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

+ **W.P.(C) 2799/2025 & CM APPL. 13323/2025 (Stay)**

BAWA TOYS

.....Petitioner

Through: Mr. Chinmaya Seth, Mr. A. K. Seth, Ms. Palak Mathur and Mr. Varun Phore, Advs.

versus

THE ADDITIONAL COMMISSIONER OF GST

.....Respondent

Through: Ms. Anushree Narain, SSC with Mr. Ankit Kumar, Adv.

CORAM:

HON'BLE MR. JUSTICE YASHWANT VARMA

HON'BLE MR. JUSTICE HARISH VAIDYANATHAN

SHANKAR

ORDER

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05.03.2025

CM APPL. 13324/2025 (Ex.) & CM APPL. 13325/2025 (Ex.)

Allowed, subject to all just exceptions.

The applications are disposed of.

W.P.(C) 2799/2025 & CM APPL. 13323/2025 (Stay)

1. The writ petitioner impugns the Order-in-Original dated 24 January 2025. From the disclosures which are made herein, we find that pursuant to the Show Cause Notice [“SCN”] which was issued on 01 August 2024 and the subsequent SCN dated 03 August 2024, the petitioner had filed a detailed reply on 15 October 2024. The petitioner had also approached this Court by way of W.P.(C) 14863/2024 seeking consolidation of the aforementioned SCN proceedings. Pursuant to the orders passed on that writ petition, a common reply



was thereafter filed on 20 November 2024.

2. However, and as we read the order impugned it is ex facie apparent that not only has the competent authority failed to notice or engage with the reply which was submitted, it has proceeded on the premise that no response had been submitted at all.

3. This becomes apparent from a reading of the following extracts of the impugned order: -

“12.3. Taking note of the above judicial pronouncements, in my opinion, no purpose will be served to keep the adjudication proceedings pending in view of no response from the Noticee. I find that ample opportunities have been provided to the Noticee to put forth their case. Hence, the principles of natural justice have been complied with. However, no reply has been received till date. It suggests that the Noticee has nothing more to say in their defense and therefore, I proceed further to decide the case ex-parte on merits based on available evidence on record in respect of the Noticees who neither appeared for personal hearing nor produced any evidence in their defense.

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13.1.1 Primarily, I find that the Noticee neither joined the investigation proceedings, nor attended the personal hearing, as and when fixed during the adjudication proceedings in the instant case. I also note here that even though the subject SCN was issued to the Noticee through DRC-01 and was communicated through the portal, however, it is the case of the Noticee that he did not respond to the same. Hence, it is deemed here that the Noticee has nothing to state in the instant case hence, the allegations contained in the SCN are deemed admitted by the Noticee. Hence, I hereby proceed to decide upon the case, based on the facts and the available records.

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13.1.5 I find that the noticees neither submitted reply to the Show Cause Notice nor attended personal hearing offered to them at three occasions. This act of non-submission of reply and non-appearance during personal hearing strengthens the allegation of the department that they are fictitious linns created on common mobile number and e-mail id, which passed on fraudulent ITC on the basis of goods-less invoices issued by various suppliers without any actual underlying supply of goods/services and have also engaged in passing on of such fraudulent ITC on the basis of



goods-less invoices issued to various recipients, so as to enable the said recipients to evade the payment of appropriate GST to the Government exchequer.

13.1.6 Considering the provisions and facts enumerated above, I observe that the noticee had issued invoices without underlying/actual supply of goods and thus passed on inadmissible Input Tax Credit thus, violated the provisions under Section 16(2) of the CGST Act, 2017, wherein it has been specifically provided that no registered person shall be entitled to the credit of any input tax in respect of any supply of goods or services or both to him unless he has actually received the goods or services or both. In the instant case, the noticee had never supplied the goods and only issued invoices to their recipient/beneficiary firms, as they were found non-existent at its registered principal place of businesses during the course of investigation by the department. Further, he failed to produce any submissions during the course of adjudicating proceedings in spite of giving ample opportunities of personal hearing as well he failed to prove that whether they have actually received or supplied the goods.

13.1.7 I find it relevant to mention here that as per the allegations contained in the impugned SCN, it is evident that the noticee had issued invoices without underlying/actual supply of goods and thus passed on inadmissible Input Tax Credit to their beneficiary firms. Further, Section 16(2) of the CGST Act, 2017 mandates that the recipient of the ITC should actually had received the goods/services. However, as the noticee never supplied the goods as they were not existing at its registered place of business, therefore, no supply of goods took place. Hence, I do not find anything substantiating that as to how they had actually supplied the goods, thereby, had further complied with the conditions of Section 16 of the CGST Act, 2017 to correctly avail the ITC. Therefore, even otherwise, the ITC availed by the noticee is legally incorrect.”

4. In view of the aforesaid recitals and which concededly proceed on the incorrect premise of the writ petitioner having filed no reply, we find ourselves unable to sustain the order which is impugned before us.

5. Accordingly, and for all the aforesaid reasons, we allow the present writ petition and quash the order dated 24 January 2025, insofar as the present writ petitioner is concerned, and who stood



arrayed as Noticee no. 18. It shall be open for the competent authority to pass a fresh order after taking into consideration the reply which had been submitted by the writ petitioner.

6. All rights and contentions of respective parties on merits are kept open.

YASHWANT VARMA, J.

HARISH VAIDYANATHAN SHANKAR, J.

MARCH 05, 2025/DR