



# Lawgics

By Nidhi, Advocate



Judgment No.: 111  
Dt.: 15-04-2024



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## Judgment Deals With

Section/Rule	Section 73
Authority	Delhi High Court
Case Name	M/s. A. B Traders VS Commissioner Of Delhi Goods And Service Tax
Dated	02 <sup>nd</sup> April, 2024

### Brief Facts of the Case:

Petitioner impugns order dated 25.12.2023, whereby the impugned Show Cause Notice dated 26.09.2023, proposing a demand of Rs. 44,48,488.00 against the Petitioner has been disposed of and a demand including penalty has been raised under Section 73 of the CGST Act, 2017.

### Contention of the Petitioner:

Petitioner had filed a detailed reply dated 23.10.2023, however, impugned order dated 25.12.2023 does not take consideration the reply submitted by Petitioner in full consideration and a cryptic order has been passed.

### Findings & Decision of the Court:

Perusal of SCN shows that the Department has given separate headings i.e., under declaration of output tax; excess claim Input Tax Credit ["ITC"] and ITC claimed from cancelled dealers, return defaulters and tax non payers. To the said Show Cause Notice, a detailed reply was furnished by the petitioner giving disclosures under each of the heads.

The impugned order records that the reply uploaded by the taxpayer is insufficient and unsatisfactory. It stated "And whereas, the Taxpayer filed reply/explanation on dated 23.10.2023 and 26.10.2023", the Proper Officer has opined that the reply is insufficient and unsatisfactory. The Proper Officer has not even considered the reply of the petitioner along with the enclosed documents and merely held that the burden cannot be shifted on the Tax Authorities. The Proper Officer had to examine the documents submitted by the petitioner and then hold whether the input tax credit is admissible or not. The Proper Officer has not stated as to why such transactions are not acceptable.

Thus, the impugned order dated 25.12.2023 was set aside & the matter was remitted to the Proper Officer to re-adjudicate the Show Cause Notice after giving an opportunity of personal hearing and shall pass a fresh speaking order in accordance with law.