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* IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: 14.03.2024

\+ **W.P.(C) 3823/2024 & CM. APPLS. 15701/2024**

JAI OPTICAL ..... Petitioner

Versus

GOVT OF NCT OF DELHI AND ORS ..... Respondents

**Advocates who appeared in this case:**

For the Petitioner: Mr. Ankit Goel and Mr. Nikhil Sharma, Advocates.

For the Respondents: Mr. Rajeev Aggarwal, Additional Standing Counsel with Ms. Samridh Vats, Advocates.

**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, whereby the impugned Show Cause Notice dated 24.09.2023, proposing a demand against the petitioner has been disposed and a demand of Rs. 1,52,60,614.00 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 as the Act).

2. Petitioner was engaged in business of trading of optical items, spectacle frames etc. and possessed GST registration. As per the Petitioner , he closed down all business activities in the year 2022 and filed an application seeking cancellation of GST registration Thereafter, the GST registration of the Petitioner was cancelled w.e.f from 31.03.2022 vide order dated 02.05.2022.

3. Learned counsel for the Petitioner submits that the Petitioner was issued a Show Cause Notice dated 24.09.2023, after one year of passing an order of cancellation of GST registration.

4. He further submits that a detailed reply dated 20.10.2023 was filed to the Show Cause Notice, and despite submitting a detailed reply dated 20.10.2023, Petitioner was served with two notices dated 07.11.2023 and 14.11.2023 seeking a reply of the Petitioner and to appear for personal hearing. Thereafter, impugned order dated 29.11.2023 was passed without taking into consideration the reply submitted by the petitioner and is a cryptic order.

5. He further submits that on account of an error, the attachment to the Show Cause Notice dated 24.09.2023 could not be filed. Copy of the same has been handed over in the Court today. The same is taken on record.

6. 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. To the said Show Cause Notice, a detailed reply dated 20.10.2023 was furnished by the petitioner giving full disclosures under each of the heads.

7. The impugned order, however, after recording the narration, records that a demand as *ex-parte* is created. It merely states that "*And whereas, the taxpayer has been accorded opportunity for the personal hearing. The taxpayer has neither filed any reply nor appeared in person or through any authorized representative on the stipulated date and time. And whereas, taxpayer has been accorded one more opportunity u/s 75(4) of the CGST/DGST Act 2017 and the taxpayer again failed to reply and appear in person himself/herself or through any authorized representative on the stipulated date and time. And whereas, after analyzing, examining and evaluating the details available, as on date on the GST portal the tax payer has liabilities to be cleared as per provisions of the CGST Act and Rules- 2017. In view of above, it is evident that despite of according opportunities, the taxpayer failed to make any submission/representation or appear in person or through authorized representative, the undersigned has left with no other option to create demand ex-parte u/s 73(9) of CGST/DGST Act-2017 on the basis of the information available on the GST Portal.*"

8. The observation in the impugned order dated 29.11.2023 is not sustainable for the reasons that the reply filed by the petitioner is a detailed reply, however the impugned order records that "neither filed any reply nor appeared in person". Proper Officer had to at least consider the reply submitted by the Petitioner on merits and then form an opinion. He merely held that the no reply has been filed which *ex-facie* shows that Proper Officer has not applied his mind to the reply submitted by the petitioner.

9. In view of the above, the order cannot be sustained, and the matter is liable to be remitted to the Proper Officer for re-adjudication. Accordingly, the impugned order dated 29.11.2023 is set aside. The matter is remitted to the Proper Officer for re-adjudication.

10. As noticed hereinabove, the impugned order records that petitioner has not filed any reply or appeared for personal hearing. Proper Officer is directed to intimate to the petitioner details/documents, as maybe required to be furnished by the petitioner. Pursuant to the intimation being given, petitioner shall furnish the requisite explanation and documents. 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.

11. 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.

12. Petition is disposed of in the above terms.

**SANJEEV SACHDEVA, J**

**RAVINDER DUDEJA, J**

**MARCH 14, 2024**
**NA**