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* IN THE HIGH COURT OF DELHI AT NEW DELHI

% Date of decision: 15.02.2024

\+ **W.P.(C) 2237/2024 & CM. APPLS. 9266-67/2024**

M/S SHRI SHYAM METAL ……Petitioner

versus

THE UNION OF INDIA & ANR. ..... Respondents

Advocates who appeared in this case:

For the Petitioner: Mr. Rajesh Jain, Mr. Virag Tiwari, Mr. Ramashish, Mr. Rishabh Jain and Ms. Tanya Saraswat, Advocates.

For the Respondents: Mr. Hemant Kumar Yadav, SPC for UOI. Mr. Rajeev Aggarwal, ASC for R-2.

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

JUDGMENT

SANJEEV SACHDEVA, J.

1. Petitioner impugns order dated 29.12.2023, whereby the Show Cause Notice dated 23.09.2023 has been adjudicated and a demand has been confirmed against the petitioner along with penalty. 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 detailed replies to the show cause notice were filed, however, the impugned order dated 29.12.2023 is a cryptic order without adverting to any of the submissions raised by the petitioner and records that the reply was not found satisfactory. He also submits that the time period extended for the purposes of Section 73 (10) by Notification dated 31.03.2023

contravenes the mandate of Section 168A of the Central Goods and Services Tax Act.

3. Issue notice. Notice is accepted by learned counsel appearing for respondents. With the consent of parties, the petition is taken up for final disposal.

4. 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, detailed replies were furnished by the petitioner giving full particulars under each of the heads.

5. The impugned order, however, after recording the narration, records that the reply uploaded by the tax payer is not satisfactory. It merely states that *“And whereas, after analyzing, examining and evaluating the reply filed by the taxpayer and details available, as on date on the GST portal, reply of the tax payer is found to be vague and miserably fails to counter the demands mentioned in the DRC-01.”*

6. In case the GST Officer was of the view that reply was vague or 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.

7. Further petitioner was not provided with an adequate opportunity to defend the show cause notice by way of a hearing

8. Accordingly, the impugned order dated 29.12.2023 and show cause notice dated 23.09.2023 are set aside. The matter is remitted to the GST Officer for re-adjudication after giving an opportunity of personal hearing.

9. As noticed hereinabove, the impugned order records that petitioner has not furnished the requisite details. The GST Officer is directed to intimate to the petitioner details/documents, as maybe required to be furnished by the petitioner and petitioner shall furnish the same.

10. The issue raised by the petitioner with regard to the Notification dated 31.03.2023, contravening provisions of Section 168A of the Act is left open.

11. In case petitioner is aggrieved by any further order, petitioner is granted liberty to impugn the same in accordance with law and also to raise the question qua the validity of the notification.

SANJEEV SACHDEVA, J

FEBRUARY 15, 2024/NA **RAVINDER DUDEJA, J**