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W.P.No.36614 of 2024
and W.M.P.No.39493 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 04.02.2025

CORAM

THE HON'BLE MR.JUSTICE KRISHNAN RAMASAMY

W.P.No.36614 of 2024
and W.M.P.No.39493 of 2024

Tvl.Jainsons Castors & Industrial Products,
Rep. by its Authorized Representatives,
K.V.Srinivasamurthy,
No.29-A B, Old Poonamallee Road,
Achuthan Nagar,
Chennai – 600 097.

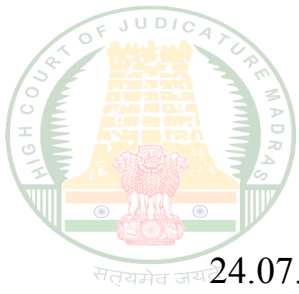
.. Petitioner

Vs.

The Assistant Commissioner (ST),
Ekkatuthangal Assessment Circle,
Station No.571,
Integrated Buildings for Commercial
Taxes Department,
South Tower, Room No.305, 3rd Floor,
Nandanam, Chennai – 600 035.

.. Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India,
pleaded to issue Writ of Certiorari, calling for the records of the respondent
in Form GST DRC-07 with Reference No.ZD330724295618W dated



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24.07.2004 passed under Section 73 of the TNGST Act, 2017, and quash the same as illegal, devoid of merits and against principles of natural justice.

For Petitioner : Mr.M.Varun Pandian

For Respondent : Mr.C.Harsha Raj,
Additional Government Pleader (Tax)

ORDER

This Writ Petition has been filed by the petitioner seeking to call for the records of the respondent in Form GST DRC-07 with Reference No.ZD330724295618W dated 24.07.2004 passed under Section 73 of the TNGST Act, 2017, and quash the same.

2.Learned counsel appearing for the petitioner would submit that, as per Section 47 of the TNGST Act, 2017 (hereinafter referred as 'the Act') only late fee can be levied. Further, the provision under Section 125 of the Act, will apply only in the case where no penalty is levied under Section 47 of the Act. Further, he would submit that no notice was issued as per Section 46 of the Act, however, penalty proceeding has been initiated



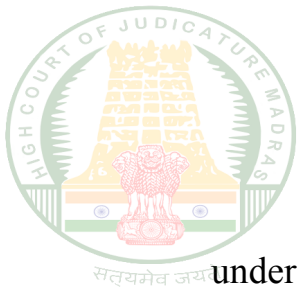
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against the petitioner. When Section 47 of the Act is available, for levy of the late fee, in the event of filing the return belatedly, in the present case, notice has been issued under Section 47 r/w 73 of the Act and no notice can be issued in terms of Section 73 of the Act.

3.Learned counsel appearing for the petitioner would further submit that the petitioner has not challenged into the late fee imposed upon them. Their contention is only to the extent that no notice was issued before issuing the show cause notice. In the present case, already return has been filed, however, the petitioner has not file their turnover. The respondent without properly communicating about the assessment proceedings, has straight away issued show cause notice under Section 73 of the Act. Section 73 of the Act pertains only to determination of tax and the same does not spells about non-filing of returns. Hence, he prayed to quash the impugned order.

4.Mr.C.Harsha Raj, learned Addl. Government Pleader appearing for the respondent would submit that in the present case, notice was issued



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under Section 47 r/w 73 of the Act since the petitioner failed to file annual returns in terms of Section 44 of the Act. Therefore, the notice was issued under section 47 of the Act and also the demand was made under Section 73 of the Act. Therefore, there is no error in the initiation of proceedings and also in the decision making process. According to the respondent, the late fee would come to Rs.1,12,000/- and the petitioner is not furnishing the full details of the turnover. Hence, prayed for the dismissal of the writ petition.

5. Heard the submissions made by the learned counsel appearing for the petitioner as well as the learned Additional Government Pleader (Tax) appearing for the respondents.

6. In the present case, as per Section 44 of the Act, there was delay in filing the annual return by the petitioner. In the event of delay in filing the annual return, late fee would be levied under Section 47(2) of the Act. At this juncture, it is necessary to extract Section 47 of the Act:-

“47. (1) Any registered person who fails to furnish the



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details of outward or inward supplies required under section 37 or section 38 or returns required under section 39 or section 45 by the due date shall pay a late fee of one hundred rupees for everyday during which such failure continues subject to a maximum amount of five thousand rupees.

(2) Any registered person who fails to furnish the return required under section 44 by the due date shall be liable to pay a late fee of one hundred rupees for every day during which such failure continues subject to a maximum of an amount calculated at a quarter per cent of his turnover in the State.”

A reading of the above Section 47(2) of the Act, it is clear that any registered person, who fails to furnish the return required under section 44 by the due date shall be liable to pay a late fee of one hundred rupees for every day during which such failure continues subject to a maximum of an amount calculated at a quarter per cent of his turnover in the State.

7. In the event of non-filing of the return, the respondent can call upon the petitioner to pay the late fee in terms of Section 47 of the Act, which is independent provision deals with any default or belated filing of return.



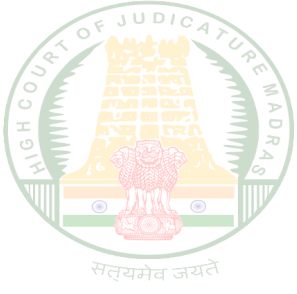
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Therefore, this Court does not find any fault in the show cause notice issued by respondent under Section 47 r/w 73 of the Act. The respondent is entitled to initiate proceedings as per applicable provision for non-filing of return. However, in the present case, the respondent has imposed the late fee under Section 47 of the Act and also penalty under Section 125 of the Act. At this juncture, it is relevant to extract Section 125 of the Act, which reads as follows:-

“125. Any person, who contravenes any of the provisions of this Act or any rules made thereunder for which no penalty is separately provided for in this Act, shall be liable to a penalty which may extend to twenty five thousand rupees.”

A reading of the above would show that in the event no penalty is separately provided in this act, general penalty would apply. In the present case, penalty was imposed in the form of late fee in terms of Section 47 of the Act. Therefore, general penalty of Rs.50,000/- towards CGST and SGST is not correct and the same is set aside. As far as late fee is concerned, the same is confirmed.



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8. With the above observation, this writ petition is partly allowed.

There is no order as to costs. Consequently, connected miscellaneous petition is closed.

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rst

Index : Yes/No

Internet: Yes/No

Speaking/Non-Speaking Order

To:

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KRISHNAN RAMASAMY, J.

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