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

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Date of decision: 08.02.2024

+ **W.P.(C) 3300/2022**

GS EXIM INTERNATIONAL LLP THROUGH ITS DESIGNATED
PARTNER BHAKTI PADA GHOSH Petitioner

versus

COMMISSIONER, CENTRAL EXCISE / (GST) APPEALS-I,
THROUGH JOINT COMMISSIONER & ANR. Respondents

Advocates who appeared in this case:

For the Petitioner: Mr. Aseem Mehrotra, Advocate.

For the Respondent: Mr. Farman Ali, SPC with Ms. Usha Jamwal and Mr.
Krishan Kumar, Advocates.

CORAM:-

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

HON'BLE MR. JUSTICE RAVINDER DUDEJA

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

1. Petitioner impugns Order-in-Appeal dated 09.09.2021, whereby the appeal filed by the petitioner impugning the Order-in-Original dated 21.08.2020 has been dismissed.

2. Petitioner had filed an application seeking refund of GST. The Proper Officer issued a show cause notice dated 04.08.2020 proposing to reject the refund. Petitioner, thereafter, filed a reply on 12.08.2020 and submitted the same through the online portal.



3. Petitioner has also produced a copy of the reply and submitted that the same was also physically supplied to the Adjudicating Authority at the time of hearing of the show cause notice. Thereafter, the Adjudicating Authority, rejected the application by an order dated 21.08.2020, which led to the petitioner filing an appeal before the Appellate Authority.

4. A perusal of the Order-in-Appeal dated 09.09.2021 shows that the order is a cryptic order and does not deal with any of the submissions made by the petitioner. Said order in paragraph 5-Discussion and Findings, gives a brief narration of the fact, then notices the contention of the petitioner and, thereafter, extracts a Board Circular and then in the next paragraph numbered as 7 merely holds that in view of the above legal provisions, appellant has not fulfilled the eligibility conditions for taking input tax credit.

5. Appellate Authority in paragraph 5 has noted submissions of learned counsel on behalf of petitioner, however, there is no consideration of the submissions in the subsequent paragraphs and the order merely extracts the Board Circular and holds that the eligibility conditions are not complied with.

6. It is not apparent from the order as to why or on what basis findings have been returned that petitioner does not fulfil the eligibility conditions. The order is cryptic and the reasoning is not emanating from the order and there is no specific consideration of the factual matrix or the contentions of the petitioner in the Order-in-W.P. (C) 3300/2022



Appeal. Accordingly, we are of the view that Order-in-Appeal cannot be sustained and the matter calls for a remit.

7. In view of the above, the Order-in-Appeal dated 09.09.2021 is set aside. The appeal is restored on the record of the Appellate Authority. The Appellate Authority shall decide the appeal afresh and pass a speaking order after giving an opportunity of personal hearing to the petitioner.

8. Petition is disposed of in the above terms.

SANJEEV SACHDEVA, J

RAVINDER DUDEJA, J

FEBRUARY 08, 2024/vp