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

\+ W.P.(C) 12341/2024

ABHISHEK JAIN .....Petitioner

Through: Mr. Nitin Gulati & Ms. Reena Gandhi, Advs.

versus

UNION OF INDIA & ORS. .....Respondents

Through: Mr. Vanish Phog hat, CGSC for Resp./ UOI.
Mr. Avishay Sanghvi, Mr. Naveed Ahmed, Mr. Vivek Kumar & Mr. Shubham Kumar, Advs.

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA
HON'BLE MR. JUSTICE RAVINDER DUDEJA

ORDER

% **23.10.2024**

CM APPL. 51341/2024 (Ex.)

Allowed subject to all just exceptions.

Application stands disposed of.

W.P.(C) 12341/2024 & CM APPL. 51342/2024 (Stay)

1. The writ petitioner impugns the Order-in-Original dated 27 August 2024 which purports to be under Section 73 of the **Central Goods & Services Tax Act, 2017**[1]. The aforesaid order was preceded by the issuance of a **Show Cause Notice**[2] on 20 May 2024 in which the respondents had alleged that the petitioner had failed to declare its correct tax liability while filing annual returns. A detailed reply thereafter came to be submitted by the writ petitioner, a copy of which

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[1] CGST Act
[2] SCN

forms part of our record as Annexure P-3.

2. However, while passing the final order all that the respondents observed is as follows:

> " Whereas, SCN/ DRC-1 [see rule 100(2) & 142(1)(a)] was issued to the taxpayer under Section 73 of CGST/ DGST Act & Rules, 2017;
>
> And Whereas, in response to the DRC-01, the taxpayer submitted his reply in DRC-06 and the reply of the registered person as well as data available on GST Portal has been checked/ examined and the reply/ submission of the taxpayer is not found to be satisfactory.
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> Further, another opportunity to submit reply and for the sake 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.
>
> And whereas, further as per section 73(7) notice of tax and interest is to be given while section 73(9) prescribed for imposition of penalty equivalent to 10% of tax or Rs. 10000/- whichever is higher. The penalty is consequently and mandatory as per Act. As such the registered person is liable to pay penalty equivalent to 10% of tax along with tax amount in each head already conveyed through SCN/ DRC-01.
>
> Now, since **no further additional 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.
>
> In view of the aforesaid circumstances, the undersigned is left with no other option to create demand ex-parte, in accordance with the provisions of CGST/DGST act and rules. Therefore the DRC-07 has been issued along with applicable interest as per discrepancies already conveyed through SCN/DRC-01."

3. As is manifest from the above, the final order neither alludes to nor takes into consideration the reply which had been submitted by the writ petitioner. It was in that backdrop that we had on an earlier occasion observed that the impugned order may not sustain being wholly unreasoned.

4. Learned counsel appearing for the respondents submits that rather than the petition being retained on the board of this Court, the

ends of justice may warrant the matter being remitted for the consideration of the authority for passing an order afresh.

5. We, accordingly, allow the present writ petition and quash the impugned order dated 27 August 2024. We leave it open to the concerned Sales Tax Officer to examine the matter afresh bearing in mind the reply which had been submitted by the writ petitioner and to proceed further in accordance with law.

6. All rights and contention of respective parties on merits are kept open.

YASHWANT VARMA, J.

RAVINDER DUDEJA, J.

OCTOBER 23, 2024/kk