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By Nidhi, Advocate



Judgment No.: 136
Dt.: 29-05-2024



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Judgment Deals With

Section/Rule	Section 73
Authority	Delhi High Court
Case Name	Kalpatru Projects International Limited VS Goods And Service Tax Officer (GSTO)
Dated	24 th April, 2024

Brief Facts of the Case:

Petitioner impugns order dated 28.12.2023, passed under Section 73 of the CGST Act, 2017, whereby the impugned Show Cause Notice dated 24.09.2023, proposing demand against the Petitioner has been disposed of and a demand including penalty has been raised against the Petitioner.

Contention of the Petitioner:

Petitioner had filed a detailed reply dated 07.11.2023, however, the impugned order dated 28.12.2023 does not take into consideration the reply submitted by the Petitioner and is a cryptic order.

Findings & Decision of the Court:

A detailed reply was furnished by petitioner giving disclosures, to the above-mentioned Show Cause Notice.

The impugned order, however, after recording the narration records that the reply uploaded by the taxpayer is not found to be satisfactory. The Proper Officer has opined that the reply is not found to be satisfactory and since no further additional reply/explanation has been received from the taxpayer a demand ex-parte is being created.

The observation in the impugned order dated 28.12.2023 is not sustainable for the reasons that the reply dated 07.11.2023 filed by the Petitioner is a detailed reply with supporting documents. Proper Officer had to at least consider the reply on merits and then form an opinion. He merely held that the reply is not found to be satisfactory, which ex-facie shows that Proper Officer has not applied his mind to the reply submitted by the petitioner. Thus, the impugned order dated 28.12.2023 was set aside and the matter was remitted to the Proper Officer for re-adjudication. The Proper Officer shall readjudicate 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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