



2024:DHC:4427-DB



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

% Date of decision: 27.05.2024

W.P.(C) 6816/2024 & CM APPLs. 28413-14/2024

ALKA ENTERPRISES THROUGH PROPRIETOR ASHOK

KUMAR

..... Petitioner

versus

UNION OF INDIA & ORS.

..... Respondents

Advocates who appeared in this case:

For the Petitioner: Mr. Prabhat Kumar, Mr. Arun Kumar Singh and Mr. Utkarsh Kumar, Advocates.

For the Respondents: Ms. Suruchi Mitta, Advocate for UOI.
Mr. Rajeev Aggarwal, ASC for R-2 and 3.

CORAM:-

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

HON'BLE MR. JUSTICE RAVINDER DUDEJA

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

1. Petitioner impugns order dated 08.12.2023 whereby the impugned Show Cause Notice dated 26.09.2023 proposing a demand of Rs 12,03,064.80/- against the petitioner has been disposed of and a demand including penalty has been created against the petitioner. The order has been passed under Section 73 of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as the Act).



2. Issue notice. Notice is accepted by learned counsel appearing for respondent. With the consent of the parties, petition is taken up for final disposal today.

3. As per the petitioner, he applied for cancellation of GST registration due to his illness and old age. The GST registration of the petitioner was cancelled with effect from 18.06.2021.

4. Learned counsel for Petitioner submits that neither did he receive the Show Cause Notice, as all the communications were through the GST portal, nor was he aware of the pendency of the proceedings. As such, he could not file any reply to the said Show Cause Notice. He further prays for an opportunity to be granted to the petitioner to file a reply to the Show Cause Notice.

5. Perusal of the Show Cause Notice dated 26.09.2023 shows that the Department has raised grounds under separate headings i.e., excess claim of Input Tax Credit [“ITC”]; the excess input tax credit (ITC) claimed on account of non-reconciliation of information and ITC claimed from cancelled dealers, return defaulters & tax non payers.

6. The impugned order, however, after recording the narration records that demand as *ex-parte* is created. It states that “*And whereas, it is noticed that the Taxpayer neither filed reply/explanation within stipulated period nor appeared for Personal Hearing before*



*Proper Officer on the given date and time, Further, another opportunity to submit reply and for the sake of natural justice opportunity for Personal Hearing, as per provision of Section 75(4) DGST Act, was also provided to the taxpayer by issuing "REMINDER" through the GST portal.**** Now, since no reply/explanation has been received from the taxpayer despite sufficient and repeated opportunities, which indicate that the taxpayer has nothing to say in the matter. In view of aforesaid circumstances, the undersigned is left with no other option to create demand ex-parte, in accordance with the provisions of CGST/DGST act & rules Therefore the drc-07 has been issued along with applicable interest as per discrepancies already conveyed through SCN/DRC-01." The Proper Officer has opined that despite providing another opportunity, neither an online reply has been filed nor has the petitioner appeared in person or through an authorized representative.*

7. As per the petitioner, he was not aware of the proceedings as the GST registration stood cancelled w.e.f. 18.06.2021 and all communication for the said proceedings were uploaded on the GST portal.

8. In view of the above, since the only reason for passing the impugned order is that the petitioner had not filed any reply/explanation, one opportunity needs to be granted to the petitioner to respond to the Show Cause Notice. The matter is liable



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to be remitted to the Proper Officer for re-adjudication. Accordingly, the impugned order dated 08.12.2023 is set aside.

9. Petitioner may file a reply to the Show Cause Notice within 30 days from today. Thereafter, the Proper Officer shall re-adjudicate the Show Cause Notice after giving an opportunity of personal hearing and shall pass a fresh speaking order in accordance with law within the period prescribed under Section 75 (3) of the Act.

10. It is clarified that this Court has neither considered nor commented upon the merits of the contentions of either party. All rights and contentions of parties are reserved.

11. Petition is disposed of in the above terms.

SANJEEV SACHDEVA, J

RAVINDER DUDEJA, J

MAY 27, 2024/vp