$~101

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of Decision: 11.07.2024*

\+ **W.P.(C) 8437/2024 & CM No.34840/2024**

M/S ESSENCE COMMUNICATION PVT LIMITED.....Petitioner

Through: Mr. Pradeep Jain, Mr. Sambhav Jain, Mr. Tarun Chawla & Mr. Pranav Raj Singh, Advs.

Versus

COMMISSIONER OF CENTRAL GOODS SERVICE TAX, AUDIT-II, DELHI .....Respondent

Through: Mr. Rajesh Mishra, Mr. Harishh Singhal, Mr. B. Prakash, Mr. Nishannt Kunal & Mr. R. Vishwakarma, Advs.

**CORAM:**
**HON'BLE MR. JUSTICE VIBHU BAKHRU**
**HON'BLE MR. JUSTICE SACHIN DATTA**

**VIBHU BAKHRU, J. (*ORAL*)**

1. The petitioner has filed the present petition impugning an Order-in-Original dated 12.03.2024 (hereafter *the impugned order*) passed by the Office of the Commissioner of Central Goods & Service Tax, Audit-II, Delhi, *inter alia,* confirming the demand of service tax amounting to ₹20,74,77,321/- (Rupees Twenty Crores Seventy-four Lacs Seventy-seven Thousand Three Hundred Twenty-one Only) and Cenvat Credit amounting to ₹10,49,42,030/- (Rupees Ten Crores Forty-nine Lacs Forty-two Thousand Thirty Only). In addition, the concerned authority also imposed penalties amounting to ₹20,74,77,321/- (Rupees Twenty Crores Seventy-four Lacs Seventy-seven

Thousand Three Hundred Twenty-one Only) under Section 78 of the Finance Act, 1994 for failure to pay the service tax and ₹10,49,42,030/- (Rupees Ten Crores Forty-nine Lacs Forty-two Thousand Thirty Only) for utilizing the inadmissible cenvat credit.

2. It is the petitioner's case that it had not received the Show Cause Notice dated 26.11.2019 (hereafter *the SCN*) and therefore, was unable to tender a comprehensive reply to the same. The petitioner contends that the impugned order has been passed in violation of the principles of natural justice.

3. The said contention is stoutly disputed by the learned counsel for the respondent. He submits that the impugned order clearly reflects that notices were sent to the petitioner by speed post at the correct address. However, it is not disputed that the petitioner had on three occasions requested the respondent to provide a copy of the SCN and had unequivocally asserted that it had not received the same.

4. The first such request was made on 15.12.2020 by the authorized representative of the petitioner (Anuj Goyal Associates, Chartered Accountant). Thereafter by a communication dated 29.12.2020, the petitioner requested copies of the letters dated 27.12.2017, 11.05.2018, 22.05.2018 as well as the impugned SCN, which were referred to in the summons dated 25.06.2019. The petitioner reiterated that a similar request was made on 15.12.2020 but it did not receive a response or a copy of the impugned SCN. The petitioner also stated that the notices were not traceable as the petitioner's erstwhile counsel was not cooperating in the matter.

5. The petitioner filed a response before the Proper Officer under cover of

its letter dated 28.06.2023. In its response it once again stated that it had not received the impugned SCN.

6. It appears that the petitioner also sent an e-mail dated 23.01.2024, once again making a grievance of non-receipt of impugned SCN. In response to the said e-mail, the respondent sent a communication dated 25.01.2024 asserting that the impugned SCN had been supplied to the petitioner at his address – B-280, Vivek Vihar, Delhi-110095 and called upon the petitioner to submit its defence on merits. The petitioner responded to the said communication reiterating that the impugned SCN had not been delivered to it.

7. Whilst the respondent asserts that the impugned SCN has been delivered, the petitioner disputes the same. We do not consider it apposite to conduct an inquiry in regard to this question in these proceedings. This is because it is not disputed that the petitioner had repeatedly mentioned that it had not received the copy of the impugned SCN and in any event had claimed that the same is not traceable. As is evident from the above, the petitioner had requested for a copy of the impugned SCN and certain other communications on at least three occasions. We find no reason as to why the respondent could not forward a copy of the impugned SCN, without prejudice to their stand that the impugned SCN was served to the petitioner earlier.

8. In view of the above, we consider it apposite to set aside the impugned order and remand the matter to the adjudicating authority for consideration afresh. The respondent shall provide the copy of the impugned SCN and the other communications, if any, as sought by the petitioner in its e-mail dated 15.12.2020 within a period of two weeks from date.

9. The petitioner or its authorized representative shall collect the impugned SCN and other documents from the office of the concerned proper officer at such time as may be convenient to the concerned proper officer.

10. The petitioner shall respond to the impugned SCN within one week from the date of receipt of the aforesaid documents. The adjudicating authority is requested to pass a fresh order after affording the petitioner an opportunity of hearing as expeditiously as possible and preferably within a period of eight weeks thereafter.

11. The petition is disposed of in the aforesaid terms. Pending application is disposed of.

**VIBHU BAKHRU, J**

**SACHIN DATTA, J**

**JULY 11, 2024**
'gsr'

*Click here to check corrigendum, if any*