BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 11.11.2025

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)Nos.30453 to 30458 of 2024
and
W.M.P.(MD)Nos.25593, 25594, 25597, 25599, 25595, 25598, 25602, 25604, 25603, 25606, 25600 & 25601 of 2024
&
W.M.P.(MD)Nos.5215, 5224, 5226, 5271, 5261 & 5264 of 2025

Neeyamo Enterprise Solutions Private Limited
Rep. by its Manager-Finance (Statutory & Compliance),
Ms.Archana K
D/o.P.Kumar,
Aged 32 years,
Plot No.8, II Floor, Elcot IT SEZ, Madurai Ring Road,
Near Pandi Koil,Madurai Illandhikulam Village,
Tamil Nadu-625 020. ... Petitioner in all W.Ps.

Vs.

The Commercial Tax Officer,
Office of the Joint Commissioner (State Tax) (Intelligence)
Commercial Taxes Building,
Dr Thangaraj Salai,
KK Nagar,
Madurai-625 002. ... Respondent in all W.Ps.

Prayer in W.P.(MD)No.30453 of 2024 : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, to call for the records in Reference No. ZD3306240857908 dated 11.06.2024 order u/s. 74 of TNGST Act 2017 along with a Summary of order in Reference

No. ZD3306240857908 dated 11.06.2024 on the file of the Respondent for the period April, 2018 to March 2019.

Prayer in W.P.(MD)No.30454 of 2024 : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, to call for the records in Reference No. ZD330624085928V dated 11.06.2024 order u/s. 74 of TNGST Act 2017 along with a Summary of order in Reference No. ZD330624085928V dated 11.06.2024 on the file of the Respondent for the period April, 2019 to March 2020 and quash the same.

Prayer in W.P.(MD)No.30455 of 2024 : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, to call for the records in Reference No. ZD330624148472G dated 18.06.2024 order u/s. 74 of TNGST Act 2017 along with a Summary of order in Reference No. ZD330624148472G dated 18.06.2024 on the file of the Respondent for the period April, 2020 to March 2021 and quash the same.

Prayer in W.P.(MD)No.30456 of 2024 : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, to call for the records in Reference No. ZD330624148228D dated 18.06.2024 order u/s. 74 of TNGST Act 2017 along with a Summary of order in Reference No. ZD330624148228D dated 18.06.2024 on the file of the Respondent for the period April, 2021 to March 2022 and quash the same.

Prayer in W.P.(MD)No.30457 of 2024 : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, to

call for the records in Reference No. ZD330624086028C dated 11.06.2024 order u/s. 74 of TNGST Act 2017 along with a Summary of order in Reference No. ZD330624086028C dated 11.06.2024 on the file of the Respondent for the period April, 2022 to March 2023 and quash the same.

Prayer in W.P.(MD)No.30458 of 2024 : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, to call for the records in Reference No. ZD330624086120Q dated 11.06.2024 order u/s. 74 of TNGST Act 2017 along with a Summary of order in Reference No. ZD330624086120Q dated 11.06.2024 on the file of the Respondent for the period April, 2023 to August, 2023 and quash the same.

For Petitioner : Mr.J.Dinesh

For Respondents : Mr.R.Suresh Kumar
Additional Government Pleader

COMMON ORDER

Heard both sides.

2.The cases on hand pertain to the financial years 2018-2019 to 2022-2023 and the period from April 2023 to August 2023. The first respondent issued show cause notices dated 10.05.2024 calling upon the assessee to show cause as to why he should not pay the tax, interest and penalty determined in the show cause notices. The show cause notices were a fall out

of the surprise inspection conducted in the petitioner's business premises on various dates in September 2023 under Section 67 of the TNGST Act, 2017. As many as 9 defects were noticed and they had been catalogued in the notices also. The petitioner failed to respond to the show cause notices. Thereafter, the impugned orders came to be passed on 11.06.2024 and 18.06.2024 calling upon the petitioner to pay the petition mentioned sums towards tax, penalty and interest. Challenging the same, these writ petitions have been filed.

3.The respondent has filed counter-affidavit and the learned Additional Government Pleader took me through its contents. He pointed out that the assessee ought to have filed appeals within time and having missed the bus cannot agitate the matter in writ proceedings.

4.Admittedly, the impugned orders were passed only under Section 74 of the TNGST Act, 2017. Chapter XII of TNGST Act, 2017 deals with assessment. Chapter XIII deals with audit. Chapter XIV deals with inspection, search, seizure and arrest. Section 73 enables the proper officer to proceed against the assessee for recovery of any tax that has not been paid or short paid or erroneously refunded or where input tax credit has been wrongly availed or utilised. Action under this provision has to be taken within three years from the

due date for furnishing of annual return for the relevant financial year. Section 74 provides for an extended period of limitation. The non-payment or short payment of tax or erroneous refund or wrong availing or utilization of input tax credit must have been by reason of fraud, any wilful misstatement or suppression of facts to evade tax.

5.Sub-section (1) and sub-section (10) of Section 74 of the Act are relevant and they read as follows :

> "(1) Where it appears to the proper officer that any tax has not been paid short paid or erroneously refunded or where input tax credit has been wrongly availed or utilized by reason of fraud, or any willful misstatement or suppression of facts to evade tax, he shall serve notice on the person chargeable with tax which has not been so paid or which has been so short paid or to whom the refund has erroneously been made, or who has wrongly availed or utilised input tax credit, requiring him to show cause as to why he should not pay the amount specified in the notice along with interest payable thereon under section 50 and a penalty equivalent to the tax specified in the notice.
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> .....
>
> (10) The proper officer shall issue the order under subsection (9) within a period of five years from the due date for furnishing of annual return for the financial year to which the tax not paid or short paid or input tax credit wrongly availed or utilised relates to or

within five years from the date of erroneous refund."

The above provision provides for passing a re-assessment order within five years provided the assessee can be attributed with fraud, or any wilful-misstatement or suppression of facts.

6.In almost all statutes providing for levy of tax, there are provisions providing for reopening the assessment when there is non-payment or short payment. But it has to be done within a prescribed period. An extended period is provided when the assessee can be charged with conduct such as fraud, suppression etc., Section 74 is not an innovation. Corresponding provisions can be found in many a taxing statute. Section 11A of the Central Excise Act, 1944 is almost in pari materia. The judicial precedents interpreting the said provision can be applied with equal force to cases arising under Section 74 of the TN GST Act.

7.Issuance of show cause notice is mandatory. The show cause notice must spell out the reason for non-payment or short payment or erroneous refund of tax or wrongful availing or utilization of input tax credit. The provision itself stipulates that such a situation must have been by reason of fraud or any wilful misstatement or suppression of facts to evade tax. In other words, the

show cause notice itself must make it clear whether the assessee is being charged with fraud, or suppression or wilful misstatement. It is quite possible that one or all the three elements could be present. It is not enough to merely impute the offending the conduct to the assessee. The show cause notice itself must disclose the entire material on which the proper officer has arrived at such a conclusion. In the very nature of things, the inference can only be a tentative one. Section 74(9) of the Act mandates that the proper officer shall issue an order after considering the representation if any made by the noticee. If the noticee makes a request in writing for an opportunity of hearing, the proper officer is obliged to grant the same (vide Section 75(4)). The same obligation will apply when the proper officer contemplates an adverse decision against the noticee. In such a case, request from the assessee is not even necessary.

8.The Hon'ble Supreme Court in the decision reported in ***(1994) 74 ELT 9 (SC) (Tamil Nadu Housing Board v. Collector of Central Excise, Madras)*** held that in case the provision provides for extension of limitation period, it has to be construed strictly. In ***Raj Bahadur Narain Sing Sugar Mills Ltd v. UOI (1997) 6 SCC 81)***, the Hon'ble Supreme Court while construing Rule 10 of the Central Excise Rules, 1944 held that the party to whom a show cause notice is issued must be made aware that the allegation against him is of collusion or

wilfulness statement or suppression of fact and that it is a requirement of natural justice. The Allahabad High Court in ***Safecon Lifescience Private Limited v. Additional Commissioner Grade 2 (2025 (9) TMI 919*** held that proceedings under Section 74 of the Act could not have been initiated against the petitioner since the authorities have neither recorded any findings of fraud nor wilful misstatement nor suppression of fact to evade payment of tax. The Hon'ble Supreme Court in ***Commissioner, Central Excise and Customs v. Reliance Industries Ltd (2023) 20 SCC 368*** held as follows :

> "**14.....** since the expression "suppression of facts" is used in the company of terms such as fraud, collusion and wilful misstatement, it cannot therefore refer to an act of mere omission, and must be interpreted as referring to a deliberate act of non-disclosure aimed at evading duty, that is to say, an element of intentional action must be present."

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.My attention is drawn to the order dated 20.09.2024 made in W.P.(MD)No.22420 of 2024 (***S.S.Communications Vs. The Deputy State Tax Officer II***). Paragraph Nos.6 to 8 of the said order reads as follows:-

> "6. Before proceeding further, it may be relevant to extract to Section 74 of the GST Act, which has been invoked by the respondent vide impugned proceedings:
>
> "**74...**
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> A reading of the above provision would show that the extended period would be invoked only where tax has not been paid or short paid or erroneously refunded or where input tax credit has been wrongly availed or utilised by reason of fraud, or any wilful misstatement or suppression of facts to evade tax. The existence of the above ingredients is a jurisdictional fact/condition precedent for invoking extending period of limitation under Section 74 of the Act. It is clear that existence of "jurisdictional fact" is sine qua non for the exercise of power. If the jurisdictional fact exists, the authority can proceed with the case and take an appropriate decision in accordance with law. It leaves no room for any doubt that to invoke the extended period, the Assessing Officer ought to show/demonstrate the existence of any of the circumstances set out in Section 74 of the Act. In terms of Section 74 of the Act, fraud, wilful misstatement or suppression of facts to evade tax would constitute the "jurisdictional fact" for invoking extended period of limitation and failure to record the existence of the above jurisdictional fact while

invoking the extended period under section 74 of the Act, would vitiate the entire proceedings. In this regard, it may be relevant to refer to the following judgments rendered under Section 11A of the Central Excise Act, which contained similar/identical expressions:

a)CCE v. H.M.M. Ltd., 1995 Supp (3) SCC 322

"2. If the department proposes to invoke the proviso to Section 11-A(1), the show-cause notice must put the assessee to notice which of the various commissions or omissions stated in the proviso is committed to extend the period from six months to 5 years. Unless the assessee is put to notice, the assessee would have no opportunity to meet the case of the department. The defaults enumerated in the proviso to the said sub-section are more than one and if the Excise Department places reliance on the proviso it must be specifically stated in the show-cause notice which is the allegation against the assessee falling within the four corners of the said proviso. In the instant case that having not been specifically stated the Additional Collector was not justified in inferring (merely because the assessee had failed to make a declaration in regard to waste or by-product) an intention to evade the payment of duty."

b) CCE v. Pepsi Foods Ltd., (2011) 1 SCC 601:

"25. The aforesaid dictum of Lord Reid has been followed by this Court also. A reference in this connection may be made to Union of India v. Rajasthan Spg. & Wvg. Mills [(2009) 13 SCC 448 : (2009) 238 ELT 3] . This Court considering Section 11-AC of the Act held in ELT para 19 at p. 12 of the Report as follows: (SCC p. 459, para 29)

"29. From the aforesaid discussion it is clear that penalty under Section 11-AC, as the word suggests, is punishment for an act of deliberate deception by the assessee with the intent to evade duty by adopting any of the means mentioned in the section."

26. Following the aforesaid well-settled principles, this Court quashes that part of the order-in-original which imposes penalty without any finding

of fraud or misstatement against the respondent. This part of the order-in-original is quashed. Save as aforesaid, the order-in-original is upheld. These appeals filed by the Revenue are allowed to the extent indicated above. No costs."

7.It may also be relevant to refer to the judgment of this Court rendered under the Income Tax Act in the case of CIT v. Elgi Ultra Industries Ltd. [2008] 296 ITR 573 (Mad), which reads as follows:

".. . the reopening of the assessment under section 148 beyond the period of four years at the end of the relevant assessment year can be sustained only if it is established that there is a failure on the part of the assessee to disclose fully and truly all material facts. In this case there is no finding that there is failure on the part of the assessee to disclose fully and truly all material facts."

(emphasis applied)

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."

11.The learned counsel for the writ petitioner draws my attention to the circular dated 13.12.2023 issued by the Principal Commissioner (GST). Paragraph Nos.3.1 to 3.3 of the said circular read as follows:-

"3.1 It has also been represented by the industry that in many cases involving secondment, the field formations are mechanically invoking extended period of limitation under Section 74(1) of the CGST Act.

3.2 In this regard, Section 74(1) of CGST Act reads as follows:-

"(1) Where it appears to the proper officer that any tax has not been paid or short paid or erroneously refunded or where input tax credit has been wrongly availed or utilized by reason of fraud, or any wilful-misstatement or suppression of facts to evade tax."

3.3 From the perusal of wording of Section 74(1) of CGST Act, it is evident that Section 74(1) can be invoked only in cases where there is a fraud or wilful mis-statement or suppression of facts to evade tax on the part of the said tax payer. Section 74(1) cannot be invoked merely on account on non-payment of GST, without specific element of fraud or wilful mis-statement or suppression of facts to evade tax. Therefore, only in the cases where the investigation indicates that there is material evidence of fraud or wilful mis-statement or suppression of facts to evade tax on the part of the tax payer, provisions of Section 74(1) of CGST Act may be invoked for issuance of show cause notice, and such evidence should also be made a part of the show cause notice."

12.The learned Additional Government Pleader appearing for the respondents submitted that another learned Judge of this Court (Honourable Mr.Justice K.Kumaresh Babu) in **W.P.(MD)No.28502 of 2022**, dated 28.01.2025 had taken the view that even if the expression set out in Section 74 of GST Act have not been mentioned, the writ Court can take note of the conduct of the assessee to evade tax and deny relief. Paragraph No.15 of the said order reads as follows:-

"15.The entire claim against the petitioner had arisen of its own failure to register itself under the GST Act as required under law. Only pursuant

> thereto, the petitioner had remitted the tax that he is liable to pay. Even though, such action is claimed to be a voluntary payment by the petitioner, it should be seen that the petitioner had attempted to evade payment of tax which is liable to be taxed and only pursuant to the inspection effected by the respondent, the petitioner had submitted himself for payment of tax and hence, the same cannot be said to be a voluntary payment and has been made only to wriggle out of the penal consequences. This conduct of the petitioner to evade tax will also fall under suppression and fraudulent activities envisaged under Section 74 of the GST Act. Hence, the contention that Section 74 cannot have been invoked against the petitioner cannot be countenanced."

With utmost respect, I am unable to follow the above decision. This is for more than one reason. There is no reference to the earlier order dated 20.09.2024 made in ***W.P.(MD)No.22420 of 2024 (S.S.Communications Vs. The Deputy State Tax Officer II***). There is also no reference to the circular issued by the Central Board of Indirect Taxes and Customs. It is well settled that the circular issued by the board is the binding authority concerned. In my view, non-payment or short payment of tax or even evasion of tax by itself is not sufficient. They must be by reason of the elements specifically set out in Section 74. If there is no suppression or wilful misstatement or fraud, the extended period of limitation will not be available. The expression "by reason of" was not brought to the notice of the Hon'ble Judge. It is for this reason (no pun intended) I beg to disagree.

13.When a subsequent decision departs from the earlier approach, the

Judge concerned will have to not only make a reference to the earlier precedents but also give reasons for such departure. If there is no such reference to the earlier decisions, the subsequent decision cannot be taken as a binding decision.

14.The learned Additional Government Pleader then pointed out that another learned Judge of this Court (Hon'ble Mr.Justice K.Senthilkumar Ramamoorthy) vide order dated 15.02.2024 in W.P.No.3458 of 2024, even while setting aside the order impugned in the writ petition for not complying with the ingredients of Section 74 chose to put the assessee on terms and remand the matter. Paragraph No.6 & 7 of the said order read as follows:-

> "6. On examining the impugned assessment order and the show cause notice which preceded it, however, it is noticeable that the impugned order is unreasoned. It is also noticeable that the ingredients of Section 74 are not satisfied. For these reasons, the orders impugned herein warrant interference, albeit by putting the petitioner on terms.
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> 7. For reasons set out above, the assessment order and the consequential attachment notice are quashed subject to the condition that the petitioner remits 10% of the disputed tax demand within a period of twoweeks from the date of receipt of a copy of this order. Subject to fulfilment of the above condition, the assessing officer is directed to provide a reasonable opportunity to the petitioner, including a personal hearing, and thereafter issue a fresh assessment order within a period of two months from the date of fulfillment of the above condition by the petitioner."

15.I am again not persuaded by this submission. When an order passed by the authority is bad in law, it has to be quashed. The order may be set aside either for non-adherence to procedural formalities or on account of the absence of the jurisdictional facts. Executive orders are often set aside on the ground of violation of principles of natural justice. The statute would provide for issuance of notice. But without issuing such notice, an adverse order would be passed. When such orders are set aside, the writ court has to remand the matter. The authority has to be given liberty to proceed afresh. But when jurisdictional facts are absent, the order has to be set aside and the court will have to stop at that. The presence of the jurisdictional fact alone confers power on the authority to initiate action and proceed in the matter. Their absence would completely undermine the very foundation itself. In such cases, the question of making a remand does not arise at all. An order of remand cannot be made mechanically. When the issue goes to the root of the matter touching on the jurisdictional aspect and the issue is answered in favour of the assessee, the writ court will not be justified in remanding the matter.

16.Section 74(1) of the Act talks about specifying the sum payable by the assessee in the show cause notice. In the case on hand, the authority has used the word “determined”. There is a ocean of difference between specifying

something and determining something. The word "determined" found in the show cause notice cannot be construed as "specified". Public orders made by public authorities are meant to have public effect and are intended to affect the acts and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself (vide ***Commissioner of Police, Bombay v. Gordhandas Bhanji [(1951) SCC OnLine SC 70].*** The show cause notices in this case by employing the expression "determination" betray the element of pre-determination on the part of the authority.

17.Since the show cause notices as well as the impugned orders themselves do not charge the writ petitioner with fraud or wilful misstatement or suppression of facts to evade tax, they stand quashed. Section 74 of the Act could not have been invoked against the petitioner. If the authority can proceed against the petitioner under any other provision such as Section 73 of the Act, he or she is at liberty to do so.

18.These writ petitions are allowed. Consequently, connected miscellaneous petitions are closed.

11.11.2025

Index : Yes / No
Internet : Yes/ No
rmi/SKM

To

The Commercial Tax Officer,
Office of the Joint Commissioner (State Tax) (Intelligence)
Commercial Taxes Building,
Dr Thangaraj Salai,
KK Nagar,
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G.R.SWAMINATHAN, J.

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