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

% Date of decision: 04.03.2024

\+ **W.P.(C) 3227/2024 & CM. APPLS. 13278-79/2024**

M/S SRI RADHA KRISHNA INTERNATIONAL ... Petitioner

versus

UNION OF INDIA & ANR. ..... Respondent

Advocates who appeared in this case:

For the Petitioner: Mr. Pranay Jain and Mr. Karan Singh, Advocates.

For the Respondents: Mr. Jagdish Chandra Solanki, SPC with Ms. Saakshi Yadav, Advocates.

Mr. Rajeev Aggarwal, ASC with Ms. Samridhi Vats, Advocate.

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

JUDGMENT

SANJEEV SACHDEVA, J (ORAL)

1. Petitioner impugns order dated 27.12.2023, whereby the show cause notice dated 25.09.2023, proposing a demand against the petitioner has been disposed and a demand of Rs. 22,10,220.00 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 respondent submits that the demand was created on account of claim of Input Tax Credit from a dealer whose registration had been cancelled and no details were furnished by the petitioner to substantiate that there were underlying supplies made with regard to invoices based on which ITC had been claimed.

3. *Per contra*, learned counsel for petitioner submits that the respondents were obliged to conduct an investigation of the cancelled dealer and also determine as to whether the cancellation was on account of non-filing of returns, or some underlying defect in the supplies in grant of ITC benefit to the petitioner before passing the impugned order.

4. He further submits that a detailed reply dated 24.10.2023 was filed to the Show Cause Notice, however, the impugned order dated 27.12.2023 does not take into consideration the reply submitted by the petitioner and is a cryptic order.

5. Perusal of the Show Cause Notice shows that the Department has given separate headings of alleged excess claim Input Tax Credit and ITC claim from cancelled dealers, return defaulters and tax non-payers. To the said Show Cause Notice, a detailed reply was furnished by the petitioner giving full disclosures under each of the heads.

6. The impugned order, however, after recording the narration, records that the reply uploaded by the tax payer is not satisfactory. It merely states that "xxxx *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 falls to counter the demands mentioned in the DRC-01 No invoices/certificates/payments proof have been attached in support of claim of excess ITC in terms of circular no. 183 of 2022 issued CBIC.
x x x x"

7. The observation in the impugned order dated 27.12.2023 is not sustainable for the reasons that the reply filed by the petitioner is a detailed reply. Proper officer had to at least consider the reply on merits and then form an opinion whether the reply was vague or failed to counter the demands made. He merely held that the reply is vague which *ex-facie* shows that proper officer has not applied his mind to the reply submitted by the petitioner.

8. Further, if the Proper Officer was of the view that reply was vague and further details were required, the same could have been specifically 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.

9. 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 27.12.2023 is set aside. The matter is remitted to the Proper Officer for re-adjudication.

10. 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 after giving an opportunity of personal hearing.

11. 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.

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

13. Petition is disposed of in the above terms.

SANJEEV SACHDEVA, J

RAVINDER DUDEJA, J

MARCH 04, 2024/NA