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)No.6709 of 2026
and
W.M.P(MD)No.5559 of 2026

Tvl.T.Balasubramanian ... Petitioner

Vs.

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

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/2019-20 for the assessment year 2019-2020 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

ORDER

This writ petition is filed challenging the impugned order dated 03.12.2025 passed for the assessment year 2019-2020.

2.In this case, it can be seen that when the petitioner who is engaged in the business of supply of bricks, cement, etc. Where duly filing returns, realizing that certain transactions were not reported. Through Form DRC-03 on 16.09.2023, the petitioner had paid a sum of Rs.28,46,104/- being the tax due under CGST and SGST respectively, along with an interest amount of Rs.7,49,466/-. Thereafter an inspection was conducted in the year 2025. Between 17.02.2025 and 19.02.2025 show cause notice was issued on 27.03.2025 under section 74(1) of the TNGST Act, pointing out to the aforementioned difference in GSTR-3B, GSTR-1 and form 26AS and directing the petitioner to show cause as to why appropriate penalty and interest be levied. The petitioner appeared before the authority and submitted his reply. It is his contention that the case can never come under Section 74 of the Act, as there is no willful suppression or an intention to evade the tax that is alleged. The said contention is not accepted and the proposal as made in the show cause notice was confirmed in the impugned order as against which, the petitioner is before this Court.

3.Even though there is an appellate remedy, the petitioner has approached this Court questioning the jurisdiction of the authorities to invoke Section 74 of the Act, while the nature of transaction and the defect alleged can only fall under Section 73 of the Act.

4.The learned counsel appearing on behalf of the Revenue would submit that when the petitioner had shown a different set of transaction in his income tax account in Form 26AS and has not disclosed the same to the TNGST authorities. Then the action is nothing, but willful suppression to evade tax, and therefore the authorities were right in invoking Section 74 of the Act. As a matter of fact, in the connected writ petitions in W.P(MD)Nos. 6708 and 6710 of 2026, I have considered the rival submissions made on either side, and I have held as follows in the order:

> "....
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> *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 spend. 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. If the authorities still 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."

5.Thus, it can be seen that in the present case, neither there was evasion of tax and that even before the inspection, the petitioner had paid the tax in the year 2023 itself along with interest. The show cause notice also does not allege that as to how there was any intention of willful suppression or to evade tax, especially when the petitioner himself has voluntarily paid the entire tax amount and the interest amount as early as in the year 2023. When the inspection itself happened only in the year 2025, as a matter of fact, the show cause notice itself refers to the sworn statement recorded on 19.02.2020 at the conclusion of this surprise inspection in the year 2025. Therefore, in this case, I am unable to hold that it can be a case under Section 74 of the Act. I am of the view that when the petitioner has voluntarily paid the entire tax and in the absence of any specific averments in the show cause notice or in the impugned order as to how the petitioner had committed the fraud or that he has willfully made misstatements or suppressions to evade tax. The entire exercise under section 74 of the Act cannot stand.

6.In view thereof this writ petition is allowed on the following terms:

The impugned order dated03.12.2025 shall stand set aside. However, it will be open for the respondent authorities to issue a fresh show cause notice under Section 73 of the Act, if they still feel that any penalty under Section 73 of the Act has to be collected from the petitioner or any other amount due from the petitioner has to be assessed and collected. No costs. Consequently, connected miscellaneous petition is closed.

11.03.2026

NCC:Yes/No
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D.BHARATHA CHAKRAVARTHY, J.

Ns

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