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

\+ W.P.(C) 15701/2024 & CM APPL. 65927/2024 – STAY

INDIAN HIGHWAYS MANAGEMENT COMPANY LIMITED .....Petitioner

Through: Mr. Sanjib Sen, Senior Advocate with Mr. Prateek Goyal, Ms. Saloni Jagga, Ms. Anjali Singh, Mr. Pragyan Mishra and Ms. Radha Gupta, Advocates.

versus

ASSISTANT COMMISSIONER DELHI DEPARTMENT OF TRADE AND TAXES AND ANR. .....Respondents

Through: Mr. Rajeev Aggarwal, ASC with Mr. Shubham Goel and Mr. Mayank Kamra, Advocates.

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

ORDER

% **12.11.2024**

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

> "a. pass an appropriate writ, order or direction to quash and set aside the impugned order dated 16.08.2024 passed by Respondent authority;
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> b. Issue an appropriate writ, order or to remit the matter to the proper officer/authority with a direction to re-adjudicate the Show Cause Notice dated 29.05.2024 by the concerned Respondent authority;
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> c. Issue a writ, order or direction in the nature of certiorari or any other appropriate writ, order or direction to call for records and upon examination, and quash the Impugned Notification No. 49/2019 - Central Tax dated 09.10.2019 notified by Respondents as being illegal, arbitrary, unreasonable and ultra vires the CGST/UPGST Act and the Constitution of India, 1950;
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> d. Issue an appropriate writ, order or direction in the nature of certiorari or any other appropriate writ, order or direction to call for

records and upon examination, quash the Impugned Notification No. 56/2023-Central Tax dated 28.12.2023; notified by Respondents as being illegal, arbitrary, unreasonable and ultra vires the CGST/UPGST Act and the Constitution of India;

e. pass such further and other orders, as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case."

2. The petitioner is aggrieved by the final order dated 16 August 2024 and in terms of which the Assistant Commissioner has observed as follows:-

> "The taxpayer M/s Indian Highways Management Company Limited, GSTIN-07AADCI1946F1ZQ was served upon a notice under section 73 of CGST/DGST Act, 2017 regarding (Voluntary Payment Intimation, if applicable) along with GST DRC-01 vide reference No. ZD0705240427592 (Summary of SCN) on 29.05.2024 for the period April-2019 to March-2020.
>
> In response to DRC-01 issued to the taxpayer u/s 73 of CGST/DGST Act, 2017 for the year 2019-20, the taxpayer filed reply through DRC-06.
>
> Observing the principle of natural justice reminder was issued on 26.07.2024 and personal hearing was fixed for 02.08.2024, however, till date none has appeared in personal hearing to explain the issues mentioned in the Show Cause Notice.
>
> In view of the above, the taxpayer has failed to attend the personal hearing despite ample opportunity and after having gone through the reply filed by the taxpayer in r/o each point no explanation could be given in want of personal hearing by the taxpayer till date. The reply filed by the taxpayer is not comprehensible, conceivable, not perspicuous and is ambiguous. Therefore, the proposed demand mentioned in the Show Cause Notice is confirmed.
>
> **(Dinesh Kumar Gondyan)**
> **Assistant Commissioner**
> **Ward-201, 207 & 208**"

3. As is manifest from the record, upon the issuance of the Show Cause Notice [**'SCN'**] dated 29 May 2024, the petitioner had filed a detailed reply on 29 June 2024. However, the same has come to be perfunctorily rejected in terms of the order impugned.

4. Apart from the Assistant Commissioner having observed that

the reply filed by the tax payer was "*not comprehensible, conceivable, not perspicuous and is ambiguous*", no further reasons have been assigned. In fact, we are constrained to observe that the said language appears to have attained the status of a template and is being uniformly used while passing orders like the one which is impugned before us.

5. Consequently and since the impugned order is wholly unreasoned, we find ourselves unable to sustain the same. Faced with our aforenoted tentative conclusions, Mr. Aggarwal, learned counsel appearing for the respondent submitted that rather than the matter being retained on the board of this Court, the ends of justice would warrant the impugned order being set aside, subject to liberty being reserved to the respondents to proceed in the matter afresh.

6. We, accordingly, allow the present writ petition and quash the impugned order dated 16 August 2024. The Assistant Commissioner shall initiate proceedings afresh in terms of the SCN already issued and pass a fresh reasoned and speaking order taking into account the reply which has been submitted. All rights and contentions of respective parties on merits in that respect are kept open.

7. Since we have disposed of the writ petition on grounds of aforenoted, we reserve the right of writ petitioner to impugn the validity of the Notification No. 49/2019-Central Tax dated 09 October 2019 and the Notification No. 56/2023-Central Tax dated 28 December 2023, in appropriate proceedings and if the need so arises.

YASHWANT VARMA, J.

DHARMESH SHARMA, J.

NOVEMBER 12, 2024/n