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

Date of decision: 20th December, 2024

\+ **W.P.(C) 17637/2024 & CM APPL. 74952/2024**

HOLY LAND MARKETING PRIVATE LIMITED.....Petitioner

Through: Mr. Abhishek Garg; Mr. Yash Gaiha & Mr. Naman Mehta, Advs. (M-9673116776)

versus

SALES TAX OFFICER CLASS II/AVATO WARD 205 ZONE 11, DELHI & ORS. .....Respondents

Through: Mr. Bharat Gupta, Adv. for R-1 & 2. Mr. Sparsh Bhargava, Adv. for R-3.

CORAM:
JUSTICE PRATHIBA M. SINGH
JUSTICE AMIT SHARMA

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through hybrid mode.

CM APPL. 74953/2024 (exemption)

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

W.P.(C) 17637/2024 & CM APPL. 74952/2024 (stay)

3. The present petition, *inter alia*, challenges the impugned order dated 31st August, 2024 passed by the Sales Tax Officer, Class-II, Ward 202,203 and 205, Zone-11, Delhi which arises out of Show Cause Notice dated 15th May, 2024. The present petition also seeks quashing of Notification No. 56/2023-Central Tax dated 28th December, 2023 and Notification No. 56/2023-State Tax dated 11th September, 2024 on the grounds of it being *ultra vires* of Section 168-A of the Central Goods and Services Tax Act, 2017 read with Delhi Goods Services Tax Act, 2017.

4. Vide the Show Cause Notice dated 15th May, 2024, the Petitioner was

given an opportunity to show cause as to why they had not declared the correct tax liability in the annual returns of GSTR-09. According to the Show Cause Notice there is a difference in the turnover of the company and there is an under-declaration of the output tax and accordingly the Petitioner has been directed to pay the tax liability of Rs. 46,49,420/-.

5. In response to the said Show Cause Notice, replies were given by the Petitioner on 14th June, 2024 explaining in detail the position of the Petitioner. Reminder notices were issued by the Department again against the Petitioner. The Petitioner replied to the reminder notices on 13th August, 2024 submitting various documents along with its reply. subsequent to which the impugned order dated 31st August 2024 was passed.

6. Heard. Upon pursuing the impugned order, the Court is of the considered opinion that the impugned order has been passed in a completely cryptic and templated manner. The impugned order in this case reads as under:-

> *"Whereas, a notice GST DRC-0L was issued to the taxpayer for the Financial Year 2O19-20 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 pursuant to notice of personal hearing the AR appeared on behalf of the firm to provide explanation/clarification with regard to***

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<u>the reply submitted against DRC-01.</u>

And whereas, the submissions of the taxpayer and explanation of the AR during personal hearing has been considered and after examination of the updated reply, it is found that the reply is lack of supporting document and clarity and thus found not satisfactory.

In view of the above, and after having gone through the final reply filed on the GST portal by the taxpayer in respect of each point, it is observed that the reply filed by the taxpayer is still not comprehensible, conceivable and perspicuous and therefore, the proposed demand mentioned in the Show Cause Notice i.e., conveyed through notice DRC-01- is confirmed."

7. Issue notice.

8. Mr. Bharat Gupta, Advocate has been requested to accept notice on behalf of Respondent No.1 and 2.

9. It is seen that none of the contentions raised by the Petitioner in response to the Show Cause Notice have even been adverted to in the impugned order. The order is completely silent on the grounds and the reasons for which the reply of the Petitioner has not been considered or has been rejected. This is yet another case where the order has been passed by the same Proper Officer in Ward Nos. 202, 203 and 205 Mr. Subhash Kumar Jha, who has used identical language even in earlier cases which this Court has clearly frowned upon. Recently, in the case of ***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) 15701/2024***, a Coordinate Bench of this Court has already taken note of similar orders and has set aside the same. This Court in ***Chetak Logistic Ltd. vs. Union of India & Ors., order dated 13th December, 2024 in W.P.(C.)***

17270/2024 had occasion to consider another previous order of the same officer, which had identical language and complete non-application of mind wherein this Court had observed as under:-

> *"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: -*
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> 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) 15701/2024***
>
> *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*

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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 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 assessees are adjudicated is undertaken."*

Following the aforesaid reasoning, we find ourselves

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

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

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. All rights and remedies are left open.

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

10. In view of the lack of reasoning, non-consideration of the reply and non-application of mind in passing the impugned order dated 31st August, 2024, it is held that the impugned order is not tenable and deserves to be set aside. Ordered accordingly.

11. The matter is remanded for fresh consideration of the Show Cause

notice and the replies given by the Petitioner.

12. The matter shall now be marked to a different Proper Officer in the same department, who shall adjudicate the Show Cause Notice on merits within a period of two months. The Petitioner would be afforded an opportunity of one hearing.

13. The petition is disposed of along with pending applications.

14. Let the order be communicated to the concerned Department, for necessary information and compliance.

PRATHIBA M. SINGH
JUDGE

AMIT SHARMA
JUDGE

DECEMBER 20, 2024/*nk/pr/Am*