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* IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: 08.04.2024

+ W.P.(C) 4520/2024 & CM APPL. 18438-39/2024

ANITA BANSAL PROPRIETRESS OF
M/S A.B. ENTERPRISES

..... Petitioner

versus

THE UNION OF INDIA & ANR.

..... Respondents

Advocates who appeared in this case:

For the Petitioner: Mr. Rajesh Jain, Mr. Viraj Tiwari, Mr. Rishabh Jain, Mr. Ramashish and Ms. Tanya Saraswat, Advocates

For the Respondents: Mr. Shoumendu Mukherji, Senior Panel Counsel with Ms. Megha Sharma and Ms. Akanksha 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 30.12.2023, whereby the impugned Show Cause Notice dated 23.09.2023, proposing a demand of Rs.21,11,088.00 against the Petitioner has been disposed of and a



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. Issue notice. Notice is accepted by learned counsel appearing for respondent.
3. With the consent of the parties, petition is taken up for final disposal today.
4. Perusal of the Show Cause Notice dated 23.09.2023 shows that the Department has given the heading of excess claim of Input Tax Credit [“ITC”].
5. Thereafter, the impugned order passed on the said show cause notice records that a demand as *ex-parte* is created. It states that “*And whereas, it is noticed 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, 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 accorded 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 indicates that the taxpayer has nothing*



*to submit in the matter. ***** In view of aforesaid circumstances, the undersigned is left with no other option but to decide the matter ex-parte, in accordance with the provisions of CGST / DGST Act & Rules, 2017”*

6. Learned counsel for petitioner submits that the petitioner could not respond to the Show Cause Notice as on the date fixed for hearing i.e. 20.12.2023, the husband of the proprietor expired and thereafter the default assessment order has been issued.

7. Perusal of the order shows that the order has been passed disposing of the Show Cause Notice solely on the ground that no reply/explanation has been received from the tax payer. Petitioner has also annexed the medical record of the husband of the petitioner which shows that he was admitted in the hospital on 04.11.2023 and thereafter expired on 20.12.2023 after a prolonged illness.

8. We are of the view that the petitioner was prevented from filing a response to the Show Cause Notice on account of serious illness of her husband. Accordingly, petitioner is liable to be granted an opportunity to respond to the Show Cause Notice.

9. In view of the above, the impugned order dated 30.12.2023 which had been passed solely on account that petitioner had not filed a reply is set aside and the matter is remitted to the Proper Officer to re-



adjudicate the same in accordance with law.

10. 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 and pass a fresh speaking order in accordance with law within the period prescribed under Section 75 (3) of the Act.

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

12. Petition is disposed of in the above terms.

SANJEEV SACHDEVA, J

RAVINDER DUDEJA, J

APRIL 8, 2024

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