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IN THE HIGH COURT OF DELHI AT NEW DELHI***Date of Decision: 16th April, 2025***

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W.P.(C) 2178/2025 & CM APPL. 10285/2025**M/S PERFETTI VAN MELLE INDIA PVT LTDPetitioner****Through: Ms. Charanya Lakshmikumaran, Mr.
Yogendra Aldak, Mr. Kunal Kapoor,
Mr. Yatharth Tripathi, Advocates****versus****ADDITIONAL COMMISSIONER (ADJN.) CGST DELHI NORTH
& ORS.Respondents****Through: Mr. Shivam, Advocate for Mr. Jatin
Singh, Advocate.****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 writ petition filed by the Petitioner- M/s Perfetti Van Melle India Pvt. Ltd. under Article 226 of the Constitution of India, *inter alia*, assailing the impugned Order-in-Original bearing no. 35/ADC/D.N./BHAVAN MEENA/2024 dated 06th January, 2025 (incorrectly mentioned as 06th January, 2024) followed by the Form GST DRC-07 summary bearing reference no. ZD070125035322W dated 25th January, 2025.
3. The allegation in the present petition is in respect of the short payment of Goods and Service Tax (hereinafter, '*GST*') *qua* products which are sold by the Petitioner. The question that arises in the present petition is as to



whether the products of the Petitioner are liable for GST at 12% or 18%.

4. The show cause notice (hereinafter, 'SCN') was issued on 04th August, 2024 to the Petitioner to show cause as to why demand should not be raised to the tune of Rs.10,86,92,372/- .

5. The reply to the said SCN was filed by the Petitioner in detail which was uploaded by the Petitioner on the portal on 02nd September, 2024 and the hard copy of the same was also served on 03rd September, 2024.

6. Ld. Counsel for the Petitioner submits that the same was also emailed on 02nd September, 2024.

7. Unfortunately, however, the Order-in-Original records that no reply has been received from the Petitioner. The relevant portion of the order reads as under:

"19. The noticee has not given any submissions in response to the Show Cause Notice No.170/2024-25 dated 04.08.2024 issued vide F.No.IV(Hqrs.Prev)GSTN/12/2972/ Gr.2/2023/30624. Further, following the principle of natural justice, the noticee was granted personal hearing (PH) on 27.11.2024, 09.12.2024 & 27.12.2024. The PH letters sent through by post was returned back by the postal authority having the remark "no such person". Further, neither the Noticee nor their authorized representative had appeared before the Adjudicating Authority for personal hearing on the said dates. Thus, on the basis of available facts and records, I proceed to examine the instant case.

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23.2. In view of the above, the department has complied with the provisions of Section 169 of the CGST Act, 2017 in their matter of Personal hearing. I find that the Noticee has never submitted any written reply or availed the opportunity for PH whenever the same was provided to them. They not even bothered to offer the reason for



the same or to come forward for any hearing despite giving ample opportunities to them. The letters sent to them have been returned undelivered for one reason or the other by the postal authorities. I find that there is nothing on record to suggest that they have changed their addresses, which also entails a strong belief that they have purposely changed their addresses to avoid the proceedings against them. The act of Noticee, thus, unequivocally bear out that they were interested in avoiding the proceedings. They avoided filing reply to the Show Cause Notice purposely to delay the proceedings and to avoid the clutches of laws. I find that they have sensed trouble and have avoided the proceedings without any reasons. I, therefore, hold that by giving ample opportunities of. Personal Hearing as above, principle of natural justice is complied in this case and also department meticulously followed the procedure as set out in the Section 169 of the CGST Act, 2017.

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26. Thus, in absence of any representation, written or oral, on behalf of the Noticee, I conclude that the charges levelled against them in the impugned show cause notice are accepted by them in toto as per their alleged role as brought out in the show cause notice. Further, the Noticee never availed the opportunity of PH before me. Further, non-disclosure of the true facts itself means suppression of facts by the Noticee. It is a deliberate act on their part as enough time has passed giving them a lot of opportunities to present their case but they have not heeded anything towards the replying of the show cause notice. So, in the aforesaid circumstances, I am inclined to decide the present case ex-parte, in favour of department, in respect of charges levelled against the Noticee.”

8. Clearly, a substantial demand of more than Rs.10 crores has been raised without considering the stand of the Petitioner despite the fact that the reply



was filed well within time way back in September, 2024 itself.

9. The present petition has been served upon the Central Goods and Service Tax (hereinafter, ‘CGST’) Department on 19th February, 2025.

10. Ld. Counsel for the Respondents were directed to obtain instructions. The matter was adjourned on two other dates *i.e.* 10th March 2025 and 24th March 2025 and on 28th March, 2025, last opportunity was given to Mr. Jatin Singh, Ld. Counsel for the Respondents, to take instructions. The relevant portion of the said order dated 28th March 2025 reads as under:

“Learned Counsel appearing for the Respondent states that he is yet to receive instructions. He prays for one last opportunity to get instructions.”

11. Today also Mr. Shivam appearing for Mr. Jatin Singh submits that no instructions have been received from the CGST Department.

12. Ld. Counsel for the Respondents submits that the present Order-in-Original is an appealable order and the reply could have been considered before the appellate authority itself.

13. Considering the fact that the reply has been completely ignored by the adjudication authority, the impugned order would not be sustainable. The said Order-in-Original clearly records that no reply was filed.

14. Accordingly, the impugned Order-in-Original is set aside.

15. The matter is remanded to the adjudicating authority for a fresh hearing.

16. The Respondent- CGST Department shall give three dates of hearing to the Petitioner to appear and to address submissions. After hearing submissions, the adjudicating authority shall decide the matter within three months.

17. The personal hearing notice shall be uploaded on the portal, emailed



and also communicated on the following email address and mobile number.

- Email Address- pulkit.babbar@perfettivanmelle.com ;
Mobile No.- 9899707807
- Email Address- vaibhav.mangal@perfettivanmelle.com ;
Mobile No.- 9650295777

18. Ld. Counsel for the Petitioner submits that two other jurisdictions in similar facts and circumstances have taken a decision in favour of the Petitioner. Let the relevant orders be also placed on record before the adjudicating authority.

19. Accordingly, the present petition is disposed of remanding the matter for fresh decision by the adjudicating authority. The impugned order dated 6th January 2025, is set aside. Pending applications, if any, are also disposed of.

20. It is made clear that this Court has not examined the merits of the matter.

21. The adjudicating authority after hearing the Petitioner shall pass the Order-in-Original in accordance with law. All rights and remedies are left open.

PRATHIBA M. SINGH
JUDGE

RAJNEESH KUMAR GUPTA
JUDGE

APRIL 16, 2025
v/ck