IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On	26.11.2025
Pronounced On	08.06.2026

CORAM :

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.Nos.172 and 382 of 2025
and
W.M.P.Nos.176, 178, 435 and 440 of 2025

Tvl. K.Ezhil Arasan,
Contractor … Petitioner in both W.Ps

Vs.

1.The Joint Commissioner (ST) Intelligence,
Group-2, Commercial Taxes Building,
Hasthampatti, Salem – 636 007.

2.The Commercial Tax Officer,
Salem, Tamil Nadu. … Respondents in both W.Ps

Prayer in W.P.No.172 of 2025: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari, to call for the records on the file of the 1st Respondent in its impugned proceedings for the Assessment Year 2021-22 in GSTIN: 33AAFPE6843C1Z6/2021-2022 dated 20.06.2024 and the 2nd Respondent's consequential DRC-07 order bearing Ref.No: ZD330624275821B dated 24.06.2024 and quash the same.

Prayer in W.P.No.382 of 2025: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari, to call for the records on the file of the 1st Respondent in its impugned proceedings for the Assessment Year 2020-21 in GSTIN: 33AAFPE6843C1Z6/2020-2021 dated 20.06.2024 and the 2nd Respondent's consequential DRC-07 order bearing Ref.No: ZD3306242757354 dated 24.06.2024 and quash the same.

For Petitioner (In both W.Ps)	:	Mrs.R.Hemalatha
For Respondents (In both W.Ps)	:	Mrs.K.Vasanthamala Government Advocate

COMMON ORDER

These cases were heard along with a batch of 250 Writ Petitions and as one of the 53 Writ Petitions which were finally heard on the larger issue regarding the challenge to the proceedings under Section 74 of the respective GST Enactments.

2. By a Common Order today in **W.P.No.2142 of 2026** [**Turbo Energy Private Limited**], **W.P.Nos.35967, 35970, 35974 and 35976 of 2024** [**Fastenex Private Limited**] and **W.P.Nos.14487, 14492 and 14500 of 2025** [**Ispahani Estates Private Limited**], a detailed order has been passed insofar as the invocation of extended period of limitation under Section 74 of the respective GST Enactments.

3. In these Writ Petitions, the Petitioner has challenged the respective Impugned Orders both dated 20.06.2024 passed for the Tax Periods 2020-2021 and 2021-2022. The respective Impugned Orders were preceded by a Show Cause Notice in Form GST DRC-01 both dated 07.05.2024 for the respective period to which the Petitioner submitted a Manual Reply dated 14.06.2024.

4. Following defects were pointed out in the aforesaid Notice issued for the respective Tax Periods, which eventually culminated in the Impugned Orders:

Sl. No.	**W.P.No.**	**Assessment Year**	**GSTR-3B Vs. GSTR-2A (Defect No.1)**	**GSTR-7 Vs. GSTR-3B (Defect No.2)**	**GSTR-9 Vs. Form 26AS (Defect No.3)**
1.	172 of 2025	2021-2022	6099	---	3,27,644
			6099	---	3,27,644
2.	382 of 2025	2020-2021	18957	12,18,125	2,54,39,123*
			18957	12,18,125	2,54,39,123*

***Note**- Though the discussion under **Defect No.3** in the Notice in **W.P.No.382 of 2025** records the tax liability as **Rs.15,26,347/- x 2**, the Revenue Abstract erroneously mentions the Tax Liability as **Rs2,54,39,123/- x2** i.e., the **Exempted Turnover** of the tax payer reported in **GSTR-9**.*

5. The tax liability of the Petitioner confirmed in the Revenue Abstract to the Impugned Orders dated 20.06.2024 for the Tax Periods 2020-2021 & 2021-2022, are detailed as follows:-

Sl. No.	**W.P.No.**	**Assessment Year**	**GSTR-3B Vs. GSTR-2A (Defect No.1)**	**GSTR-7 Vs. GSTR-3B (Defect No.2)**	**GSTR-9 Vs. Form 26AS (Defect No.3)**
1.	172 of 2025	2021-2022	6099 #	---	3,27,644
			6099#		3,27,644
2.	382 of 2025	2020-2021	18957#	12,18,125	23,50,142*
			18957#	12,18,125	23,50,142*

#Note- In both the Impugned Orders, **Defect No.1** has been dropped and the rest of the Defects have been confirmed.

6. Apart from the above, penalty and interest have been imposed on the Petitioner in the respective Impugned Orders.

7. The learned counsel for the Petitioner submitted that the “reasons to believe” the existence of Fraud or Wilful-misstatement or Suppression of Facts is a must before invoking the machinery under Section 74 of the respective GST Enactments.

8. The learned counsel for the Petitioner drew attention to the parallel provisions under Section 27 of the Tamil Nadu Value Added Tax Act, 2006 and Section 147 of the Income Tax Act, 1961.

9. The learned counsel for the Petitioner also drew attention to the decision of the Hon'ble Supreme Court in **GKN Driveshafts (India) Limited** Vs. **Income Tax Officer and others,** (2003) 1 SCC 73 / [2003] 259 ITR 19 (SC). She would submit that even under the Income Tax Act, 1961 before issuing a Notice under Section 148 of the Income Tax Act, 1961, there must be a material available with the Assessing Officer to form "reasons to believe" that income has escaped assessment.

10. It is submitted that under Section 74 of the respective GST Enactments, the expression used is "where it appears". Therefore, it is submitted that if the required material was available, it should have been communicated to the Petitioner in the Notice issued in GST DRC-01 dated 07.05.2024. It is submitted that the reason for invoking the extended period of limitation under Section 74 of the respective GST Enactments is conspicuously absent in the Notice.

11. The learned counsel for the Petitioner further drew attention to the decision of the Hon'ble Supreme Court in **Kanaksingh Raisingh Rav** Vs. **State of Gujarat**, (2003) 1 SCC 73, rendered in the context of Section 32(1) of the Indian Penal Code.

12. On the other hand, the learned Government Advocate for the Respondents submitted that the Notice in GST DRC-01 was issued by invoking the ingredients of Section 74 of the respective GST Enactments.

13. It is submitted that the Petitioner was called upon to explain the discrepancies relating to **Defect No.2** regarding the difference in turnover between **GSTR-9** and the Income Tax Return in **Form 26AS** and that a personal hearing was also fixed informing the Petitioner that the proceedings were initiated under Section 74 of the respective GST Enactments.

14. The learned Government Advocate for the Respondents further submitted that the Petitioner had not earlier explained how the difference in exempted supply arose, and therefore, these Writ Petitions are liable to be dismissed.

15. I have considered the arguments advanced by the learned counsel for the Petitioner and the learned Government Advocate for the Respondents.

16. A reading of the records reveal that the impugned proceedings are pursuant to an inspection held on 18.07.2023. During the course of an inspection, the records revealed that the Petitioner has not paid tax fully. Thus, invocation of machinery under Section 74 of the respective GST Enactments cannot be assailed.

17. The respective Notices have clearly mentioned that the Notices were issued pursuant to the Inspection held on 18.07.2023 and after communication of the Intimation in GST DRC-01A dated 26.04.2024.

18. A reading of the Reply also indicates that the Petitioner has not effectively answered to the allegations in the Show Cause Notices.

19. The reply that was filed by the Petitioner merely reads as under:-

W.P.No.172 of 2025	W.P.No.382 of 2025
Tax Period 2021-2022	**Tax Period 2020-2021**
Ref: 1 GSTIN No.33AAFPE6843C126/ 2021-22 2 DRC 01 Notice DT 7.5.24 3 Due to STO Leave during personal hearing the reply posted by RPAD 21.10.23. I am submitting herewith the reply for reference second cited above. Defect No.1 accepted. Defect No.2 A detailed statement Annexure I enclosed for the tax paid during this current year and in the subsequent years and there is no suppression and omission. This is for your kind information.	Ref: 1 GSTIN No.33AAFPE6843C126/ 2020-21 2 DRC 01 Notice DT 7.5.24 3 Due to STO Leave during personal hearing the reply posted by RPAD 21.10.23. I am submitting herewith the reply for reference second cited above. Defect No.1 I am ready to pay the difference of Rs.37914 i.e., CGST 18957 + SGST 18957. I had already paid an amount and adjust the same in that. Defect No.2 Difference in turnover between GSTR Vs. GSTR3B and the difference is paid in current and subsequent years. A detailed statement for this difference and relevant tax paid is enclosed vide Annexure I. Defect No.3 In GSTR 9 Serial No.D alone available to submit the others as EXEMPTED As per GSTR9 total turnover is **Rs.38992484** and your notice mentioned that **25439123** Not yet paid and the same paid in subsequent years.

	I therefore humbly request to drop this notice and there is no suppression and omission.

20. Since the records before the Respondents revealed short-payments of tax as compared to the amount mentioned in Form 26AS and in GSTR-7, the Respondents are entitled to invoke the machinery under Section 74 of the respective GST Enactments as the expression used therein is “**where it appears**” as held in **W.P.Nos.35967, 35970, 35974 and 35976 of 2024 etc., batch** by separate order today.

21. The Show Cause Notices have clearly referred to Section 74 of the respective GST Enactments for imposing penalty. The expression “**willful suppression of facts**” has been used in both the Show Cause Notices in GST DRC-01 dated 07.05.2024 impugned in the respective Writ Petitions.

22. However, as noted earlier, the Revenue Abstract to Notice in **GST DRC-01** for the **Tax Period 2020-2021**, records the tax liability under **Defect No.3** as **Rs.2,53,39,123/-** x 2 *i.e.,* the exempted turnover in **GSTR-9**, instead of the tax liability stated in the discussion under **Defect No.3** *i.e.,* **Rs.15,26,347/- x 2**.

23. That apart, the Impugned Order for the **Tax Period 2020-2021**, inadvertently records the exempted turnover for the Tax Period **2018-2019** and arrives at the tax liability of **Rs.23,50,142/- x 2**.

24. Considering the fact that the Impugned Order and the respective Show Cause Notice in **W.P.No.382 of 2025** have inadvertently recorded the exempted turnover as the tax liability and have erroneously arrived at the total tax liability, and considering the fact that the reply filed by the Petitioner to the Show Cause Notice preceding the Impugned Order challenged in W.P.No.172 of 2025 is insufficient, I am inclined to remit the case back to the Respondent to pass a fresh order on merits.

25. Accordingly, the cases are remitted back to the Respondent to pass a fresh order on merits after affording opportunity of personal hearing to the petitioner, who shall file detailed replies and necessary documents to defend their case, within a period of 3 months from the date of issuance of a copy of this order.

26. Accordingly, the present Writ Petitions are disposed of with the above directions. No Costs. Connected Miscellaneous Petitions are closed.

08.06.2026

Neutral Citation : Yes / No

av/arb

To:

1.The Joint Commissioner (ST) Intelligence,
Group-2, Commercial Taxes Building,
Hasthampatti, Salem – 636 007.

2.The Commercial Tax Officer,
Salem, Tamil Nadu.

C.SARAVANAN, J.

av/arb

Pre-Delivery Common Order in W.P.Nos.172 and 382 of 2025

08.06.2026