



\$~3

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

Date of decision: 22nd August, 2025

+ **W.P.(C) 1349/2025**

RAMAN ENTERPRISESPetitioner
Through: Mr. Sailendra Kumar Verma, Mr. Sibhash Chandra Gupta, Ms.Taramg Varshney, Mr. Siddharth Kumar Verma and Mr. Amrish Kumar, Advs.

versus

COMMISSIONER OF SGST DELHI AND ANRRespondents
Through: Mr. Girish Kaul, Adv. for Mr. K.G. Gopalakrishnan, Adv.

CORAM:
JUSTICE PRATHIBA M. SINGH
JUSTICE SHAIL JAIN

JUDGMENT

Prathiba M. Singh, J.

1. This hearing has been done through hybrid mode.
2. The Petitioner has filed the present petition challenging the impugned order dated 30th December, 2023 by which a demand of Rs.15,39,686/- has been raised against the Petitioner.
3. The grievance of the Petitioner is that the Show Cause Notice (hereinafter “SCN”) was issued on 25th September, 2023 wherein no date for personal hearing was fixed. The Petitioner had filed its reply to the same on 25th October, 2023. Thereafter, without hearing the Petitioner the impugned order was passed. After the impugned order was passed, the Petitioner preferred a Rectification Application on 27th March, 2024. However, the said application



was dismissed by the Department on 28th June, 2024 on the ground that it was found to be unsatisfactory.

4. On 3rd February, 2025, the Court had directed the Petitioner to file an additional affidavit explaining the delay in challenging the impugned order which was passed in 2023. The said affidavit has been filed by the Petitioner.

5. The Court has heard the Id. Counsels for the Parties and has also perused the affidavit filed to explain the laches. The reason for delay is stated to be that, at the relevant point in time, there was a dispute between the Petitioner and his GST Consultant due to which the Petitioner was unaware of the impugned order.

6. Considering the above as also the facts of the case, in the opinion of the Court no ground for entertaining the challenge against the impugned order in has been made out as the Petitioner had an opportunity of filing a reply which it did. Further the delay is not sufficiently explained. The order is of December 2023 and the writ petition has been filed even after the limitation period for filing the appeal has lapsed.

7. However, insofar as the Rectification Order dated 28th June, 2024 is concerned, in terms of the third proviso to Section 161 of the Goods and Services Act, 2017 (hereinafter "*the Act*"), if the rectification order is to be passed adverse to the Petitioner, a hearing ought to be afforded. Section 161 of the Act reads as under:

"161. Rectification of errors apparent on the face of record.—Without prejudice to the provisions of section 160, and notwithstanding anything contained in any other provisions of this Act, any authority, who has passed or issued any decision or order or notice or certificate or any other document, may rectify any error which is apparent on the face of record in such decision or order or notice



or certificate or any other document, either on its own motion or where such error is brought to its notice by any officer appointed under this Act or an officer appointed under the State Goods and Services Tax Act or an officer appointed under the Union Territory Goods and Services Tax Act or by the affected person within a period of three months from the date of issue of such decision or order or notice or certificate or any other document, as the case may be:

Provided that no such rectification shall be done after a period of six months from the date of issue of such decision or order or notice or certificate or any other document:

Provided further that the said period of six months shall not apply in such cases where the rectification is purely in the nature of correction of a clerical or arithmetical error, arising from any accidental slip or omission:

Provided also that where such rectification adversely affects any person, the principles of natural justice shall be followed by the authority carrying out such rectification.

8. This Court in ***HVR Solar Private Limited vs. Sales Tax Officer Class II Avato Ward 67 & Anr., 2025:DHC:2476-DB***, has considered the third proviso to Section 161 of the Act while relying on the decision of the Madras High Court in ***W.P. (MD) No. 7338 of 2024 titled ‘Suriya Cement Agency v. State Tax Officer’*** (decided on 21st November 2024). The relevant portion of the judgement in ***Suriya Cement Agency (supra)*** reads as under:

“7. It is an admitted fact that the petitioner had made a Rectification Application. The order of rectification which is impugned would indicate that for the reasons



given in the annexure to the said order, the Rectification Application is rejected.

8. A perusal of the order does not also indicate that there had been no error apparant on the record to reject the rectification. He had only extracted the tables indicating the figures which the petitioner is liable to pay. There is also no reasonings as to why there is no error apparant on the face of the record. For this reason, the impugned order dated 02.02.2024 is liable to be set aside. Even though, strenuous efforts had been made by the learned Additional Government Pleader that no personal hearing need to be given when an application had been made at the instance of the assessee, I am not in agreementd with the learned Additional Government Pleader. **The Provisio indicates that when an order is being made adverse to the assessee, then he should be given an opportunity of being heard when the rectification adversely affects any person. The principles of natural justice had been inbuilt by way of the 3rd Proviso to Section 161. If pursuant to a Rectification Application, if a rectification is made and if it adversely affects the assessee, Proviso 3 contemplates an opportunity of hearing to be given. However, when an Rectification Application is made at the instance of assessee and the rectification is being sought to be rejected without considering the reasons for rectification or by giving reasons as to why such rectification could not be entertained. It is also imperative that the assessee to be put on notice.**

9. The above position of law is clear to the effect that it is necessary to afford a hearing to the assessee when the rectification order adversely affects the said assessee. The said position would also prevail when the rectification application has been preferred by the assessee and the same is being rejected without providing reasons for non-consideration/insufficiency of the grounds



raised by the said assessee. This practice, in our view, would be in line with the intent of the third proviso to Section 161 of the Act which stipulates compliance with the principle of natural justice to protect the interest of the assesseees.

10. Coming to the facts of this case, the Court has perused the Rectification Order rejecting the rectification application of the Petitioner. The relevant portion of the same reads as under:

“With reference to the DRC-07 Notice (SCN) issued by the undersigned for the Tax Period July 2017-March 2018 vide reference no. ZD0712231752420 dated 30.12.2023 in response to DRC-07 the taxpayer has filed for rectification on dated 27.03.2024.

As per section 161 the requirement of rectifying order is that error/mistake should be apparent on record. No new facts or submission can be considered at this stage. In this case the taxpayer has filed reply on 25.10.2023 with supporting documents and reply found not satisfactory to show cause notice I have gone through rectification application and observed that no error/ mistake is apparent on record as such I reject the application for rectification.”

11. It is clear from a reading of the said order, that the same is a mechanical order passed without providing reasons as to why there is no error apparent on the face of the record.

12. Accordingly, the Rectification Order dated 28th June, 2024 is set aside.

13. The Petitioner shall be provided a hearing in the Rectification Application. The notice for personal hearing shall be served on the following e-mail address and mobile number:

- ***Email: shailenderverma1@yahoo.co.in***
- ***Mobile: 9267979878***



2025:DHC:7228-DB



14. After hearing the Petitioner, a reasoned order in the Rectification Application shall be passed. Upon the said decision being rendered, the appellate remedy of the Petitioner is left open to be availed of, in accordance with law, if so advised.

15. The present petition is disposed of in the above terms. Pending applications, if any, are also disposed of.

**PRATHIBA M. SINGH
JUDGE**

**SHAIL JAIN
JUDGE**

AUGUST 22, 2025/kp/msh