$~34

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

\+ **W.P.(C) 6302/2025, CM APPL. 28722/2025 & CM APPL. 28723/2025**

SRI GANPATI ENTERPRISES .....Petitioner

Through: Mr. Pulkit Verma, Advocate.

versus

SALES TAX OFFICER CLASS II/AVATO, WARD 82 & ORS. .....Respondents

Through: Mr. Sumit K. Batra, Advocate for R-1 & 4.
Mr. Jatin Singh, Advocate for R-2.
Mr. Anurag Ojha, SSC with Mr. Subham Kumar and Mr. Dipak Raj, Advocates for R-3.

CORAM:
JUSTICE PRATHIBA M. SINGH
JUSTICE RAJNEESH KUMAR GUPTA

O R D E R

% 13.05.2025

1. This hearing has been done through hybrid mode.

2. The present writ petition has been filed by the Petitioner-Sri Ganpati Enterprises under Article 226 and 227 of the Constitution of India *inter alia* seeking to set aside the order dated 25th August, 2024 and consequential rectification order dated 28th February, 2025. The only ground being pressed in the present case is that the Petitioner has filed a rectification application in respect of the impugned order dated 25th August, 2024.

3. It is the case of the Petitioner that the rectification application was

rejected *vide* order dated 28th February, 2025 without giving a proper hearing. Ld. Counsel for the Petitioner submits that the only ground that he presses is that under Proviso 3 to Section 161 of Central Goods and Service Tax Act, 2017, the hearing ought to have been granted in the rectification application. Reliance is placed upon decision of this Court in ***HVR Solar Private Limited vs. Sales Tax Officer Class II/AVATO, Ward 67 & Anr (W.P.(C) 4506/2025)***

4. On behalf of the Respondent, ld. Counsel for the GST Department submits that the rectification application has been rejected as being not maintainable and a detailed order has been passed as well.

5. As held in ***HVR Solar (Supra)*** under Proviso 3 to Section 161, if any order would be passed adverse to the Assessee, the principles of Natural Justice have to be followed. The relevant portion to the said order is set out below:

> *11. **As per proviso 3 to Section 161, the rectification order, if allowed in favour of the Petitioner seeking rectification, hearing can be dispensed with. However, if the rectification is to be decided adversely affecting the right of the applicant, the principles of natural justice have to be followed and a hearing ought to be given, if sought.***
>
> *12. The Madras High Court has in its decision in Suriya Cement Agency (supra) also observed as under:*
>
> > *"8. A perusal of the order does not also indicate that there had been no error apparent on the record to reject the rectification. He had only extracted the tables indicating the figures which the petitioner is liable to pay. There is also no reasonings as to why there is no error apparent on the face of the record. For this reason, the impugned order dated 02.02.2024 is liable to be set aside. Even though, strenuous efforts had been made by the learned Additional Government Pleader that no personal hearing need to be given when an application had been made at the instance of the assessee, I am not in agreement with the learned*

*Additional Government Pleader. **<u>The Proviso indicates that when an order is being made adverse to the assessee, then he should be given an opportunity of being heard when the rectification adversely affects any person. The principles of natural justice had been inbuilt by way of the 3rd Proviso to Section 161. If pursuant to a Rectification Application, if a rectification is made and if it adversely affects the assesse, Proviso 3 contemplates an opportunity of hearing to be given. However, when an Rectification Application is made at the instance of assessee and the rectification is being sought to be rejected without considering the reasons for rectification or by giving reasons as to why such rectification could not be entertained.</u>** It is also imperative that the assessee to be put on notice. For the aforesaid reasons, I am inclined to hold that the order of rectification passed by the first respondent dated 02.02.2024 is contrary to the provisions of Section 161 and in that aspect, the same alone is set aside and the Rectification Application filed by the petitioner shall be taken afresh by the first respondent and after giving an opportunity to the petitioner, the first respondent shall pass appropriate orders and in accordance with law. If any such order is made in the Rectification Application, it is for the petitioner to work out his remedy in the manner known to law."*

*13. **<u>In view of the above legal position, the personal hearing ought to have been afforded to the Petitioner, which has not been done. Accordingly, the order in rectification application dated 28th February, 2025 is set aside</u>**.*

14. Let the Petitioner be afforded a hearing in the rectification application and the order be passed in accordance with law."

6. In view of the above legal position, the rectification application alone is remanded for fresh consideration. Notice of personal hearing shall be given to the Petitioner on the following e-mail address:

***email:* pulkit@enurelegal.com**

7. After hearing the Petitioner, fresh order on the rectification application shall be passed in accordance with law.

8. Accordingly, the present writ petition is disposed of. All the pending applications, if any, are also disposed of.

PRATHIBA M. SINGH, J.

RAJNEESH KUMAR GUPTA, J.

MAY 13, 2025/*MR/Ar.*