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

\+ W.P.(C) 16808/2024 & CM APPL. 71113/2024 (Stay)

NSPIRA MANAGEMENT SERVICES PRIVATE LIMITED

.....Petitioner

Through: Mr. Venkat Prasad, Mr. Aayush Agarwala and Mr. Kunj Mehra, Advs.

versus

THE SALES TAX OFFICER & ORS. .....Respondents

Through: Mr. Udit Malik, ASC (Civil) with Mr. Vishal Chanda and Ms. Rima Rao, Advs.
Mr. Vinish Phogat, CGSPC for R-2/UOI.

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

O R D E R

% **05.12.2024**

1. The writ petitioner impugns a final order dated 31 August 2024 passed under Section 73 of the **Central Goods and Services Tax Act, 2017**[1] in terms of which a demand has come to be confirmed against the writ petitioner.

2. The record would reflect that upon receipt of a **Show Cause Notice**[2] dated 29 May 2024, the petitioner had furnished a response and it is thereafter that the **Goods & Services Tax**[3] Officer has proceeded to dispose of the matter by observing as follows:

"**Annexure to Order**
(u/s 73(9) of CGST/DGST Act, 2017)
Tax Period: April 2019- March 2020

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

Whereas, a notice GST DRC-01 was issued to the taxpayer for the Financial Year 2019-20 along with the details of proposed tax, interest and Penalty with the direction to pay the due tax along with interest and Penalty along with opportunity of personal hearing.

And whereas, the taxpayer was also conveyed that if the said demand has already been paid or in case any objection, the taxpayer may file objections in DRC-06 within the stipulated period of time given in the notice and also granted opportunity of personal hearing to explain the same.

And whereas, the taxpayer submitted its reply in DRC-06, but the same is found not comprehensive, conceivable, perspicuous and also no one appeared on behalf of the firm to provide explanation/clarification with regard to the reply submitted against DRC-01.

In view of the above, as the taxpayer failed to attend the personal hearing despite ample opportunity given and after having gone through the reply filed on the GST portal by the taxpayer in respect of each point, no opinion could be drawn in absence of personal hearing by the taxpayer. Since, the reply filed by the taxpayer is not comprehensible, conceivable, perspicuous and ambiguous, therefore, the proposed demand mentioned in the Show Cause Notice i.e. conveyed through notice DRC-01 is confirmed.

(Subhash Kumar Jha)
Proper Officer/GST Officer
Ward-202, 203 & 205"

3. We take note of identically worded orders which had been passed by the officer of the Department and which formed the subject matter of challenge in earlier writ petitions.

4. We had recently and while dealing with such a challenge in **Xerox India Limited vs. Assistant Commissioner, DGST & Anr.**[4], allowed the writ petition in the following terms:

"1. The writ petitioner is aggrieved by the final order dated 16 August 2024 passed by the Assistant Commissioner under Section 73 of the **Central Goods and Services Tax Act, 2017**.

2. The aforesaid order was preceded by the issuance of a **Show Cause Notice** and pursuant to which the petitioner had submitted a detailed response. The Assistant Commissioner had thereafter proceeded to frame a final order which reads as follows:

"The taxpayer M/s Xerox India Limited, GSTIN-

[4] W.P.(C) 16451/2024 dated 28 November 2024

> 07AAACM8634RIZT was served upon a notice under section 73 of CGST/DGST Act, 2017 regarding (Voluntary Payment Intimation, if applicable) along with GST DRC-0l vide reference No. ZD0705240298761 (Summary of SCN) on 27.05.2024 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 20I9-20, the taxpayer filed reply through DRC-06.
>
> Observing the principle of natural justice reminder was issued on 12.07.2024. The taxpayer requested for adjournment on 24.07.2024, however, no sufficient cause as envisaged u/s 75(5) of the Act 2017 was mentioned in the adjournment request. Request of the taxpayer was considered and hearing was fixed on 01.08.2024. Further the taxpayer again requested for adjournment on 30.07.2024 and 01.08.2024 and two days time was sought for personal hearing, 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. <u>The reply filed by the taxpayer is not comprehensible, conceivable, not perspicuous and is ambiguous</u>. Therefore, the proposed demand mentioned in the Show Cause Notice is confirmed."

3. <u>We are constrained to observe that the order as passed follows lines identical to those which have come before us and have fallen for our notice on earlier occasions. The Assistant Commissioner has clearly adopted a template where the only reason assigned is that the reply filed was "*not comprehensible, conceivable, not perspicuous and is ambiguous*". This clearly exhibits an abject non-application of mind and the officer repeatedly employing identical phraseology to deal with such matters.</u>

4. <u>Despite caution having been sounded by us of the said language having attained the status of a template and the concerned officer having chosen to replicate an identical pattern while framing orders, in **Indian Highways Management Company Limited vs. Assistant Commissioner & Anr.**, we find that the officer has failed to make any amends.</u>

5. <u>Accordingly, while we are convinced that the impugned order being wholly unreasoned is liable to be set aside on this short score alone, we also require Mr. Aggarwal, learned counsel for the respondents to place a copy of this order before the Principal</u>

Commissioner concerned, so that an appropriate review of the manner in which such applications of assessees are adjudicated is undertaken.

6. The writ petition is, accordingly, allowed. For reasons assigned above, the impugned order of 16 August 2024 is quashed and set aside. We leave it open to the respondents to proceed further in terms of the earlier SCN issued in accordance with law and bearing in mind the reply which had been submitted by the writ petitioner.

7. All rights and contentions of respective parties on merits are kept open."

We, accordingly and for reasons assigned therein, find ourselves unable to sustain the final order passed.

5. We consequently allow the writ petition and quash the order dated 31 August 2024. It shall be open for the respondents to proceed afresh with the SCN proceedings, bearing in mind the reply that had been submitted by the writ petitioner. All rights and contentions of respective parties on merits are kept open.

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 which are issued under Section 168A of the CGST Act**,** is kept open to be addressed in appropriate proceedings and if need so arises.

YASHWANT VARMA, J.

DHARMESH SHARMA, J.

DECEMBER 05, 2024/DR