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* IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of decision: 16.02.2024

+ **W.P.(C) 2356/2024 & CM. APPL. 9755-56/2024**

ANHAD IMPEX THROUGH ITS PARTNER & ANR..... Petitioner

versus

ASSISTANT COMMISSIONER WARD 16 ZONE 2 DELHI & ORS.
..... Respondents

Advocates who appeared in this case:

For the Petitioner: Mr. Abhishekh Garg, Mr. Sandeep Gupta and Mr. Yash Gaiha and Mr. Ranesh Mankotia, Advocates.

For the Respondents: Mr. Anurag Ojha, Senior Standing Counsel with Mr. Subham Kumar, Advocate for R-3 and R-4.
Mr. Rajeev Aggarwal, ASC for respondents No.2 and 4.

CORAM: -

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

HON'BLE MR. JUSTICE RAVINDER DUDEJA

JUDGMENT

SANJEEV SACHDEVA, J (ORAL)

1. Petitioner impugns order dated 29.11.2023 passed under Section 73 of the Central Goods and Services Tax Act, 2017, whereby a demand has been created against the petitioner.



2. Learned counsel for petitioner submits that petitioner never received the Show Cause Notice dated 24.09.2023 and accordingly could not respond to the same. Learned counsel submits that the Show Cause Notices are normally uploaded on the portal under the heading of 'Notices', however, in the instant case it appears that the Show Cause Notice was uploaded on the portal in the category of 'Additional Notices' which were not easily accessible, and accordingly skipped the attention of the petitioner. He prays that one opportunity be granted to the petitioner to respond to the Show Cause Notice and an opportunity of a personal hearing be also given.

3. Issue notice. Notice is accepted by learned counsel for the respondent. With the consent of parties, this petition is taken up for hearing today.

4. Learned counsel for respondent submits that in terms of Section 169 of the Central Goods and Services Tax Act, 2017, uploading of a notice on the portal is sufficient compliance with regard to intimation to the taxpayer.

5. We are unable to accept the contention of the learned counsel, reference may be had to the judgment of the High Court of Madras in W.P. No.26457/2023, titled *M/s East Coast Constructions and Industries Ltd. vs. Assistant Commissioner (ST)* dated 11.09.2023, wherein the High Court of Madras has noticed that communications



are placed under the heading of “View Notices and Orders” and “View Additional Notices and Orders”. The Madras High Court had directed the respondents to address the issue arising out of posting of information under two separate headings. As per the petitioner, the Menu “View Additional Notices and Orders” were under the heading of “User Services” and not under the heading “View Notices and Orders”.

6. This issue is further highlighted by another judgment of the Madras High Court dated 31.07.2023 in W.P. No.22369/2023 and other connected petitions, wherein the Madras High Court has noticed as under:-

“3. The only ground on which the, the impugned orders are under challenge is that the notices, which preceded the impugned orders were hosted in the Dashboard of the petitioner meant for ‘Additional Notices and Orders’ whereas, the notices should have been hosted by the respondent in the Dash Board for ‘View Notices and Orders’.

4. The learned counsel for the petitioner has drawn attention to the manual copy given by the respondent in the web portal, which reads as under:-

“How can I view or download the notices and demand orders issued by the GST tax authorities?

To view or download the notices and demand orders issues by the GST tax authorities, perform the following steps:

1. Access the www.gst.gov.in URL. The GST Home page is displayed.



2. *Login to the GST Portal with valid credentials.*

3. *Click the Services > User Services > View Notices and Orders command.*

5. *It is submitted that had the notice been uploaded in the correct place, the petitioner would have seen it and replied to the same and participated in the proceedings. Since the Notices and the Orders were hosted in the Dashboard of the petitioner meant for "Additional Notices and Orders", the petitioner failed to notice and file a reply to the Show Cause Notice.*

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9. *The problem has arisen on account of the complex architecture of the web portal. It has been designed to facilitate easy access of informations. It has however resulted in the petitioner failing to notice the notice that was issued to the petitioner prior to the impugned order on 20.03.2023. It went unnoticed by the petitioner, as a result of which, the impugned orders have been passed on 29.04.2023."*

7. Attention is also drawn to yet another judgment of Madras High Court dated 08.02.2024 in Writ Petition No.2746/2024, titled *Murugesan Jayalakshmi Vs. State Tax Officer*, wherein the Madras High Court has noticed that the said issue has been addressed and the portal has been re-designed and both the "View Notices" tab and "View Additional Notices" tab are under one heading.



8. Clearly, petitioner has made out a case that petitioner has missed out the receipt of the notice and accordingly could not respond to the Show Cause Notice.

9. Perusal of the impugned order shows that the impugned order categorically records that the tax payer has not replied or appeared in person. Consequently, we are of the view that petitioner needs to be granted one opportunity to respond to the Show Cause Notice and thereafter, the Show Cause Notice to be re-adjudicated.

10. In view of the above, impugned order dated 29.11.2023 is set aside. Respondent shall open the portal to enable the petitioner to file a response to the said Show Cause Notice dated 24.09.2023 which shall be filed within a period of 30 days. Thereafter, the Proper Officer of the respondent shall adjudicate the Show Cause Notice within a period of four weeks thereof. Petitioner shall also be given an opportunity of personal hearing.

11. Petition is disposed of in the above terms.

SANJEEV SACHDEVA, J

RAVINDER DUDEJA, J

FEBRUARY 16, 2024/NA