

# TAX INFO

*S. No. 32 Dated 01.06.2023*

Latest update on GST Law: **Opportunity of hearing is mandatory & adjournment request cannot be declined based on the illness of the assessee** as given in judgement by **Madras High Court**.

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<b>Name of Petitioner</b>	M/s. Bhavadharani Builders
<b>Name of Respondent</b>	The Deputy Commissioner of CGST and Central Excise
<b>Authority</b>	Madras High Court
<b>Date of Judgement</b>	11.05.2023
<b>Appeal No.</b>	W.P.(MD).No.11631 of 2023 & W.M.P.(MD).No.10097 of 2023

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

The Department have issued notice of personal hearing dated 14.11.2022 and the date of personal hearing was fixed on 25.11.2022. But the petitioner has sought an adjournment vide reply dated 23.11.2022 citing his illness. Thereafter, the Department has issued personal hearing Notice dated 23.02.2023 directing the petitioner to appear for the personal hearing fixed on 01.03.2023. After receipt of the notice, the petitioner has sent adjournment letter dated 27.02.2023 informing that he has been admitted in Hospital as inpatient and he is undergoing treatment for which he has produced the Medical Certificate. Thereafter, the Department have issued one more notice dated 10.03.2023, wherein the petitioner was directed to appear for personal hearing on 16.03.2023. Immediately, the petitioner has sent an adjournment letter dated 14.03.2023 seeking "2 months time" to file reply to the SCN for which the petitioner also enclosed the certificate of the Hospital where he has been diagnosed as having cancer in his right leg. However, the Department declined to grant adjournment and passed an impugned order dated 20.04.2023.

## **Contention of the Petitioner:**

The petitioner has challenged the assessment order dated 20.04.2023 which was passed without providing sufficient opportunity of personal hearing to the petitioner.

## **Contention of the Department:**

The Department submitted that the **Hon'ble Division Bench has granted only 60 days time from the date of issuance of such Show Cause Notice to file reply**, vide order dated 30.11.2022 in W.P.No.24996 of 2019. Thereafter, the Department was granted 90 days for passing final order. Since only 60 days time is granted by the Division Bench, the Department is constrained to pass final order; hence the Department refused to grant further adjournment and has passed the impugned order. The Department is bound to follow the directions issued by the Hon'ble Division Bench failing which contempt proceedings may be initiated. The petitioner ought to have directed his representatives to appear before the authorities for personal hearing instead of seeking any adjournment.

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

The Court opines that without instructions, without verifying the records, the petitioner cannot direct his representatives to appear. Moreover, the petitioner is having full knowledge of the transactions. Therefore, the petitioner sought time to appear for the personal hearing. Even to instruct his representatives on facts, the petitioner ought to verify the records and instruct, for which he needs time. Therefore, this Court is of the considered opinion that adjournment ought not to be declined when an assessee is seeking adjournment based on his illness and medical treatment. Further, the reason cited by the Department is erroneous.

Therefore, the impugned order was set aside.

**Suresh Aggarwal, Advocate**

**Compliance & Litigation under GST**

**Address: House No. 54, Pocket A-3, Sector-5, Rohini- 110085**

**Phone: 91-9810032846; 011 - 45131427**

**Email: sureshagg@gmail.com**

**Website: <http://www.sureshtaxation.com>**