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* IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision: 13th December, 2024

+ W.P.(C) 17270/2024 & CM APPLs.73478/2024, 73479/2024

CHETAK LOGISTICS LTD

.....Petitioner

Through: Mr. V. Lakshmikumaran, Mr. L. Badri
Narayanan, Mr. Charanya
Lakshmikumaran, Mr. Yogendra
Aldak, Mr. Kunal Kapoor, Advocates.

versus

UNION OF INDIA & ORS.

.....Respondents

Through: Mr. Sushil Kumar Pandey, Special
Panel Counsel for UOI.

CORAM:**JUSTICE PRATHIBA M. SINGH****JUSTICE AMIT SHARMA****Prathiba M. Singh, J. (Oral)**

1. This hearing has been done through hybrid mode.

CM APPL.73479/2024 (exemption)

2. Allowed, subject to all just exceptions. The application is disposed of.

W.P.(C) 17270/2024 & CM APPL. 73478/2024

3. The present writ petition under Article 226 of the Constitution of India has been filed, *inter alia*, challenging the impugned order dated 17th August, 2024 by which the reply to the show-cause has been completely discarded by the proper officer, Assistant Commissioner, DGST without any reasons.

4. The petition arises out of a show-cause notice issued on 31st May, 2024 by which it was alleged that proper declaration of output tax was not made by the Petitioner. The Petitioner had filed a reply to the show-cause notice dated 28th June, 2024 (uploaded on 3rd July, 2024). The Petitioner again received reminder notices to which reply was again communicated by him. The impugned order has been passed by the Assistant Commissioner Ward-201,



207 and 208. A perusal of the impugned order would show that after giving the background in two main paragraphs, the order merely records as under: -

“....The explanation given in the reply is not comprehensible, conceivable, not perspicuous and is ambiguous.....”

5. It is pointed out by learned Counsel for the Petitioner that even in the past, identical template orders have been passed by this very official, which has been taken note of in several matters, including the following: -

- a. ***Xerox India Limited v. Assistant Commissioner, Ward 208 (Zone-11) DGST and Anr., Order dated 28th November, 2024 in W.P.(C) 16451/2024;***
- b. ***ICICI Lombard General Insurance Co. Ltd v. Union of India and Ors., Order dated 4th December, 2024 in W.P.(C) 16744/2024;***
- c. ***Indian Highways Management Company Limited v. Assistant Commissioner Delhi Department of Trade And Taxes And Anr., Order dated 12th November, 2024 in W.P.(C) 15701/202***

6. These petitions were allowed by the coordinate Bench of this Court and a perusal of the said orders would show that the wording is almost identical. In fact, the impugned order lacks reasons and also lacks any application of mind to the reply given by the Petitioner. Show-cause notices which seek to impose further liabilities upon assesses, including, penalties *etc.*, have to be decided on merits and not in such a cavalier manner. By way of reference, the order passed in ***ICICI Lombard General Insurance (supra)***, is extracted below: -

“CM APPL. 70903/2024 (Ex.)

Allowed, subject to all just exceptions.

The application stands disposed of

W.P.(C) 16744/2024 & CM APPL. 70902/2024
(Interim Stay)



1. The writ petitioner is aggrieved by the final order referable to Section 73 of the **Central Goods and Services Tax Act, 2017** which has come to be passed by the **Goods and Services Tax Officer**, observing as follows:-

“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.”

2. We take note of the fact that pursuant to the original Show Cause Notice which had come to be issued, the petitioner had furnished a detailed response. However, the same has been perfunctorily brushed aside and the observations as extracted hereinabove rendered.

3. We take note of an identical challenge which formed the subject matter of **Xerox India Limited vs. Assistant Commissioner**¹. Dealing with an identically worded order framed by the said GST Officer, we had observed as follows:-

“3. 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.

4. 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.**², we find that the officer has failed to make any amends.

5. Accordingly, while we are convinced that the impugned order being wholly unreasoned

¹ W.P.(C) 16451/2024 decided on 28 November 2024

² W.P.(C) 15701/2024 dated 12 November 2024



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

Following the aforesaid reasoning, we find ourselves unable to sustain the impugned order dated 31 August 2024.

4. We, consequently, quash the aforesaid order and allow the present writ petition.

5. The respondents shall have liberty to proceed afresh in light of the SCN already issued and the reply submitted. 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, issued under Section 168A of the CGST Act/Delhi Goods & Services Tax Act, 2017 is kept open to be raised afresh, if need so arises.”

A perusal of the above order would show that almost identical language used in the orders has not been approved by this Court.

7. In view of the above position, the impugned order is quashed. The challenge to the validity of the Notification No. 9/2023-CT dated 31st March, 2024 and Notification No. 09/2023-ST dated 22nd June, 2023 and also, Notification No. 56/2023-CT dated 28th December, 2023 and Notification No. 56/2023-ST dated 11th July, 2024 issued by the Resp. Nos. 1 and 2 under Section 168A of the CGST Act is kept open to be raised afresh, if the need so arises.

8. The show-cause notice shall now be heard afresh in the light of the reply submitted by the Petitioner and a proper reasoned order shall be passed.



2024:DHC:9682-DB



All rights and remedies are left open.

9. The petition is disposed of in the aforesaid terms. All pending applications are also disposed of.

PRATHIBA M. SINGH
JUDGE

AMIT SHARMA
JUDGE

DECEMBER 13, 2024/bsr/Am