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

\+ **W.P.(C) 17867/2024 & CM APPL. 76030/2024**

M/s ANANT WIRE INDUSTRIES .....Petitioner

Through: Mr. Pulkit Verma and Mr. Akhil Gupta, Advocates (M-9716694879).

versus

SALES TAX OFFICER CLASS II/AVATO, WARD 83 & ANR. .....Respondents

Through: Mr. Rajeev Aggarwal, ASC with Mr. Shubham Goel and Mr. Mayank Kamra, Advocates (M-9654298599).

CORAM:
JUSTICE PRATHIBA M. SINGH
JUSTICE AMIT SHARMA

O R D E R

% **23.12.2024**

1. This hearing has been done through hybrid mode.

2. The present petition under Articles 226 and 227 of the Constitution of India has been filed by the Petitioner challenging the impugned order dated 21st February, 2024, on the ground that the said order has been passed pursuant to the Show Cause Notice dated 5th September, 2023 *(hereinafter, the 'Show Cause Notice')* which was not received by the Petitioner.

3. It is the case of the Petitioner that the Show Cause Notice appears to have been uploaded on the Goods and Services Tax portal under the category of 'Additional Notices and Orders' and therefore, the same was never received by him.

4. Ld. Counsel appearing on behalf of the Petitioner submits that benefit ought to be given to the Petitioner on the ground that the Show Cause Notice

was not received by the Petitioner. He relies on a Division Bench judgment of this Court in ***Kamla Vohra v. Sales Tax Officer Class II [W.P. (C) No. 9261/2024 dated 10th July, 2024]*** wherein it was held that uploading of notices under the heading of 'Additional Notices' would not be sufficient service of notice in terms of Section 169 of the CGST Act. The ld. Counsel further relies on the judgment of ***ACE Cardiopathy Solutions (P.) Ltd. v. Union of India [W.P. (C) No. 6758/2024 dated 10th May, 2024].***

5. In the aforesaid cases this Court had given the benefit to the Petitioner so long as an affidavit was filed to the effect that the notice was not received on the registered email ID.

6. The relevant portion of the judgment, ***Kamla Vohra v. Sales Tax Officer Class II*** *(Supra)* reads as under:

> *"3. **The impugned SCN was uploaded on the portal in the category of 'Additional Notices' which the petitioner claims was not easily accessible. It is contended that the show cause notices were required to be placed under the heading of 'Notices' but the same was not done.***
> *4. Learned counsel for the parties submit that the issue involved in the present petition is covered by earlier decisions of this Court, including in* **ACE Cardiopathy Solutions (P.) Ltd. v. Union of India: [2024] 163 taxmann.com 17 (Delhi)**.
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> *5. In the said decision, this Court had rejected the contention that uploading of the notices under the heading 'Additional Notices' would be sufficient service in terms of Section 169 of the CGST Act. The relevant extract of the said decision is set out below :-*
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>> *"4. Learned counsel for respondent submits that in terms of Section 169 of the*

Central Goods and Services Tax Act, 2017, uploading of a notice on the portal is sufficient compliance with regard to intimation to the taxpayer.

5. We are unable to accept the contention of the learned counsel, reference may be had to the judgment of the High Court of Madras in W.P. No. 26457/2023, titled M/s East Coast Constructions and Industries Ltd. v. Assistant Commissioner (ST) dated 11-9-2023, wherein the High Court of Madras has noticed that communications are placed under the heading of "View Notices and Orders" and "View Additional Notices and Orders". The Madras High Court had directed the respondents to address the issue arising out of posting of information under two separate headings. As per the petitioner, the Menu "View Additional Notices and Orders" were under the heading of "User Services" and not under the heading "View Notices and Orders".

6. The GST Authorities had addressed the issue and had re-designed the portal to ensure that 'View Notices' tab and 'View Additional Notices' tab were placed under one heading. The impugned SCN was issued before the portal was re-designed.

*7. **In view of the above, the present petition is allowed and the impugned order is set asid**e.*

8. The matter is remanded to the concerned authority to adjudicate the SCN afresh. The petitioner is at liberty to file a response to the impugned SCN within a period of *two weeks from date.*

*9. **<u>The concerned authority shall adjudicate the impugned SCN after considering the petitioner's response and after affording the petitioner an opportunity to be heard</u>**. "*

7. In the present case, the affidavit dated 19th December, 2024 has been filed by Shashank Mittal, S/o Anil Mittal to the effect that the Show Cause Notice and the order dated 21st February, 2024 were not received on the registered email ID or physically.

8. After having perused the said affidavit, this Court is of the view that following the earlier decisions passed by this Court, the Petitioner herein also deserves to be given an opportunity to reply to the Show Cause Notice.

9. Accordingly, in the facts of this case, the impugned order dated 21st February, 2024 is set aside.

10. The matter is remanded back to the concerned Department for fresh consideration after providing an opportunity of hearing to the Petitioner.

11. In the Show Cause Notice dated 5th September, 2023, let the Petitioner file a reply within a period of 30 days and a hearing shall be afforded to the Petitioner. Order be passed within three months from the date of said hearing.

12. The present petition is disposed of. All pending applications are disposed of.

PRATHIBA M. SINGH, J.

AMIT SHARMA, J.

DECEMBER 23, 2024/*sn*