

# TAX INFO

*Dated*

Latest update on GST Law: **HC directs opportunity of personal hearing must be provided despite no such request by the petitioner** as given in judgement by **Gujarat High Court**.

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<b>Name of Petitioner</b>	Graziano Trasmissioni India Private Limited
<b>Name of Respondent</b>	State of Gujarat
<b>Court</b>	Gujarat High Court
<b>Date of Judgement</b>	23.06.2022
<b>Appeal No.</b>	R/Special Civil Application No. 11332 Of 2022

## **Brief Facts of the Case Law:**

The petitioner is a unit manufacturing automobile component and from July 2017 to March 2018, the petitioner 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 had correctly disclosed the export turnover in the Column meant for Zero-rated supply; however, while filing Form GSTR-3B for the m/o September 2017, the petitioner had inadvertently reported the value of exports in the Column for Nil rated / Exempt supply and not in the Column for Zero-rated supply. This had happened as the entire regime of GST had started in the year 2017. A written intimation was received from Department pursuant to the scrutiny of returns filed by petitioner 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 Department 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. 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 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. On 25.03.2022 the order came to be passed by Department which has seriously aggrieved the petitioner since the same has been passed without affording any opportunity of personal hearing, as contemplated under Section 75(4) of the CGST Act, 2017.

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.

## **Findings and Decision of the Court:**

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. Thus, the request of the petitioners to remand the matter by directing the Department to consider the matter afresh by giving the fullest opportunity to the parties to present their case.

Thus, without entering into the merits of the matter, only on the ground of non-availment of opportunity of personal hearing, the impugned Order-in-original dated 25.03.2022 was quashed and the Department shall give the opportunity of personal hearing. If any document/s are needed to be furnished, let the same be done physically. None of the observations will come in the way of the parties in finally deciding the matter.

**Suresh Aggarwal, Advocate**

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