



# Lawgics

By Nidhi, Advocate



Judgment No.: 096  
Dt.: 27-03-2024



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## Judgment Deals With

Section/Rule	Section 73
Authority	Delhi High Court
Case Name	Ethos Limited VS Assistant Commissioner Deptt. of Trade & Taxes
Dated	14 <sup>th</sup> March, 2024

### Brief Facts:

Petitioner impugns order dated 23.12.2023, whereby the impugned Show Cause Notice dated 25.09.2023, proposing a demand against the petitioner has been disposed of and a demand of Rs. 1,36,98,144.00 including penalty has been raised under Section 73 of the CGST Act, 2017.

### Contention of the Petitioner:

A detailed reply dated 08.11.2023 was filed to the Show Cause Notice, however, the impugned order dated 23.12.2023 does not take into consideration the reply submitted by the petitioner and is a cryptic order.

### Findings & Decision of the Court:

Perusal of the Show Cause Notice shows that the Department has given separate headings under declaration of output tax, excess claim Input Tax Credit, ITC to be reversed on non-business transactions & exempt supplies and under declaration of ineligible ITC. To the said Show Cause Notice, a detailed reply was furnished by the petitioner giving full disclosures under each of the heads. However, the order records that reply uploaded by the taxpayer is not satisfactory.

The Proper Officer has opined that the reply is unsatisfactory. The observation in the impugned order dated 23.12.2023 is not sustainable for the reasons that the reply filed by the petitioner is a detailed reply. Proper Officer had to at least consider the reply on merits and then form an opinion whether the reply was unsatisfactory, incomplete and not duly supported by adequate documents. He merely held that the reply is not clear and unsatisfactory which ex-facie shows that Proper Officer has not applied his mind to the reply submitted by the petitioner. Further, if the Proper Officer was of the view that the reply is unsatisfactory and if any further details were required, the same could have been specifically sought from the petitioner. However, the record does not reflect that any such opportunity was given to the petitioner to clarify its reply or furnish further documents/details.

Accordingly, the impugned order dated 23.12.2023 was set aside & the matter was remitted to the Proper Officer for re-adjudication. 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.

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