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* IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: 21.05.2024

+ W.P.(C) 6831/2024 & CM APPL. 28499/2024

M/S TRENDZ

..... Petitioner

Versus

SALES TAX OFFICER CLASS II/AVATO, WARD 54 & ORS.

..... Respondents

Advocates who appeared in this case:

For the Petitioner:

Mr. Pulkit Verma, Mr. Vibhu Gupta and Mr. Peyush Pruthi, Advocates.

For the Respondents:

Mr. Abhishek Khanna, SPC with Mr. Ashish Khanna and Mr. Parvesh Khanna, Advocates for R-2.

Mr. Anurag Ojha, Sr. SC with Mr. Kumar Abhishek, Mr. Subham Kumar and Mr. Vipul, Advocates for R-3.

CORAM:-

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

HON'BLE MR. JUSTICE RAVINDER DUDEJA

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

1. Petitioner impugns order dated 28.12.2023 whereby the impugned Show Cause Notice dated 29.09.2023 proposing a demand of Rs.3,38,402.00/- against the petitioner has been disposed of and demand including penalty has been raised 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. Learned counsel for Petitioner submits that Petitioner could not file a reply because the petitioner has transferred the business to another entity which has an independent GST Number 07AAEFB3144N1ZF. He submits that petitioner did not access the portal since the business was closed and the GST registration stood cancelled w.e.f. 31.08.2021.

3. Perusal of the Show Cause Notice dated 29.09.2023 shows that the Department has raised issues under separate headings i.e., under declaration of output tax; excess claim of [Input Tax Credit] ITC and scrutiny of ITC availed.

4. The impugned order, however, after recording the narration records that demand as *ex-parte* is created. It states that “*And whereas, it is notices 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, for the sake of natural justice, another opportunity to submit reply and 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, 2017, 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.

5. The only reason for passing the impugned order is that petitioner had not filed any reply to the Show Cause Notice. Considering the Petitioner did not have access to the portal due to the GST registration being cancelled, we are of the view that one opportunity needs to be granted to the Petitioner to respond to the Show Cause Notice.

6. Accordingly, the impugned order dated 28.12.2023 is set aside. The Show Cause Notice is remitted to the Proper Officer for re-adjudication.

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



(3) of the Act.

8. 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.

9. The challenge to Notification No. 9 of 2023 with regard to the initial extension of time is left open.

10. Petition is disposed of in the above terms.

SANJEEV SACHDEVA, J

MAY 21, 2024/MR

RAVINDER DUDEJA, J