BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 14.09.2022

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**THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ**

W.P(MD).No.13258 of 2020
and
W.M.P(MD).Nos.11084 and 11085 of 2020

Thirugnanam Chandraprakash
Proprietor of
Tvl.Sree Easwaren Tools and Services,
168, J.J.Towers,
Madurai Road,
Tiruchirappalli-620 008. ... Petitioner

**Vs.**

The State Tax Officer,
Mailamchandi-II Assessment Circle,
Trichy-620020. ...Respondent

**Prayer** : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the records of the Respondent in Form GST DRC-02, dated 05.02.2020 bearing Reference No.210211180000471 and quash the same and further direct the Respondent to accept the manually filed TRAN-1, dated 13.12.2019 and allow the transitional input tax credit availed therein.

For Petitioner : Mr.Adithya Reddy
For Respondent : Mr.T.Ajmadkhan
Government Advocate

**ORDER**

This Writ Petition has been filed challenging the impugned order, dated 05.02.2020 reversing wrongly availed and utilized transitional Input Tax Credit under Section 74 of the Tamil Nadu Goods and Services Tax Act, 2017.

2. The learned counsel for the Petitioner raised two objections relating to the validity of the impugned order. It is submitted that the impugned proceedings have been made without compliance with the procedure set out under Section 75 (4) of the Tamil Nadu Goods and Services Tax Act, which mandates a personal hearing, if an adverse decision is contemplated against the said proceedings. It is submitted that the personal hearing under Section 75 (4) of the Tamil Nadu Goods and Services Tax Act, is granted after the receipt of the objections and where the authority contemplates an adverse decision. In the present case, no personal hearing was granted after the receipt of the objections. It is submitted that the impugned order being is not in compliance under Section 75 (4) of the Tamil Nadu Goods and Services Tax Act. In this regard, reliance was sought to be placed on the order of this Court in W.P(MD)Nos.8133 of 2020, etc.. batch, dated 31.08.2020, wherein, the scope of Section 75 (4) of the Tamil Nadu Goods and Services Tax Act came up for consideration and it was held as under:

*"3.The petitioners' counsel drew my attention to Section 75(4) of the Tamil Nadu Goods and Service Tax Act 2017, which reads as under:-*

> *"...75(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..."*

*4.A reading of the above provision shows that after the explanation is received from the writ petitioners, the authority must apply their mind and if they contemplate an adverse decision, then they must provide an opportunity of hearing. Therefore, issuing a personal hearing notice even prior to the receipt of the explanation cannot be said to be compliance of the aforesaid statutory requirements. That stage would arise only after the authority prima facie considers the explanation and contemplates an adverse decision."*

3. This Court finds that there are merits in the above submission of the Petitioner. Though there are other aspects, which have been raised by the Petitioner, in view of the above submission, this Court do not think that it is necessary to examine the above other aspects. The impugned order is set aside, with the direction to the Respondent to grant personal hearing to the Petitioner within a period of four weeks from the date of receipt of copy of this order and thereafter, pass orders on merits and in accordance with law.

4. With the above direction, the writ petition stands disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

**14.09.2022**

Index : Yes / No
Internet : Yes/ No
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To

The State Tax Officer,
Mailamchandi-II Assessment Circle,
Trichy-620020.

**MOHAMMED SHAFFIQ, J.**

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W.P(MD).No.13258 of 2020

14.09.2022