IN THE HIGH COURT JUDICATURE OF MADRAS

Dated:28.07.2026

Coram:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN
AND
THE HONOURABLE MRS.JUSTICE N.MALA

Writ Appeal No.1477 of 2026
and
C.M.P.No.13558 of 2026

M/s Geena Garments
Rep.by its Partner,
Mr.L.Mohan Shankar,
No.410, RK Nagar, Pichampalayam Pudur,
PN Road, Tiruppur 641 603. ..Appellant/Petitioner

/versus/

State Tax Officer,
Gandhi Nagar Assessment Circle,
No.16, Emperor Building,
Indira Nagar 1st Street,
Avinashi Road,
Tiruppur 641 603. ..Respondent/Respondent

Writ Appeal has been filed under Clause 15 of the Letters Patent to set aside the order dated 11.02.2026 made in W.P.No.19805 of 2025 on the file of this Hon'ble Court.

For Petitioner :Mr.S.Sathyanarayanan

For Respondents :M/s.Amirta Poongodi Dinakaran, GA (Taxes)

ORDER

(Order of the Court was made by Dr.G.Jayachandran,J)

The Intra-Court appeal is filed by the Assessee, being aggrieved by the order passed by the learned Single Judge, dismissing the writ petition filed by the appellant and upholding the Order-in-Original dated 05.02.2025 passed by the respondent.

2. Point involved in this case, to put it in brief:-

The appellant is a trader in the garments business. For managing its accounts and administrative affairs, it has engaged the service of M/s Infotech Audit Solution, which has supplied software, by name, ERP software for warehouse office staff and in-house activities. For the said service, during the assessment year 2017-2018, the appellant has paid around Rs.40 lakhs, which is inclusive of service tax of Rs.2,37,965/-. The Input Tax Credit in respect of the service tax is the subject matter of the appeal.

3. According to the appellant, the service tax/GST paid to the service provider is covered for Input Tax Credit. Whereas, the Department has contended that the service provider, namely, M/s Infotech Audit Solution is a

non-existent registered trader. The investigation has revealed that the alleged transaction is not a genuine transaction. The whereabouts of the said M/s Infotech Audit Solution are not known and several cases of this nature have come to the notice of the Director General of GST Intelligence (DGGI) and therefore, the Input Tax Credit availed by the appellant under CGST and SGST Acts needs to be revised.

4. In this connection, an intimation in Form GST DRC-01A was sent to the appellant vide proceedings dated 04.07.2024. After receiving his explanation, a show cause notice in Form GST DRC-01 was issued on 30.08.2024. The said explanation submitted by the appellant was considered and rejected by holding as below:-

> "*Verification by the concerned authorities at the principal place of the taxpayer, no such person by the name of Tvl.Infotech Audit Solution, was a non-existent registered person, there was no business activity, there is no movement of goods and only they were giving the invoices with a fraudulent intention to avail ITC without movement of goods and also invoices were being issued for outward supply in order to circulate and transfer of Input Tax Credit to the taxable Person to evade the Government Exchequer.*"

5. Pending disposal of the proceedings by the respondent, the appellant/Assessee had paid the tax demanded on 18.10.2024. The assessment order came to be passed thereafter on 05.02.2025 confirming the levy of tax and refusal of Input Tax Credit, besides interest and penalty imposed invoking Section 74 of the TNGST Act, 2017. Challenging the said imposition of interest and penalty, the writ petition has been filed.

6. The learned Single Judge, considering the facts, dismissed the writ petition holding that there is no scope for interference in the impugned assessment order, as the petitioner has accepted the demand proposed therein and made payment on 18.10.2024 in Form GST DRC-03 for a sum of Rs.2,37,965/-. The demand of interest under Section 50(3) and the penalty imposed under Section 74 of the respective GST Enactents are the automatic corollary in the case of willful mis-statement and short-paid tax.

7. The learned counsel appearing for the appellant primarily contended that the transport of goods in the case of software is not necessary, since it is intangible goods. However, the Assessing Authority had suspected the entire transaction solely on the ground that there is no

evidence for transport of goods. That apart, the investigation conducted by the Directorate General of GST Intelligence in respect of the service provider and the incriminating evidence alleged to have been collected cannot be mulcted on the appellant herein, who has genuinely availed the service of M/s.Infotech Audit Solution and paid the tax availed. Further, he submitted that in any event, the assessing officer ought to have examined the explanation of the appellant in a proper perspective. However, without any material evidence to positively conclude that there is willful suppression, penalty has been levied. The learned Single Judge, drawing an adverse inference against the petitioner, who had paid the tax demanded, dismissed the writ petition.

8. The learned Government Advocate appearing for the respondent submitted that material so far produced by the appellant herein has not disclosed the genuine transaction between the appellant and M/s Infotech Audit Solution. That apart, except book transactions, nothing is available or produced by the appellant to show the existence of the service provider or the service itself. Hence, the order of the assessing officer has to be upheld. Furthermore, when there is a statutory appeal remedy available to the appellant herein, instead of invoking the statutory appeal remedy, the writ

petition has been filed which is *per se* not maintainable. In this case, unlike the facts in the cases which have been referred to as precedents, a peculiar and unique circumstances is found for consideration, that is, the service which is alleged to have been availed by the appellant herein, being intangible goods, we cannot expect the physical transport of the said goods. However, the existence and utilisation can be very well verified by production of the outcome and utilisation of the said software.

9. The learned counsel appearing for the appellant submitted that the ERP software primarily relates to generating the payroll of the staff. The appellant is running a garment factory engaging around 1,000 employees and its actual turnover is around Rs.65 crores. While so, he submitted that for managing the payroll the software supplied by M/s Infotech Audit Solution was utilized and service charges were paid to them along with the tax. It is not difficult to prove this fact through the materials which would be in the custody of the appellant and if such materials are produced, it is not difficult for the department to verify whether that software was really utilised for the purpose for which the appellant had paid the service charges.

10. From the records, we find that neither the appellant nor the Department had ventured to establish their respective stand by testing or verifying the fundamental facts regarding the existence of the ERP software and the alleged utilization by the appellant. Instead, the Department had been keen in verifying the existence of the alleged service provider namely, M/s Infotech Audit Solution.

11. In the said circumstances, though we uphold the contention of the Department that the writ jurisdiction cannot be invoked in the nature of the case in view of the appeal provision, considering the special facts and circumstances of the case, while disposing of the writ appeal, we provide an opportunity to the appellant herein to appear before the appellate authority to file its appeal within a period of 30 days from the date of receipt of a copy of this order. On such appeal, the appellate authority shall entertain the appeal without insisting on any pre-deposit and dispose of the appeal on merits and in accordance with law within a period of three months from the date of receipt of the appeal.

12. Accordingly, **this Writ Appeal is disposed of**. No order as to costs. Consequently, connected Miscellaneous Petition is closed.

(Dr.G.Jayachandran,J) **(N.Mala,J.)**
28.07.2026

Index:yes/no
Speaking order/non speaking order
Neutral citation:yes/no
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