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

\+ W.P.(C) 12898/2024 & CM APPL. 53747/2024 (Stay)

ARCHIT KHANDELWAL PRO]PRIETOR ARCHIT ENTERPRISES .....Petitioner

Through: Mr. Ramashish & Mr. Rishabh Jain, Advs.

versus

THE UNION OF INDIA REVENUE SECRETARY, MINISTRY OF FINANCE & ORS. .....Respondents

Through: Mr. Udit Malik, ASC with Mr. Vishal Chanda & Ms. Rima Rao, Advs.
Mr. Anurag Ojha, SSC with Mr. Shubham Kumar, Mr. Dipak Raj & Mr. Kumar Abhishek, Advs. for R-3.

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA
HON'BLE MR. JUSTICE DHARMESH SHARMA

ORDER

% **03.12.2024**

1. The writ petition has been preferred seeking the following reliefs:

> "a) quash and set aside the impugned adjudication order dated 28.8.2024;
>
> b) hold and declare the adjudication order in DRC-07 dated 28.8.2024 as well as the show cause notice along with the DRC-O1 dated 14.5.2024 for the year 2019-20 are barred by limitation.
>
> c) hold and declare that the Notification No.9/2023-Central Tax dated 31.3.2023 as well as Notification No.56/2023-Central Tax dated 28.12.2023 through which the time period has been extended up till 30.8.2024 for the purpose of sec 73(10) for the year 2019-20 not only rub against sec 168A of the CGST Act but are also contrary and in conflict with the mandate of sec 168A of the CGST Act.
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> d) issue a Writ of Mandamus or any other Writ, order or direction.
>
> e) issue a Writ of Certiorari or any other Writ, order or direction.

f) pass any other order or orders, direction or directions as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case."

2. However, learned counsel for the writ petitioner submits that bearing in mind the challenge which presently stands mounted and is restricted to the validity of the final order framed by the respondents, the challenge to Notification No.9/2023-Central Tax dated 31 March 2023 and Notification No. 56/2023- Central Tax dated 28 December 2023, issued under Section 168A of the **Central Goods & Services Tax Act, 2017**[1]**/Delhi Goods & Services Tax Act, 2017**[2] may be kept open to be addressed in an appropriate case.

3. We note that the proceedings under the CGST Act came to be initiated against the writ petitioner with the issuance of a **Show Cause Notice**[3] on 14 May 2024. In response to the same, the petitioner filed a detailed reply on 28 June 2024. However, the Goods & Services Tax Officer while framing a final order referable to Section 73, has held as follows:

> "Whereas, SCN/ DRC-1 [see rule 100(2) & 142(1)(a) was issued to the taxpayer under Section 73 of the CGST/ DGST Act & Rules, 2017.
>
> <u>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.</u>
>
> 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

[1] CGST Act
[2] DGST Act
[3] SCN

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 aforesaid circumstances, the undersigned is left with no other option to create demand *ex-parte*, in accordance with the provisions of CGST/ DGST Act & Rules. Therefore the DRC-07 has been issued along with applicable interest as per discrepancies already conveyed through SCN/DRC-01."

4. As is manifest from the aforesaid, the proceedings under Section 73 have come to be finalized with the response of the writ petitioner being perfunctorily rejected by merely observing that it has not been found to be satisfactory. Since the final order as framed fails to engage with the reply which was submitted by the writ petitioner or disclose any reasons in support of the ultimate conclusions which have come to be rendered, we find ourselves unable to sustain the same.

5. The writ petition is, accordingly, allowed. The impugned order dated 28 August 2024 is hereby quashed. We, however, leave it open to the respondents to proceed afresh bearing in mind the reply which has been submitted by the writ petitioner.

6. The challenge to Notification No.9/2023- Central Tax dated 31 March 2023 and Notification No. 56/2023- Central Tax dated 28 December 2023 is kept open to be addressed in appropriate proceedings, and if need so arise.

YASHWANT VARMA, J.

DHARMESH SHARMA, J.

DECEMBER 3, 2024/kk