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* IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: 20.05.2024

+ W.P.(C) 7184/2024, CM APPL. 30006/2024 & CM APPL. 30007/2024

M/S. UMANG REALTECH PRIVATE LIMITED Petitioner

versus

UNION OF INDIA & ORS. Respondents

Advocates who appeared in this case:

For the Petitioner: Mr. Puneet Agrawal, Ms. Mansi Khurana, Mr. Tanmay Mangal and Mr. Chetan Kumar Shukla, Advocates.

For the Respondents: Mr. Chiranjiv Kumar, Mr. Mukesh Sachdeva and Ms. Neelima, Advocates for R-1.
Mr. Harpreet Singh, Sr. Standing Counsel with Ms. Suhani Mathur and Mr. Jatin Gaur, Advocates for R-2 & 4.
Mr. Rajeev Aggarwal, ASC with Mr. Prateek Badhwar, Ms. Shaguftha H. Badhwar and Ms. Samridhi Vats, Advocates for R-3 to 6.
Mr. Pratap Singh Dahiya, Ms. Nausha Batra and Ms. Shivani Gupta, Advocates.

CORAM:-

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

HON'BLE MR. JUSTICE RAVINDER DUDEJA

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

1. Petitioner impugns order dated 07.12.2023 whereby the impugned Show Cause Notice dated 25.09.2023, proposing a demand of



Rs.5,83,18,566.00 against the petitioner has been disposed of and a demand including penalty had 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. Issue notice. Notice is accepted by learned counsel for respondents. With the consent of parties, the petition is taken up for final disposal.

3. Learned counsel for petitioner submits that the Petitioner was unaware of the initiation of any such proceedings and accordingly could not respond to the same. He submits that the said Show Cause Notice was uploaded on the portal in the category of ‘Additional Notices’ and was not communicated to the petitioner through any other mode of communication. He further submits that it was merely uploaded on the web portal under the tab of “Additional Notices and Orders”, and accordingly, petitioner was unaware of any such proceedings initiated against it.

4. Reference may be had to the judgment of the High Court of Madras in W.P. No.26457/2023, titled *M/s East Coast Constructions and Industries Ltd. vs. Assistant Commissioner (ST)* dated 11.09.2023, wherein the High Court of Madras has noticed that communications are placed under the heading of “View Notices and Orders” and “View Additional Notices and Orders”. The Madras High Court had directed the respondents to address the issue arising out of posting of information under two separate headings. As per the petitioner, the Menu “View Additional Notices and Orders” were under the heading of “User Services” and not under the heading “View Notices and Orders”.



5. This issue is further highlighted by another judgment of the Madras High Court dated 31.07.2023 in W.P. No.22369/2023 and other connected petitions, wherein the Madras High Court has noticed as under:-

“3. The only ground on which the, the impugned orders are under challenge is that the notices, which preceded the impugned orders were hosted in the Dashboard of the petitioner meant for ‘Additional Notices and Orders’ whereas, the notices should have been hosted by the respondent in the Dash Board for ‘View Notices and Orders’.

4. The learned counsel for the petitioner has drawn attention to the manual copy given by the respondent in the web portal, which reads as under:-

“How can I view or download the notices and demand orders issued by the GST tax authorities?”

To view or download the notices and demand orders issues by the GST tax authorities, perform the following steps:

- 1. Access the www.gst.gov.in URL. The GST Home page is displayed.*
- 2. Login to the GST Portal with valid credentials.*
- 3. Click the Services > User Services > View Notices and Orders command.*

5. It is submitted that had the notice been uploaded in the correct place, the petitioner would have seen it and replied to the same and participated in the proceedings. Since the Notices and the Orders were hosted in the Dashboard of the petitioner meant for “Additional Notices and Orders”, the petitioner failed to notice and file a reply to the Show Cause Notice.



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9. *The problem has arisen on account of the complex architecture of the web portal. It has been designed to facilitate easy access of informations. It has however resulted in the petitioner failing to notice the notice that was issued to the petitioner prior to the impugned order on 20.03.2023. It went unnoticed by the petitioner, as a result of which, the impugned orders have been passed on 29.04.2023.*”

6. Attention is also drawn to yet another judgment of Madras High Court dated 08.02.2024 in Writ Petition No.2746/2024, titled *Murugesan Jayalakshmi Vs. State Tax Officer*, wherein the Madras High Court has noticed that the said issue has been addressed and the portal has been re-designed and both the “View Notices” tab and “View Additional Notices” tab are under one heading.

7. Clearly, petitioner has made out a case that Petitioner has missed out the receipt of the notice as it was merely uploaded on the portal under the category of “Additional Notices” tab and accordingly could not respond to the Show Cause Notice.

8. Perusal of the impugned order shows that the impugned order categorically records that the tax payer has not replied or appeared in person and a demand as *ex-parte* is created. It merely states that “*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 laid down in Section 73(9) of the CGST / DGST Act, 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.

9. Consequently, we are of the view that since the only reason for passing the impugned order is that Petitioner had not filed any reply/explanation, Petitioner needs to be granted one opportunity to respond to the Show Cause Notice and thereafter, the Show Cause Notice to be re-adjudicated.

10. In view of the above, impugned order 07.12.2023 is set aside. Respondent shall open the portal to enable the Petitioner to file a response to the said Show Cause Notice dated 25.09.2023 which shall be filed within a period of two weeks. 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.



11. 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.

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

13. Petition is disposed of in the above terms.

SANJEEV SACHDEVA, J

MAY 20, 2024/MR

RAVINDER DUDEJA, J