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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of decision: 20th March, 2025

+ **W.P.(C) 2543/2025 & CM APPL. 11999/2025**

A B C ENTERPRISESPetitioner

Through: Mr. Pulkit Verma & Mr. Peyush Pruthi, Advs.

versus

SALES TAX OFFICER CLASS II AVATO WARD 102
& ORS.Respondents

Through: Ms. Urvi Mohan, Adv. with Mr. Manoj Kumar, GST Officer for R-1. Mr. Anurag Ojha, SSC, Mr. Dipak Raj, Mr. Vipul Kumar and Mr. Subham Kumar, Advs. for R-3.

CORAM:

JUSTICE PRATHIBA M. SINGH

JUSTICE RAJNEESH KUMAR GUPTA

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through hybrid mode.
2. The present petition has been filed by the Petitioner - M/s. ABC Enterprises seeking directions to quash the impugned order dated 24th August, 2024, passed by Respondent No. 1 under Section 73 of the Delhi Goods and Service Tax Act, 2017. The prayer *inter alia* is for declaring the Notification No.56/2023 dated 28th December, 2023, issued by Respondent No.3-Central Board of Indirect Taxes and Customs and Notification No.09/2023-State Tax dated 11th July, 2024, issued by Respondent No.4-Principal Commissioner (Finance), Delhi Goods and Service Tax being violative of Central/Delhi GST Act, 2017 and the Constitution of India.
3. On the last date of hearing, *i.e.* 28th February 2025, the Respondents were directed to file a short affidavit to confirm the service of the show cause



notice to the Petitioner. The relevant portion of the said order reads as under:

“4. *Ld. Counsel for the Respondents, however, submits that the Petitioner has been served as per the provisions of law. She submits that the same was uploaded on the portal and an intimation via SMS has also been given.*

5. *Let a short affidavit to this effect confirming the service of the notice be placed on record.”*

4. An affidavit has been filed today on behalf of the Respondent No.1 stating that the show cause notices and the reminders were sent for the year 2019-2020 in the same manner as was sent for the previous years. The affidavit has set out a table and the manner in which the notices have been issued. The said portion of the affidavit is set out below:

“f. It is also submitted that at each stage, i.e., after issuing the DRC-01/SCN, the Reminder Notices as well as DRC-07/Demand Order, an automated email and SMS is to the taxpayer's registered e-mail address and registered mobile number.

g. Further, it is submitted that DRC-01/SCN for the Assessment Year 2017-18 and 2018-19 was previously issued to the Petitioner which was dropped after considering the reply received from the Petitioner.

h. However, for the period 2017-18 and 2018-19, during the issuance of DRC-01, the Petitioner never raised the issue of non-receipt of notice(s). In fact, the Petitioner also filed his reply against the said notices and the same were duly considered and accordingly, required action was taken by the Ward Authority. A comparison table is reproduced hereinbelow, for ease of reference:

<u>Period</u>	<u>Notice issued</u>	<u>Reminder</u>	<u>Reply</u>	<u>Action Taken</u>
2017-18	DRC-01 has been issued	Reminder issued on	Reply Received on	Order for dropping



	<i>on 24/09/2023 (Anx-1)</i>	<i>30/11/2023 (Annx-1)</i>	<i>11/12/2023</i>	<i>proceedings issued after considering the reply (Anx- 4)</i>
<i>2018-19</i>	<i>DRC-01 has been issued on 10/12/2023 (Anx-2)</i>	<i>-</i>	<i>Reply Received on 07/02/2024</i>	<i>Order for dropping proceedings issued after considering the reply (Anx- 4)</i>
<i>2019-20</i>	<i>DRC-01 has been issued on 29/05/2024 (Anx-3)</i>	<i>Reminder-1 issued on 23/07/2024 Reminder-2 issued on 11/08/2024 (Annx-3)</i>	<i>No Reply Received</i>	<i>Order for creation of demand on 24/08/2024 after receiving no-reply (Anx- 5)</i>

5. The Court has considered the matter. A perusal of the above table would show that the stand of the Department is that the automated email and the automated SMS on the registered mobile number of the taxpayer, *i.e.* Petitioner was sent for all three periods, *i.e.*, 2017-18, 2018-19 and 2019-2020. However, only for the last year *i.e.* 2019-2020, the Petitioner's case is that he did not receive any copy thereof. Thus, it is not possible to accept that the Petitioner did not receive the same.

6. For the previous years, *.i.e.*, 2017-18 and 2018-19 the Petitioner has filed a reply and the proceedings have been dropped. Since the same process is stated to have been adopted, the Department cannot be disbelieved.

7. However, the stand of the Petitioner is that the Petitioner came to know of the impugned order dated 24th August, 2024 only in January, 2025. The same can be noted in terms of paragraph 4 of the affidavit dated 24th February



2025 of the Petitioner which has been filed by the Petitioner. The relevant portion of the said affidavit is set out below:

“4. That, I became aware of the aforementioned notice and order dated 24.08.2024 only in the month of January 2025, when my accountant apprised me about the ex-parte proceedings reflecting under the 'Additional Notices' head on the GST Portal.”

8. Under these circumstances, instead of permitting the matter to proceed in default, since the Petitioner has categorically stated that it did not receive the notice, the Petitioner is permitted to file an appeal within two weeks challenging the impugned order dated 24th August, 2024 in the unique facts and circumstances of this Court.

9. It is made clear that if the appeal is not filed within two weeks and there is any delay, then the condonation of delay shall be considered by the appropriate appellate authority in accordance with law.

10. The Petitioner further states that it does not press to challenge the Notification No.9/2023-State tax dated 11th July 2024 issued by Respondent No. 4- Principal Commissioner (Finance), Delhi Goods and Service Tax and Notification No. 56/2023 dated 28th December 2023 issued by Respondent No. 3- Central Board of Indirect Taxes and Customs or any other reliefs.

11. The petition is disposed of in these terms. All pending applications, if any, are also disposed of.

PRATHIBA M. SINGH
JUDGE

RAJNEESH KUMAR GUPTA
JUDGE

MARCH 20, 2025*dj/ck*