong availment of ITC of Rs.5190117/- is ordered to have been reversed U/s 27(2) of TNVAT ACT 2006.

Penalty of Rs.5190117/- being 100% of the wrong claim of ITC of Rs.5190117/- is also levied U/s 27(4)(ii) of the Act.

<i>Penalty levied</i>	<i>Rs.5190117/-</i>
<i>Penalty paid</i>	<i>0</i>
<i>Balance</i>	<i>Rs.5190117/-</i>

Notice in Form RR is issued.



13. This order was passed on 27.02.2017. The above two assessment orders dated 09.01.2017 for the Assessment Year 2010-2011 and order dated 27.02.2017 for the Assessment Year 2011-2012 were challenged in W.P.No.8505 of 2017 and was quashed by the High Court on 24.03.2021.

14. The reason for quashing the assessment order is stated in paragraphs 3 & 4 of the High Court's order, which are extracted below:-

3. It is submitted that the impugned Show Cause Notice was issued by the 1st respondent/Commercial Tax Officer, Tindivanam after the petitioner came under the purview of the 1st respondent/Commercial Tax Officer, Tindivanam who issued Pre-revision notice on 12.03.2014, which the petitioner also replied by a reply dated 26.03.2014. The 1st respondent/Commercial Tax Officer, Tindivanam has however passed the impugned order dated 27.02.2017 and has called upon the petitioner for a personal hearing.

4. As the impugned order has been passed in violation of Principles of Natural Justice, I am inclined to quash the impugned order and remit the case back to the 1st respondent, to pass speaking order after considering the submissions of the petitioner in their reply dated 26.03.2014 in the background of the appeal filed by the petitioner against the order dated 09.01.2017 purportedly



*passed by the 2nd respondent/Commercial Tax Officer,
Nagercoil.*

15. On remitting back to the Assessing Officer with certain directions, order of fresh assessment was passed on 16.08.2024. It is pertinent to record at this juncture obviously that the fresh assessment order not passed within three months from the receipt of the order copy, but it was passed after three years. The replies were not considered and no reasons for rejecting the reply assigned.

16. The fresh assessment order for reversing the Input Tax Credit contains entirely new reasoning. When this issue was brought to the notice by the Appellate Authority in A.P.No.1 of 2025, the Appellate Authority referring only the statutory provisions without considering the assessee's reply that the input credit been adjusted in respect to VAT payable towards the sale of old windmills and not for the sale of electricity, the Appellate Authority has passed the following order.

“From the above statutory provisions and circular instructions, the claim of input tax credit on the purchase of wind mill and its spare are not eligible to claim. Since the appellant had effected sale of electrical energy which is completely exempted under section 15 of the TNVAT Act 06, the claim of input tax credit on the



purchase of wind mill and its components are not eligible for the claim of input tax credit. Hence, I hereby hold to sustain the order passed by the learned assessing officer by reversal of input tax credit of Rs.51, 90,117 u/s. 27 (2) of the act for the assessment year 2011-12. Thus, this portion of appeal is dismissed accordingly.”

17. For the said reasoning, the penalty imposed also confirmed.

18. The Tribunal rightly recorded that the Appellate Authority had wrongly recorded that assessee failed to participate in the enquiry. The reply of the assessee though available on record not been discussed and considered. Hence, remitted the matter back for re-appreciation.

19. As pointed by the Learned Counsel appearing for the revision petitioner, re-appreciation of the facts in the light of the reply will be a futile exercise unless and until the show cause notice itself is withdrawn and fresh show cause notice is issued. Pointing out that the input tax credit claimed by the dealer against the VAT payable for the sale of old windmills.



20. The contentious issue in this case is whether the Input tax levied for the purchase of windmills and spares, to replace the old windmills, can be adjusted towards the VAT payable for the sale of old windmills as output, or the output is the commodity (i.e.,) the electricity produced with the aid and help of windmills.

Section 15 of the TNVAT Act, 2006 reads as below:-

Exempted sale.- Sale of goods specified in the Fourth Schedule and the goods exempted by notification by the Government by any dealer shall be exempted from tax.

Section 27(2) of the TNVAT Act, 2006 reads as below:-

27. Assessment of escaped turnover and wrong availment of input tax credit.-

(2) Where, for any reason, the input tax credit has been availed wrongly or where any dealer produces false bills, vouchers, declaration certificate or any other documents with a view to support his claim of input tax credit or refund, the assessing authority shall, at any time, within a period of [six years from the date of assessment], reverse input tax credit availed and determine the tax due after making such a enquiry, as it may consider necessary:

Provided that no order shall be passed under sub-sections (1) and (2) without giving the dealer a reasonable opportunity to show cause against such order.



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Section 27(4) of the TNVAT Act, 2006 read as below:-

(4) In addition to the tax determined under subsection (2), the assessing authority shall direct the dealer to pay as penalty a sum -

(i) which shall be in the case of first such detection, fifty per cent of the tax due in respect of such claim; and

(ii) which shall be in the case of second or subsequent detections, on hundred per cent of the tax due in respect of such claim:

Provided that no penalty shall be levied without giving the dealer a reasonable opportunity of showing cause against such imposition.

21. The dealer, through his reply, made out a case that the Input tax paid for the purchase of windmill spares and for replacing the old windmills alone have nexus to each other and the VAT paid for the sale of the old windmills to be treated as the output. Hence, the revision petitioner is entitled for adjustment of Input Tax Credit. If the case of the department is otherwise, it should have been spelt out in the show cause notice itself. As we see from the show cause notice, the Department has proceeded on the premise that the windmills are not raw materials or consumables or packing materials for the generation of power. The show cause notice further state that Input Tax Credit



on the purchase of windmills would remain with the owner since the sale of power generated is exempted from Tax. However, neither in the show cause notice nor in the order of the Assessing Officer or the Appellate Authority the issue whether the input tax credit sought to be adjusted to the sale of electricity or to the sale of the old windmills been discussed. When the dealer been repeatedly claiming adjustment of ITC for the VAT paid towards the sale of old windmill and not in respect of energy sold, a preposterous analogy drawn in the notice, that the windmill remains with the owner, ignoring the fact that the owner had sold the old windmills and sought adjustment only in respect of the old windmill. This renders the show cause notice to suffer an incurable defect. If the Department now wants to rectify the said defect, it should necessarily issue a such fresh show cause notice. Apparently such fresh show cause notice is barred by limitation as contemplated under Section 27 of TNVAT Act.

22. As we have pointed out earlier, a mere remand of the matter back to the Assessing Officer to draw a fresh assessment order based on the show cause notice dated 12.03.2014 will be a futile exercise. If the fresh show cause notice is issued, it will be hopelessly barred by limitation. Either way, the department cannot succeed.



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23. Hence, we are of the considered view that the Revision Petitioner is entitled to succeed for the reasons stated above.

24. Accordingly, the Tax Case is Allowed. There shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

(Dr. G.JAYACHANDRAN, J.) & (SHAMIM AHMED, J.)
21-04-2026

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

1. The Sales Tax Officer (Commercial Tax Officer),
Tindivanam.
2. The Tamil Nadu Sales Tax Appellate Tribunal (Main Bench), Chennai.



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Dr. G.JAYACHANDRAN, J.
&
SHAMIM AHMED, J.
bsm

Pre-Delivery order made in
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