



2023 : DHC : 4848-DE



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

% **Date of Decision: 11th July, 2023**

+ **W.P.(C) 8787/2023 & CM APPL. 33163/2023**

HT MEDIA LIMITED

..... Petitioner

Through: Mr. Bharat Raichandani and
Mr. Deepak Kumar Khokhar,
Advs.

versus

UNION OF INDIA & ORS.

..... Respondents

Through: Mr. Siddharth Khatana, Senior
Panel Counsel for R-1 / UOI.
Mr. Satyakam, ASC for R-3 and
4.
Ms. Anushree Narain, Standing
Counsel for R-5.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

HON'BLE MR. JUSTICE AMIT MAHAJAN

VIBHU BAKHU, J.

1. The petitioner has filed the present petition impugning an order dated 03.04.2023 (hereafter '**impugned order**') passed by respondent No. 2.
2. The petitioner also impugns the Show Cause Notice dated 01.08.2022 (hereafter '**impugned Show Cause Notice**') issued under Section 73 of the Delhi Goods and Services Tax Act, 2017 (hereafter '**the Act**').
3. It is material to note that the impugned Show Cause Notice alleges that "*tax has not been paid or short paid or refund has been released erroneously or input tax credit has been wrongly availed*",



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but does not disclose any detailed reasons for proposing the demand.

4. In terms of the impugned notice, the petitioner was to submit its reply by 01.09.2022 and was also informed of a personal hearing scheduled on 19.08.2022 at 11:00 a.m.

5. As apparent from the face of the impugned Show Cause Notice, the same did not clearly specify grounds on which a demand was proposed to be raised. Although, the said Show Cause Notice did indicate a table mentioning the quantum of tax and interest; it is not clear whether the said tabular statement was related to the proposed demand or called upon the petitioner to justify the same.

6. Curiously, the petitioner was called upon to appear for a personal hearing on a date earlier than the time provided to file a reply. The respondent had also issued another Notice dated 01.08.2022 in Form GST DRC-01. The same indicates that it was accompanied by an audit report dated 29.06.2022.

7. The petitioner responded to the said Show Cause Notice and submitted its reply dated 01.09.2022. The petitioner also requested the concerned officer to afford the petitioner an opportunity of being heard. It is noticed that the said reply spans over thirty-nine pages and according to the petitioner, it has responded to the observations made in the audit report.

8. Admittedly, the concerned officer did not afford the petitioner any further opportunity of being heard and passed the impugned order raising a demand of ₹29,17,30,644/-. The said order under Section 73 of the Act neither deals with the submissions made by the petitioner in its reply dated 01.09.2022 nor mentions any reason for raising the said



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demand.

9. Mr. Satyakam, learned counsel appearing for the respondent, states that he has received instructions to the effect that the opportunity of personal hearing was afforded to the petitioner on 19.08.2022 but no one attended the hearing. He has also received instructions to the effect that the petitioner had not opted for personal hearing. However, he does not dispute that the documents placed by the petitioner on record are true copies of the original documents.

10. Concededly, a reply dated 01.09.2022 was furnished by the petitioner. The prayers made at the end of the said reply (in Form GST DRC-06) clearly request the concerned officer for affording the petitioner an opportunity to be heard. Thus this court cannot accept the contention that the petitioner did not opt for a personal hearing or waived its right.

11. It is apparent that the concerned officer has not considered the reply furnished by the petitioner.

12. We are also unable to appreciate the procedure of affording the petitioner an opportunity to be heard prior to the expiry of the time afforded to him for responding to the impugned show cause notice. An opportunity to be heard is not required to be a mere formality. It is to enable the noticee to canvas its case before the concerned officer. The purpose of eliciting a reply to the show-cause notice is to enable the noticee to place his stand on record. Thus, it is apposite that the noticee be permitted to file a reply prior to being afforded a hearing.

13. In view of the above, the impugned order cannot be sustained. We are also inclined to set aside the impugned Show Cause Notice.



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However, it is apparent that the petitioner has no doubt as to why a further demand is proposed to be raised. Admittedly, it is based on the observations in the audit report provided to the petitioner. And as noted above, the petitioner has responded in detail to the impugned Show Cause Notice.

14. In view of the above, we set aside the impugned order and direct the concerned officer to consider the petitioner's response and pass a fresh order after affording the petitioner due opportunity to be heard.

15. The petition is allowed in the aforesaid terms.

VIBHU BAKHRU, J

AMIT MAHAJAN, J

JULY 11, 2023 / 'KDK'

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