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

% Date of decision: 27.02.2024

+ **W.P.(C) 1622/2024 & CM APPL. 6702/2024**

EMCO CABLES (INDIA) PRIVATE LIMITED ..... Petitioner

versus

UNION OF INDIA AND ORS ..... Respondents

Advocates who appeared in this case:

For the Petitioner: Mr. Rakesh Kumar and Mr. P.K. Gambhir, Advocates.

For the Respondents: Mr. Ram Kumar, Advocate for R-1.
Mr. Rajeev Aggarwal, ASC for R-2 and 3.

CORAM:-
HON'BLE MR. JUSTICE SANJEEV SACHDEVA
HON'BLE MR. JUSTICE RAVINDER DUDEJA

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

1. Petitioner impugns order dated 29.12.2023, whereby the show cause notice dated 24.09.2023, proposing a demand against the petitioner has been confirmed and a demand of Rs. 11,12,004.60/- including penalty has been raised against the petitioner. The order has been passed under Section 73 of the Central Goods and Services Tax Act, 2017.

2. Learned counsel for the petitioner submits that a detailed reply dated 25.10.2023 to the show cause notice was filed, however, the impugned order dated 29.12.2023 does not take into consideration the reply submitted by the petitioner and is a cryptic order which merely records that reply was found not satisfactory and devoid of merits.

3. A perusal of the show cause notice shows that the Department has given specific details of alleged under declaration of output tax, excess claim Input Tax Credit ["ITC"], under declaration of ineligible ITC and ITC claim from cancelled dealers, return defaulters and tax non-payers. To the said show cause notice, a detailed reply dated 25.10.2023 was furnished by the petitioner giving full disclosures under each of the heads.

4. The impugned order, however, after recording the narration, records that the reply uploaded by the tax payer is not satisfactory. It merely states that "*As per the provision of Sec 75(4) an opportunity of personal hearing was also afforded to the taxpayer and as stated above, the reply is not found to be satisfactory. Accordingly as per Section 73(7) notice of tax and amount is to be given while section 73(9) prescribed for imposition of penalty equivalent to 10% of the tax or Rs. 10000/- whichever is higher. The penalty is consequently and mandatorily as per the provisions of the Act, as such the registered person is liable to pay penalty equivalent to 10% of the tax or Rs. 10000/- whichever is higher along with tax amount in each head*

already conveyed through the above mentioned SCN/DRC0l. Keeping in view the above, I hereby order for issuance of DRC-7 on the above mentioned ground where the reply of the taxpayer is not found satisfactory after taking into account the reply filed by him and supporting documents annexed and available on the portal." The Proper Officer has opined that the reply is unsatisfactory.

5. The observation in the impugned order dated 29.12.2023 is not sustainable for the reasons that the reply filed by the petitioner is a detailed reply.

6. Proper officer had to at least consider the reply on merits and then form an opinion whether the explanation was sufficient or not. He merely held that no proper reply/explanation has been received which *ex-facie* shows that proper officer has not even looked at the reply submitted by the petitioner.

7. Further, if the Proper Officer was of the view that reply is incomplete and further details were required, the same could have been sought from the petitioner, however, the record does not reflect that any such opportunity was given to the petitioner to clarify its reply or furnish further documents/details.

8. In view of the above, the order cannot be sustained and the matter is liable to be remitted to the Proper Officer for re-adjudication. Accordingly, the impugned order dated 29.12.2023 is set aside. The

matter is remitted to the Proper Officer for re-adjudication.

9. As noticed hereinabove, the impugned order records that petitioner has not furnished the requisite details. Proper Officer is directed to intimate to the petitioner details/documents, as maybe required to be furnished by the petitioner within a period of one week from today. On such intimation being given, petitioner shall furnish the requisite explanation and documents within one week thereof. Thereafter, the Proper Officer shall re-adjudicate the show cause notice within a period of two weeks after giving an opportunity of personal hearing.

10. It is clarified that this Court has neither considered nor commented upon the merits of the contentions of either party. All rights and contentions of parties, are reserved.

11. The challenge to Notification No.9 of 2023 is left open.

12. Petition is disposed of in the above terms.

SANJEEV SACHDEVA, J

RAVINDER DUDEJA, J

FEBRUARY 27, 2024/*vp*