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

+ **W.P.(C) 9700/2025 & CM APPL. 40678/2025**

M/S MARK AGENCIES

.....Petitioner

Through: Mr. Jayant Kumar & Ms. Hemlata
Rawat, Advs.

versus

DEPARTMENT OF TRADE AND TAXES & ANR.Respondents

Through: Ms. Vaishali Gupta, Adv.

CORAM:

PRATHIBA M. SINGH

JUSTICE SHAIL JAIN

ORDER

% **11.08.2025**

1. This hearing has been done through hybrid mode.

CM APPL. 40679/2025 (For Exemption)

2. Allowed, subject to all just exceptions. The application is disposed of.

W.P.(C) 9700/2025 & CM APPL. 40678/2025

3. The present petition has been filed by the Petitioner-M/s Mark Agencies under Article 226 of the Constitution of India, *inter alia*, seeking quashing of orders dated 25th August 2024 and 20th March 2025 (hereinafter, '*impugned orders*') passed by the Sales Tax Officer Class II / AVATO.

4. The grievance of the Petitioner is that the Petitioner was not given a hearing in the rectification application which was filed by the Petitioner. Despite the same, the impugned order dated 20th March 2025 has been passed rejecting the rectification application.

5. The brief background is that a Show Cause Notice (hereinafter, '*SCN*') was issued to the Petitioner on 21st May 2024, raising a demand on the following counts:



- i. Under declaration of output tax.
- ii. Excess claim of Input Tax Credit (hereinafter, '*ITC*');
- iii. Under declaration of Ineligible ITC:
- iv. Invalid ITC under Section 16(4) of the Central Goods and Service Tax Act, 2017 (hereinafter, '*CGST Act*').
- v. ITC claimed from cancelled dealers, return defaulters and tax non-payers.

The total demand raised against the Petitioner was to the tune of Rs. 2,31,85,509/-.

6. In response to the said SCN, a reply was filed by the Petitioner which is annexed as Annexure P-9 in the present petition. However, the impugned order dated 25th August 2024 came to be passed, confirming the said demand.

7. The Petitioner then filed a rectification application on 30th October 2024 under Section 161 of the CGST Act. The said application has been decided *vide* the impugned order dated 20th March 2025.

8. The grievance of the Petitioner is that under Section 161 of the CGST Act, if an order is to be passed against the Petitioner, principles of natural justice have to be followed.

9. Ld. Counsel for the Respondent submits that the impugned order is an appealable order.

10. Heard. It is clear from a reading of the impugned order dated 20th March 2025, that no hearing has been afforded to the Petitioner. Under the third proviso to Section 161 of the CGST Act, principles of natural justice have to be followed especially if an adverse decision is being taken. The same reads as under:



“* Section 161. Rectification of errors apparent on the face of record.-

Without prejudice to the provisions of section 160, and notwithstanding anything contained in any other provisions of this Act, any authority, who has passed or issued any decision or order or notice or certificate or any other document, may rectify any error which is apparent on the face of record in such decision or order or notice or certificate or any other document, either on its own motion or where such error is brought to its notice by any officer appointed under this Act or an officer appointed under the State Goods and Services Tax Act or an officer appointed under the Union Territory Goods and Services Tax Act or by the affected person within a period of three months from the date of issue of such decision or order or notice or certificate or any other document, as the case may be:

Provided that no such rectification shall be done after a period of six months from the date of issue of such decision or order or notice or certificate or any other document:

Provided further that the said period of six months shall not apply in such cases where the rectification is purely in the nature of correction of a clerical or arithmetical error, arising from any accidental slip or omission:

Provided also that where such rectification adversely affects any person, the principles of natural justice shall be followed by the authority carrying out such rectification.”

11. This issue has also been considered by this Court in ***W.P. (C) 4056/2025*** titled ‘***HVR Solar Private Limited v. Sales Tax Officer Class II AVATO Ward 67 & Anr.***’ wherein it has been held that the rectification application has to be decided after hearing the party, if the decision is to go against the said party.



The relevant portion of the said decision reads as under:

“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. 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 assessee, 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. It is also imperative that the assessee to be put on notice.

9. 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. 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.”

12. In view of the fact that no hearing was given before rejecting the rectification application, the impugned order dated 20th March 2025, is set aside. The rectification application shall be adjudicated afresh by the Adjudicating Authority after giving a hearing to the Petitioner. The personal hearing notice shall be communicated to the Petitioner on the following e-mail address and mobile number:

- ***E-mail- jayant@athenalawassociates.com***
- ***Mobile no. – 9801177896***

13. After hearing the Petitioner, a fresh order shall be passed by the Adjudicating Authority on the rectification application. No other reliefs are pressed.

14. All rights and remedies of the parties are left open.

15. The writ petition is disposed of in above terms. All the pending



applications, if any, are also disposed of

PRATHIBA M. SINGH, J

SHAIL JAIN, J

AUGUST 11, 2025/pd/ck