

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07-07-2026

CORAM

THE HON'BLE MR JUSTICE SENTHILKUMAR RAMAMOORTHY

WP Nos. 24237 & 24239 of 2026

&

WMP Nos.26376 & 26378 of 2026

In both WPs

Ms WFB Baird and Company India Private
Limited

Rep by its Dy.G.M.Mr.Sunil Nair
Plot No.13-15, 22-24, 5th Cross,
CIPCOT, Perundurai-638 052
Erode, Tamilnadu

..Petitioner(s)

Vs

1. The State Tax Officer I,
Data Analytical Unit
Office of the Joint commissioner(ST)
(Intelligence), Erode Division
Erode-638 001.
2. The State Tax Officer, Inspection III
Commercial Taxes Building, Brough Road,
Erode.
3. The Appellate Deputy Commissioner (ST),
GST Appeals
Commercial Taxes Building, Brough Road,
Erode
4. The Assistant Commissioner (ST), Perundurai
Circle
Commercial Taxes Building, Brough Road,
Erode
5. State of Tamil Nadu, Represented by its
Secretary, Department of Finance



..Respondent(s)

Prayer in W.P.No.24237 of 2026: Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of certiorarified Mandamus to call for the records of the impugned Order dated 06.01.2026 in Form GST SPL-07 bearing Reference No. ZD330126028468G issued by the 4th Respondent and quash the same and further direct the 4th Respondent to grant the benefit of waiver of penalty under Section 128A of the TNGST Act, 2017 r/w CGST Act, 2017 to the Petitioner.

Prayer in W.P.No.24239 of 2026: Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of declaration to declare that the Adjudication Order dated 08.12.2023 of the 1st Respondent as void to the extent it travels beyond the scope of Show Cause Notice dated 29.09.2023 by wrongly invoking Section 74 of the TNGST Act, 2017 r/w CGST Act, 2017 as without jurisdiction and further declare that the adjudication proceedings initiated pursuant to the Show Cause Notice dated 29.09.2023 are the proceedings under Section 73 of TNGST Act, 2017 r/w CGST Act, 2017.

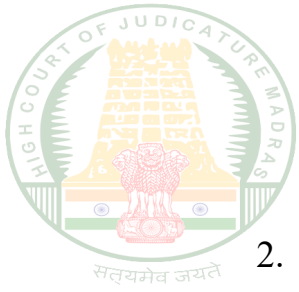
In both WPs

For Petitioner(s): Mr.R Anish Kumar

For Respondent(s): Mr.R.Sethu Prabakaran
Government Counsel

COMMON ORDER

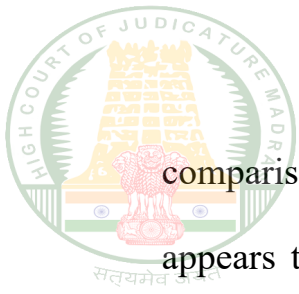
Both order dated 08.12.2023 under Section 74 of applicable GST enactments and order dated 06.01.2026 rejecting the petitioner's application under Section 128A of applicable GST enactments are challenged in these writ petitions.



2. Adverting to show cause notice dated 29.09.2023, learned counsel for the petitioner submits that said show cause notice was issued under Section 73. He also contends that the ingredients of Section 74 are not contained either expressly or in substance in said show cause notice. Turning to order dated 08.12.2023, learned counsel points out that the summary order records that it is an order under Section 73, whereas the detailed order makes a reference to Section 74 and a penalty of 100% was imposed. As a consequence, he submits that the petitioner's application under Section 128A was rejected.

3. In response, Mr.R.Sethu Prabakaran, learned Government Counsel submits that an application under Section 128A is not maintainable in relation to an order issued under Section 74.

4. On perusal of the show cause notice dated 29.09.2023, it is evident that said show cause notice was issued under Section 73. The show cause notice deals with three defects. Out of said three defects, defect No. 3 was dropped in entirety and defect No.2 was confirmed with regard to a small demand. The confirmed tax proposal relates largely to defect No.1. In the show cause notice, the tax payer was called upon to show cause as to why the excess ITC should not be reversed. Said show cause notice records the ITC claimed under GSTR 3B by comparing the same with available ITC as per GSTR 2A. Beyond such



comparison, there is nothing in the show cause notice that indicates that it appears that there was fraud or a wilful misstatement or even suppression of facts with an intent to evade tax.

5. The summary order is superscribed “order under Section 73”. The detailed order refers to the tax payer’s response to defect No.1. Thereafter, the order records that the burden of proof to establish a claim for ITC lies on the tax payer and that the tax proposal is being confirmed in view of the failure of the taxable person to prove the ITC claim. The ingredients of Section 74 are neither expressly nor impliedly contained in the said order.

6. Therefore, in terms of subsection (2) of Section 75 of applicable GST enactments, I conclude that the proceedings should appropriately have been initiated and concluded under Section 73 and not under Section 74. Consequently, the impugned assessment order is set aside and the matter is remanded for issuance of a fresh order under Section 73 of applicable GST enactments. As a corollary, the order rejecting the application under Section 128A is also set aside. Pursuant to the issuance of a fresh order under Section 73, it will be open to the petitioner to lodge a fresh application under Section 128A within the time limit prescribed in that regard.



7. These writ petitions are disposed of on these terms. Consequently, connected miscellaneous petitions are closed. No costs.

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07-07-2026

Index: Yes/No
Speaking/Non-speaking order
Neutral Citation: Yes/No

KAL

To

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Commercial Taxes Building, Brough Road, Erode
5. State of Tamil Nadu, Represented by its Secretary,
Department of Finance
Chennai



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Case Citation: (2026) taxcode.in 1194 HC

WP No. 24237 of 2



SENTHILKUMAR RAMAMOORTHY, J.

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