

# GUJARAT HIGH COURT

DIV Contents

**R/SPECIAL CIVIL APPLICATION NO. 11332 of 2022 With R/SPECIAL CIVIL APPLICATION NO. 11335 of 2022**

**Graziano Trasmissioni India Private Limited-Appellant**

**Versus**

**State of Gujarat-Respondent**

**HONOURABLE MS. JUSTICE SONIA GOKANI and HONOURABLE MS. JUSTICE GITA GOPI**

**Date of order: 23/06/2022**

**Decision- In Favour of Assessee**

**Issue Involved-** The present petitions challenge the legality and validity of the Order-in-original dated 25.03.2022 along with 2 Summary Orders thereof in Form [DRC-07](#) passed by the respondent No.3 on the ground that the same are in gross violation of the provisions of the CGST Act, 2017 as against the principles of natural justice.

**Findings-** [Section 75](#)(4) of the CGST Act, 2017 provides that an opportunity of hearing is to be provided where a request is received in writing from the person chargeable with tax or penalty or where any adverse decision is contemplated against such person.

The stand on the part of the Department is that the Online Portal mode was chosen by the petitioners, which had resulted in the entire matter having been proceeded Online. The opportunity of hearing was not granted since the same was not requested for. However, while so arguing, the provision of Section 75(4) has been missed out. Even without any request having been made on the part of the party concerned, when any adverse decision is contemplated, personal hearing is a must. Hence, the same is missing in the instant case and the request on the part of the petitioners is to remand the matter by directing the respondents to consider the matter afresh by giving the fullest opportunity to the parties to present their case.

Without entering into the merits of the matter, only on the ground of non-availment of opportunity of personal hearing, we deem it appropriate to quash the impugned Order-in- original dated 25.03.2022 and two (2) Summary Orders in Form [DRC-07](#) passed by respondent No.3. The respondent No.3 shall avail the opportunity of personal hearing on 18.07.2022.

**Appearance:**

**Mr. Dharnendra Kumar Rana with Krishal H Patel, Mr Saurin A Mehta for the petitioner.**

**Mr Trupesh Kathiriya, Assistant Government Pleader for the respondent.**

**JUDGMENT**

1. By this common order, both the petitions are being dealt with. For the purpose of adjudication, the facts are drawn from the petition being Special Civil Application No.11332/2022.
2. The present petitions under Article 226 of the Constitution of India seek to challenge the legality and validity of the Order-in-original dated 25.03.2022 along with 2 Summary Orders thereof in Form [DRC-07](#) passed by the respondent No.3 on the ground that the same are in gross violation of the provisions of the Central Goods and Services Tax Act, 2017 (CGST Act, 2017) and Central Goods and Services Tax Rules, 2017 (CGST Rules, 2017) as also the Gujarat Goods and Services Tax Act, 2017 (GGST Act, 2017) and Gujarat Goods and Services Tax Rules, 2017 (GGST Rules, 2017). as also against the principles of natural justice.
3. The petitioner No.1 is a unit manufacturing automobile components and has its GST Registration. From July 2017 to March 2018, the petitioner No.1 had exported the goods outside India under Letter of Undertaking and without payment of GST, as required under [Section 16](#) of the IGST Act. The Returns in Form GSTR-1, GSTR-3B and GSTR-9 had been filed. In Form GSTR-1 and Form GSTR-9, the petitioner No.1 had correctly disclosed the export turnover in the Column meant for Zero-rated supply; however, in Form GSTR-3B, which the petitioner No.1 had filed for the month of September 2017, inadvertently, it had reported the value of exports in the Column for Nil rated / Exempt supply and not in the Column for Zero-rated supply. This, according to the petitioners, had happened as the entire regime of GST had started in the year 2017.
4. A written intimation was received from respondent No.3 pursuant to the scrutiny of returns filed by petitioner No.1 for the period of July 2017 to March 2018, which asked for explaining the reasons for the discrepancies. The same was responded to on 27.07.2021. The Summary of GST liability and ITC claimed by petitioner No.1 was provided by respondent No.3 through E-mail.
5. The reply came to be furnished on 26.08.2021 explaining that the amount was towards export turnover and not exempt turnover and clarifying that the amount did not pertain to exempt, Nil-rated or non-GST supply.
6. The respondent No.3 intimated the liability of GST along with interest and penalty in Form GST [DRC-01A](#). The intimations also proposed that there was requirement of reversal of ITC under Rules 42 and 43 of the CGST Rules. This happened on 10.12.2021 and 22.12.2021.
7. It is the grievance of the petitioners that on 14.02.2022, without awaiting for any response from the petitioners, a show-cause Notice came to be issued proposing a demand of ITC along with interest and penalty totalling nearly 7.63 Crores (rounded off) under [Section 73](#)(1) of the CGST Act read with the GGST

Act. Reply came to be filed on 26.02.2022 along with the reasons and attachments.

8. On 25.03.2022 the order came to be passed by respondent No.3, which has seriously aggrieved the petitioners since the same, according to the petitioners, has been passed without affording any opportunity of personal hearing, as contemplated under [Section 75](#)(4) of the CGST Act, 2017. This has resulted into the petitioners approaching this Court with the following prayers:

*“A. YOUR LORDSHIPS may be pleased to admit and allow this Petition;*

*B. YOUR LORDSHIPS may be pleased to Issue a writ, order or direction in the nature of Certiorari to quash the Impugned Order-in-Original No. ZD240322019756J dated 25.03.2022 and 2 Summary Orders thereof in FORM DRC-07 passed by the Respondent No. 3;*

*C. YOUR LORDSHIPS may be pleased to Issue a writ, order or direction in the nature of Mandamus remanding the matter and directing the Respondent No. 3 to consider the matter afresh, after giving full and fair opportunity to the Petitioner to submit its reply and after affording opportunity of personal hearing to the Petitioner;*

*D. Pending hearing and final disposal of the Petition, YOUR LORDSHIPS may be pleased to stay the implementation, operation and execution of the impugned Order-in-Original No. ZD244322019756J dated 25.03.2022 and 2 Summary Orders thereof in FORM DRC – 07 passed by the Respondent No. 3;*

*E. YOUR LORDSHIPS maybe pleased to grant ex-parte ad interim relief in terms of Para 8(D);*

*F. YOUR LORDSHIPS may be pleased to Issue any other writ order or direction, which this Hon’ble Court may deem fit and proper under the facts and circumstances of the present case;*

*G. Grant costs; and*

*H. Grant such further and other reliefs as the nature and circumstances of the case may require.”*

9. Notice to be made returnable forthwith. Let the learned Assistant Government Pleader appear on advance copy.

10. We have heard both the sides finally at the time of issuance of notice itself.

11. At the outset, we would like to reproduce Section 75 of the CGST Act, 2017, which is as under:

*“Section 75 : General provisions relating to determination of tax.*

*(1) Where the service of notice or issuance of order is stayed by an order of a court or Appellate Tribunal, the period of such stay shall be excluded in computing the period specified in sub-sections (2) and (10) of section 73 or subsections (2) and (10) of section 74, as the case may be.*

*(2) Where any Appellate Authority or Appellate Tribunal or court concludes that the notice issued under sub-section (1) of [section 74](#) is not sustainable for the reason that the charges of fraud or any wilful-misstatement or suppression of facts to evade tax has not been established against the person to whom the*

*notice was issued, the proper officer shall determine the tax payable by such person, deeming as if the notice were issued under sub-section (1) of section 73.*

*(3) Where any order is required to be issued in pursuance of the direction of the Appellate Authority or Appellate Tribunal or a court, such order shall be issued within two years from the date of communication of the said direction.*

*(4) An opportunity of hearing shall be granted where a request is received in writing from the person chargeable with tax or penalty, or where any adverse decision is contemplated against such person.*

*(5) The proper officer shall, if sufficient cause is shown by the person chargeable with tax, grant time to the said person and adjourn the hearing for reasons to be recorded in writing:*

*Provided that no such adjournment shall be granted for more than three times to a person during the proceedings.*

*(6) The proper officer, in his order, shall set out the relevant facts and the basis of his decision.*

*(7) The amount of tax, interest and penalty demanded in the order shall not be in excess of the amount specified in the notice and no demand shall be confirmed on the grounds other than the grounds specified in the notice.*

*(8) Where the Appellate Authority or Appellate Tribunal or court modifies the amount of tax determined by the proper officer, the amount of interest and penalty shall stand modified accordingly, taking into account the amount of tax so modified.*

*(9) The interest on the tax short paid or not paid shall be payable whether or not specified in the order determining the tax liability.*

*(10) The adjudication proceedings shall be deemed to be concluded, if the order is not issued within three years as provided for in sub-section (10) of section 73 or within five years as provided for in sub-section (10) of section 74.*

*(11) An issue on which the Appellate Authority or the Appellate Tribunal or the High Court has given its decision which is prejudicial to the interest of revenue in some other proceedings and an appeal to the Appellate Tribunal or the High Court or the Supreme Court against such decision of the Appellate Authority or the Appellate Tribunal or the High Court is pending, the period spent between the date of the decision of the Appellate Authority and that of the Appellate Tribunal or the date of decision of the Appellate Tribunal and that of the High Court or the date of the decision of the High Court and that of the Supreme Court shall be excluded in computing the period referred to in sub-section (10) of section 73 or sub-section (10) of section 74 where proceedings are initiated by way of issue of a show cause notice under the said sections.*

*(12) Notwithstanding anything contained in [section 73](#) or [section 74](#), where any amount of self-assessed tax in accordance with a return furnished under section 39 remains unpaid, either wholly or partly, or any amount of interest payable on such tax remains unpaid, the same shall be recovered under the provisions of section 79.*

*(13) Where any penalty is imposed under section 73 or section 74, no penalty for the same act or omission shall be imposed on the same person under any other provision of this Act.”*

12. [Section 75](#)(4) of the CGST Act, 2017 provides that an opportunity of hearing is to be provided where a request is received in writing from the person chargeable with tax or penalty or where any adverse decision is contemplated against such person.

13. The stand on the part of the Department is that the Online Portal mode was chosen by the petitioners, which had resulted in the entire matter having been proceeded Online. The opportunity of hearing was not granted since the same was not requested for. However, while so arguing, the provision of [Section 75](#)(4) has been missed out. Even without any request having been made on the part of the party concerned, when any adverse decision is contemplated, personal hearing is a must. Hence, the same is missing in the instant case and the request on the part of the petitioners is to remand the matter by directing the respondents to consider the matter afresh by giving the fullest opportunity to the parties to present their case.

14. Without entering into the merits of the matter, only on the ground of non-availment of opportunity of personal hearing, we deem it appropriate to quash the impugned Order-in- original No. ZD240322019756J dated 25.03.2022 and two (2) Summary Orders in Form [DRC-07](#) passed by respondent No.3. The respondent No.3 shall avail the opportunity of personal hearing on 18.07.2022. If any document/s are needed to be furnished, let the same be done on or before 13.07.2022 physically. No adjournment shall be sought for by the petitioners. None of the observations will come in the way of the parties in finally deciding the matter. Both the petitions stands disposed of accordingly. Direct service permitted.