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* IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: 29.04.2024

+ **W.P.(C) 5938/2024 & CM APPL. 24687/2024**

M/S. SWASTIK ENTERPRISES THROUGH ITS PROPRIETOR
SH. SANJAY GUPTA Petitioner

Versus

UNION OF INDIA AND ORS Respondents

Advocates who appeared in this case:

For the Petitioner: Mr. Vineet Bhatia, Mr. Aamnaya Jagannath Mishra, Mr. Keshav Garg and Mr. Bipin, Advocates.

For the Respondents: Mr. Kshitij Chhabra, Senior Panel Counsel for UOI.
Mr. Rajeev Aggarwal, ASC with Ms. Samridhi Vats, Advocate.

CORAM:-

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

HON'BLE MR. JUSTICE RAVINDER DUDEJA

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

1. Petitioner impugns order dated 21.12.2023 whereby the impugned Show Cause Notice dated 28.09.2023 proposing a demand of Rs 10,85,557.20/- 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. Annexure to the impugned order dated 21.12.2023 has been produced in Court. The same is taken on record.

3. 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.

4. Learned counsel for petitioner submits that petitioner has closed his business in 2020 and after the closure of the business in 2020, petitioner did not check the portal. As the said Show Cause Notice (SCN) was uploaded only on the portal and was not communicated to the petitioner through any other means, petitioner was unaware of any proceedings initiated against him. Consequently, petitioner was not able to furnish a reply against the impugned SCN.

5. 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 files 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 for the sake of natural justice opportunity for Personal Hearing, as per provisions 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.” 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.

6. As noticed hereinabove, the petitioner did not access the portal due to closure of business and could not reply to the said Show Cause Notice.

7. In view of the above, since the only reason for passing the impugned order is that petitioner had not filed any reply/explanation, one opportunity needs to be granted to the petitioner to respond to the Show Cause Notice and the matter is liable to be remitted to the Proper Officer for re-adjudication. Accordingly, the impugned order dated 21.12.2023 is set aside. The Show Cause Notice is restored on the record of the Adjudicating Authority.

8. Petitioner shall file a further reply to the Show Cause Notice within two weeks 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.

9. 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.

10. Petition is disposed of in the above terms.

SANJEEV SACHDEVA, J

RAVINDER DUDEJA, J

APRIL 29, 2024
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