$~29
* IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: 12.03.2024

\+ W.P.(C) 3619/2024 & CM APPL. 14951-52/2024

SINGLA ENTERPRISES THROUGH ITS PROPRIETOR MR SHIV KUMAR SINGHAL ..... Petitioner

versus

COMMISSIONER DELHI GOODS AND SERVICE TAX AND OTHERS ..... Respondents

Advocates who appeared in this case:

For the Petitioner:	Mr. Rakesh Kumar, Mr. P.K. Gambhir and Mr. Akul Mangla, Advocates.
For the Respondents:	Mr. Rajiv Aggarwal, Addl. Standing Counsel and Ms. Samridhi Vats, Advocate Mr. Harpreet Singh, Sr. Standing Counsel with Ms. Suhani Mathur and Mr. Jatin Kumar Gaur, Advocates for R-4

CORAM:-
HON’BLE MR. JUSTICE SANJEEV SACHDEVA
HON'BLE MR. JUSTICE RAVINDER DUDEJA

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

1. Petitioner impugns order dated 22.12.2023, whereby the

impugned Show Cause Notice dated 23.09.2023, proposing a demand against the petitioner has been disposed of and a demand of Rs. 36,63,454.00 including penalty has been raised against the petitioner. The order has been passed under Section 73 of the Central Goods and Services Tax Act, 2017 (hereinafter referred to the Act).

2. Learned counsel for the petitioner submits that the petitioner could not file a reply as he did not had access to the portal as the registration of the petitioner had been cancelled retrospectively.

3. Learned counsel for the respondent concedes to the said position that once the registration is cancelled, the tax-payer cannot access the portal. This fact is further fortified by the screenshots placed on record by the petitioner which show that in the dropdown menu of the assessment years, there is no entry shown and it is blank.

4. Perusal of the Show Cause Notice shows that the Department has given separate headings excess claim Input Tax Credit ["ITC"], under declaration of ineligible ITC and ITC claim from cancelled dealers, return defaulters and tax non-payers.

5. The impugned order, however, after recording the narration, records that a demand as *ex-parte* is created. It merely states that: "*And whereas, it is noticed that the Taxpayer neither filed reply/explanation within stipulated period nor appeared for Personal*

Hearing before Proper Officer on the given date and time, Further, another opportunity to submit reply and in the larger interest of natural justice opportunity for Personal Hearing, as per provision of Section 75(4) DGST Act, was also provided to the taxpayer by issuing "REMINDER" through the GST portal. Now, since no reply / explanation has been received from the taxpayer despite sufficient and repeated opportunities, which indicate that the taxpayer has nothing to say in the matter."

6. As noticed hereinabove, the petitioner was unable to access the Show Cause Notice or reply to the said Show Cause Notices.

7. In view of the above, we are of the view that the impugned order which had been passed solely on account that petitioner had not file a reply cannot be sustained. The matter is liable to be remitted to the Proper Officer for re-adjudication. Accordingly, the impugned order dated 22.12.2023 is set aside. The matter is remitted to the Proper Officer for re-adjudication.

8. Petitioner shall file reply to the Show Cause Notice within two weeks. Thereafter, the Proper Officer shall re-adjudicate the show cause notice after giving an opportunity of personal hearing and shall pass a fresh speaking order in accordance with law within the period prescribed under Section 75 (3) of the Act.

9. It is clarified that this Court has neither considered nor commented upon the merits of the contentions of either party. All rights and contentions of parties are reserved.

10. Petition is disposed of in the above terms.

SANJEEV SACHDEVA, J

MARCH 12, 2024/*'rs'* **RAVINDER DUDEJA, J**