BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 11.03.2026

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THE HONOURABLE MR JUSTICE D.BHARATHA CHAKRAVARTHY

W.P(MD)Nos.6708 and 6710 of 2026
and
W.M.P(MD)Nos.5537 and 5542 of 2026

Tvl.T.Balasubramanian ... Petitioner in both cases

Vs.

The State Tax Officer(Roving Squad-2)
O/o.The Joint Commissioner(ST)(IW)
Commercial Taxes Buildings,
Tirunelveli. ...Respondent in both cases

Writ Petitions are filed under article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus to call for the records on the file of the respondent in GSTIN:33AHOPB1628E1ZT/2018-19 and 2020-2021, dated 03.12.2025 for the assessment year 2018-2019 and 2020-2021 passed by the respondent under Section 74 of TNGST Act, 2017 and to quash the same as cryptic, non-application of mind, illegal, arbitrary, wholly without jurisdiction and direct the respondent to proceed afresh, if at all required only under Section 73 of the TNGST Act, after affording due opportunity of personal hearing to the petitioner.

For Petitioner :Mr.N.Sudalai Muthu
For R1 to R4 :Mr.R.Sureshkumar
Additional Government Pleader
(in both cases)

COMMON ORDER

These writ petitions are filed challenging the impugned order dated 13.12.2025 passed for the assessment years 2018-2019 and 2020-2021.

2.The impugned orders are passed under Section 74 of the TN GST Act, 2017. Show cause notices were issued on the petitioner on 28.03.2025 alleging that there is turnover difference between GSTR-3B and the profit and loss account as submitted by the petitioner in Form 26AS to the income tax authorities. The show cause notice itself says that the defect has been communicated to the petitioner to pay the difference in GST at the rate of 12% for the year 2018- 2019 and 2020-2021. The show cause notice further states that the taxpayer paid the pending tax due of CGST Rs.16,22,731/- and SGST of Rs.16,22,731/- vide DRC-03 dated 27.03.2025. Therefore, the notices were issued, for the belated payment as also for the payment of penalty under Section 74 of the TNGST Act.

3.This apart, show cause notices were also issued with reference to non filing of GSTR-9 and GSTR-9C imposing penalties amount of Rs.10,000/- each for CGST and SCST. The petitioner submitted a detailed reply explaining the circumstances in which the tax was not paid at the earliest point of time. Not accepting the reasons mentioned by the petitioner, the impugned order of assessment were passed on 03.02.2025. Aggrieved by which, the petitioner is before this Court.

4.The contention of the learned counsel for the petitioner is that even as per the show cause notice and the assessment order, what is noted, is the turnover difference between GSTR-3B and profit and loss account and in case of such differences and when the petitioner has voluntarily paid the tax even before the issuance of show cause notice, the authorities have no jurisdiction whatsoever to invoke section 74 of the Act. At best only section 73 of the Act, could have been invoked, and the maximum penalty that was impossible only 10%.

5.The learned counsel would rely upon the judgment of this Court in ***Neeyamo Enterprises Solutions Private Limited vs Commercial Tax Officer(State Tax)(Intelligence), Madurai, (2025)36 Centax 341 Madras)***. The learned counsel would also rely upon the judgment in ***S.S Communications vs The Deputy State Tax Officer-II, Kumbakonam Town Assessment Circle, Kumbakonam Town, (W.P(MD)No.22420 of 2024)***. For the proposition that in the absence of finding that there is evasion of taxes or by reason of fraud, misstatement or suppression of fact, the authorities cannot invoke Section 74 of the Act.

6.The learned counsel would reiterate that either in the show cause notice or in the assessment order, there is no allegation of fraud or willful misrepresentation or misstatement is made. Therefore, the authorities ought not to have passed an order under section 74 of the Act.

7.Per Contra, the learned Additional Government Pleader would submit that in this case, a set of transactions was reported to the respondents under GSTR-3B, however, only on inspection and verification of the profit and loss accounts submitted by the petitioner in Form 26AS to the income tax authorities, the respondents were able to find out the differences and there are suppression of certain transactions only upon being pointed out in the inspection, the assessee paid the difference in tax. Therefore, there is misstatement of particulars and suppression of transactions. Thus, the authorities have jurisdiction under section 74 of the Act. As a matter of fact, in the show cause notice for the reference column, the surprise inspection is referred to, it cannot be stated that the show cause notice did not contain any averment as to willful misstatement. Therefore, the authorities are right in imposing the penalty and the interest.

8.I have considered the rival submissions made on either side and perused the material records of the case.

9.In this case, upon considering the case of the parties, it can be seen that the case of the respondent is that but for the inspection, the other transactions which were not reported to the authorities under the GST Act could not have come to light. Therefore, to an extent the facts are not in dispute. The only further question remains is that whether non-reporting and misstatement was with an willful intention to evade tax or not. The willfulness or the intention to evade tax, cannot be assumed or presumed merely by referring to the inspection report in the show cause notice. The very purpose of showing cause and calling for the explanation under Section 74 of the Act, is to decide that element of fraud, willful suppression and evasion of tax and therefore, the said aspect should be expressly put on notice. As a matter of fact, useful reference can be made to paragraph 9 of the judgment in *Neeyamo Enterprises(cited supra)*.

> *"9.In the case on hand, the show cause notice does not allege that the assessee was guilty of fraud, wilful misstatement or suppression of facts. When that is not even the case of the proper officer, Section 74 could not have been invoked. Presence of one or all the three elements is a sine qua non for taking action under Section 74 of the Act. It is not necessary that the statutory language must be reproduced. If one can cull out their presence by a overall reading of the show cause notice and the impugned order, the requirement of the section can still be said to be satisfied. In other words, both the show cause*

notice as well as the impugned order must indicate the offending conduct of the assessee."

10.Therefore, even though the facts of the present case may give a ground to the authorities, unlike the factual scenario in Neeyamo Enterprises, still, I am of the view that the show cause notice should expressly and clearly mention about the willfulness or the intention to evade the tax, the same should be made because the petitioner had actually paid the tax even before the issuance of show cause notice. In such a factual scenario, I am of the view that since the show cause notice or the impugned order that did not expressly record the intention to evade tax as also willful misstatement or suppression of facts, the present proceedings as such cannot grand. The matter is remanded back to the file of the respondent. It will be open for the petitioner to plead that it will only be a case under Section 73 of the Act and not under Section 74 of the Act. Firstly, if the authority is of the opinion that the case should fall only under 74 of the Act, it will be open for them to issue a fresh show cause notice making such allegations of fraud, evasion or misstatement as the case may be. These writ petitions are ordered on the following terms:

(i)The impugned orders dated 03.12.2025 shall stand set aside. However, it will be open for the respondent authority to issue fresh show cause notice either under section 73 or under Section 74 of the Act, as the case may be, after prima facie satisfying themselves with due averments in that regard.

(ii)Upon issue of show cause notice, it will be open for the petitioner to raise all contentions including the transaction would fall only within section 73 of the Act and fresh orders in accordance with law shall be passed. No costs. Consequently, connected miscellaneous petitions are closed.

11.03.2026

NCC:Yes/No
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To
The State Tax Officer(Roving Squad-2)
O/o.The Joint Commissioner(ST)(IW)
Commercial Taxes Buildings,
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D.BHARATHA CHAKRAVARTHY, J.

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