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W.P. No.38730 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.01.2025

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THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P. No.38730 of 2024

and

W.M.P.Nos.41935 and 41936 of 2024

Sri Dhanalakshmi Steels,
Represented By S. Veerappan, Partner,
460, Yercaud Main Road, Gorimedu,
Kondappanaickenpatti, Salem 636 008.

...Petitioner

Vs

The Assistant Commissioner (st)
Ayyothyapattinam Circle, Salem.

.. Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, to call for the records on the file of the respondent in GSTIN:33ACWFS6832Q1Z2/2019-20 dated 27.08.2024 and quash the same.

For Petitioner : Mr.V.Srikanth

For Respondents : Ms.Amrita Dinakaran
Government Advocate



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ORDER

The present writ petition is filed challenging the impugned order dated 27.08.2024 whereby the petitioner's claim of Input Tax Credit was sought to be disallowed on the premise that it is ineligible by invoking Section 17(5) of the GST Act.

2. It is submitted by the learned counsel for the petitioner that the impugned notice while proposing to invoke Section 17(5) of the GST Act had only stated that the Input Tax Credit shall not be available in respect of the list of commodities and services mentioned and does not set out the reasons nor the clauses under Section 17(5) which gets attracted and results in denial of the petitioner's claim of Input Tax Credit. To appreciate the above contention of the petitioner it may be relevant to extract Section 17(5) of the GST Act which reads as under:

"17(5) Notwithstanding anything contained in sub-section (1) of [section 16](#) and sub-section (1) of [section 18](#), input tax credit shall not be available in respect of the following, namely:-

(a) motor vehicles for transportation of persons having approved seating capacity of not more than thirteen persons (including the driver), except when they are used for making the following taxable supplies, namely:-

(A) further supply of such motor vehicles; or



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- (B) transportation of passengers; or*
- (C) imparting training on driving such motor vehicles;*

(aa) vessels and aircraft except when they are used-

(i) for making the following taxable supplies, namely:-

- (A) further supply of such vessels or aircraft; or*
- (B) transportation of passengers; or*
- (C) imparting training on navigating such vessels; or*
- (D) imparting training on flying such aircraft;*

(ii) for transportation of goods;

(ab) services of general insurance, servicing, repair and maintenance in so far as they relate to motor vehicles, vessels or aircraft referred to in clause (a) or clause (aa):

Provided that the input tax credit in respect of such services shall be available-

(i) where the motor vehicles, vessels or aircraft referred to in clause (a) or clause (aa) are used for the purposes specified therein;

(ii) where received by a taxable person engaged-

(I) in the manufacture of such motor vehicles, vessels or aircraft; or

(II) in the supply of general insurance services in respect of such motor vehicles, vessels or aircraft insured by him;

(b) the following supply of goods or services or both-

(i) food and beverages, outdoor catering, beauty



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treatment, health services, cosmetic and plastic surgery, leasing, renting or hiring of motor vehicles, vessels or aircraft referred to in clause (a) or clause (aa) except when used for the purposes specified therein, life insurance and health insurance:

Provided that the input tax credit in respect of such goods or services or both shall be available where an inward supply of such goods or services or both is used by a registered person for making an outward taxable supply of the same category of goods or services or both or as an element of a taxable composite or mixed supply;

(ii) membership of a club, health and fitness centre; and

(iii) travel benefits extended to employees on vacation such as leave or home travel concession:

Provided that the input tax credit in respect of such goods or services or both shall be available, where it is obligatory for an employer to provide the same to its employees under any law for the time being in force.

(c) works contract services when supplied for construction of an immovable property (other than plant and machinery) except where it is an input service for further supply of works contract service;

(d) goods or services or both received by a taxable person for construction of an immovable property (other than plant or machinery) on his own account including when such goods or services or both are used in the course or furtherance of business.

Explanation.-For the purposes of clauses (c) and (d), the expression "construction" includes re-construction, renovation, additions or alterations or repairs, to the extent of capitalisation, to the said immovable property;



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(e) goods or services or both on which tax has been paid under [section 10](#);

(f) goods or services or both received by a non-resident taxable person except on goods imported by him;

(fa) goods or services or both received by a taxable person, which are used or intended to be used for activities relating to his obligations under corporate social responsibility referred to in section 135 of the Companies Act, 2013;]

(g) goods or services or both used for personal consumption;

(h) goods lost, stolen, destroyed, written off or disposed of by way of gift or free samples; and

(i) any tax paid in accordance with the provisions of [section 74 in respect of any period up to Financial Year 2023-24]"

2.1. A reading of the above provision would show that there are several circumstances which would render a taxable person ineligible to claim Input Tax Credit.

3. It was submitted by the learned counsel for the petitioner that in response to the notice, they had stated that they are only engaged in

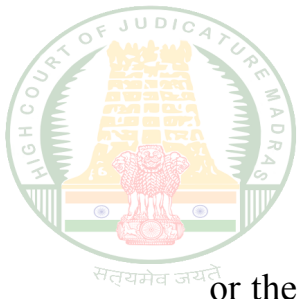


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trading of goods which are purchased and there is no further process at their end. Further no part of the inputs on which credit was claimed was being utilised by the petitioner for personal consumption or for construction of own building. The learned counsel for the petitioner would also submit that they were ready and willing to produce the tax invoices of Inward supply of taxable goods for the relevant period whenever it is convenient for the respondent. Thereafter the respondent without indicating the clause under Section 17(5) which stood attracted resulting in denial of petitioner's claim to Input Tax Credit had fixed the personal hearing on 09.08.2024. However, the impugned order was passed confirming the proposal on the premise that the petitioner had not produced the tax invoices nor availed the opportunity of personal hearing.

4. The learned counsel for the petitioner would submit that unless and until they have been informed of the Clause under which the Input Tax Credit was sought to be denied, any opportunity of personal hearing would be an empty formality as they would not be in a position to put forth their case. It was submitted that it is fundamental that the assessee



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or the person against whom an adverse order is sought to be passed must be made aware of the case that he ought to meet.

5. The learned counsel for the respondent would submit that the petitioner had not furnished the taxable invoices and that lead to the impugned order being passed confirming the proposal. However to a pointed question as to whether the respondent authority had indicated to the petitioner as to the Clause under Section 17(5) which stood attracted, the learned counsel for the respondent would submit that it appears it was not done.

6. In the circumstances this Court is inclined to set aside the order. It is open to the respondent authority to issue a notice indicating the Clause under Section 17(5) of the act which gets attracted to enable the petitioner to respond and thereafter proceed in accordance with law after affording the petitioner a reasonable opportunity of hearing.



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7. Accordingly, the writ petition stands disposed of. No costs.

Consequently, connected miscellaneous petitions are closed.

02.01.2025

Speaking (or) Non Speaking Order

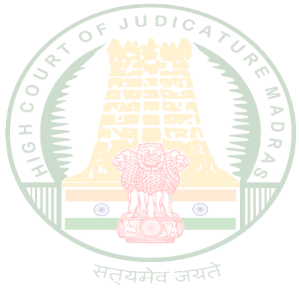
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To:

The Assistant Commissioner (st)
Ayyothyapattinam Circle, Salem.



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MOHAMMED SHAFFIQ, J.

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