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* IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: 27.05.2024

+ W.P.(C)-7637/2024 & CM APPL. 31784/2024

M/S JIG BROTHERS

..... Petitioner

versus

SALES TAX OFFICER CLASS II/AVATO,
WARD 63 & ORS.

..... Respondents

Advocates who appeared in this case:

For the Petitioner: Mr. Pulkit Verma, Mr. Vibhu Gupta and Peyush Pruthi, Advocates

For the Respondents: Mr. Rajeev Aggarwal, ASC with Prateek Badhwar, Ms. Shagufth H. Badhwar and Ms. Samrdhi Vats, Advocates
Mr. Anurag Ojha, SSC with Mr. Kumar Abhishek, Mr. Subham Kumar, Advocates for R-3**CORAM:-****HON'BLE MR. JUSTICE SANJEEV SACHDEVA****HON'BLE MR. JUSTICE RAVINDER DUDEJA****JUDGMENT****SANJEEV SACHDEVA, J. (ORAL)**

1. Petitioner impugns order dated 17.04.2024 whereby the impugned Show Cause Notice dated 27.12.2023 proposing a demand



of Rs. 7,30,212.00/- against the petitioner has been disposed of and a demand including penalty has been created 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. Issue notice. Notice is accepted by learned counsel appearing for respondent. With the consent of the parties, petition is taken up for final disposal today.

3. Learned counsel for petitioner submits that the accountant of the Petitioner entrusted with GST compliance was on a maternity leave for 12 weeks. As a result, the petitioner was unaware of the proceedings and was unable to furnish a reply to the impugned Show Cause Notice.

4. Perusal of the Show Cause Notice dated 27.12.2023 shows that the Department has raised grounds under separate headings i.e., excess claim of Input Tax Credit ["ITC"]; Excess ITC availed in GSTR-3B compared to the tax on inward supplies declared by the suppliers.

5. The impugned order, however, after recording the narration records that demand as *ex-parte* is created. It states that "*And whereas, after going through the contents of the attached SCN/DRC-01 explained therein, it has been found that the taxpayer has not*



*replied to the said DRC-01/SCN till date. **** In view of the aforesaid circumstances, the undersigned is left with no other option but to create demand as ex-parte, in accordance with the provisions of CGST/DGST Act & Rules, 2017.”* The Proper Officer has opined that despite providing another opportunity, neither an online reply has been filed nor has the petitioner appeared in person or through an authorized representative.

6. As noticed hereinabove, the petitioner was not aware of the proceedings due to his accountant being on maternity leave.

7. Keeping in view the peculiar facts of the present case and since the only reason for passing the impugned order is that petitioner had not filed any reply/explanation, one opportunity needs to be granted to the petitioner to respond to the Show Cause Notice. The matter is liable to be remitted to the Proper Officer for re-adjudication. Accordingly, the impugned order dated 17.04.2024 is set aside.

8. Petitioner may file a further reply to the Show Cause Notice within four weeks from today. 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. The challenge to Notification No. 9 of 2023 with regard to the initial extension of time is left open.

11. Petition is disposed of in the above terms.

SANJEEV SACHDEVA, J

MAY 27, 2024
MR

RAVINDER DUDEJA, J