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

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Date of decision: 11.03.2024

+ **W.P.(C) 3558/2024**

SURESH KUMAR JAIN

..... Petitioner

versus

SALES TAX OFFICER CLASS
II AVATO & ANR.

..... Respondents

Advocates who appeared in this case:For the Petitioner: Mr. Prince Mohan Sinhaa, Mr. Rajeev Deora
and Mr. Manish Jain, Advocates.For the Respondents: 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 29.12.2023, whereby the impugned Show Cause Notice dated 26.09.2023, proposing a demand against the petitioner has been disposed of and a demand of Rs. 4,70,512.00 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 (hereinafter referred to the Act).

2. Learned Counsel for the Petitioner submits that on 21.07.2022 Petitioner was issued a Show Cause Notice under Section 61 of the



Act, with regard to discrepancies of Rs. 54,704.56/- on account of mismatch of ITC between GSTR-24 and GSTR-3B as per ASMT-10. However, the said notice did not provide the Petitioner a personal hearing.

3. He further submits that a reply dated 04.08.2022 was filed by the Petitioner against the Show Cause Notice dated 21.07.2022, explaining the claim of excess ITC along with proof of payment of Rs. 23,380/-.

4. He further submits that without considering the reply and without providing an opportunity for hearing Petitioner was served with attachments to the Show Cause Notice dated 26.09.2023 along with DRC-01.

5. He submits that a detailed reply dated 22.10.2023 was filed to the Show Cause Notice dated 26.09.2023, however, the impugned order dated 29.12.2023 does not take into consideration the reply submitted by the petitioner and is a cryptic order.

6. Perusal of the Show Cause Notice shows that the Department has given separate heading of excess claim Input Tax Credit [ITC]. To the said Show Cause Notice, a detailed reply was furnished by the petitioner giving full disclosures under the said head.

7. 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, the taxpayer had filed their*



objections/reply in DRC-06 but he failed to avail the Personal Hearing opportunity on the given due date. On the basis of reply uploaded by the taxpayer, it has been observed that the same is incomplete, not duly supported by adequate documents and unable to clarify the issue. As such, taxpayer is not entitled to get benefit on the basis of its plain reply which is not supported with proper calculations/reconciliation and relevant documents. Since, the reply filed is not clear and satisfactory, the demand of tax and interest conveyed via DRC-01 is confirmed, with the direction to deposit the amount mentioned in DRC- 07 within one month from the date of receipt of this demand notice, failing which recovery proceedings u/s 79 of CGST Act will be initiated and the actions as per law will be initiated without further reference.” The Proper Officer has opined that the reply is unsatisfactory.

8. 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. Proper officer had to at least consider the reply on merits and then form an opinion whether the reply was not satisfactory. He merely held that the reply is not satisfactory which *ex-facie* shows that Proper Officer has not applied his mind to the reply submitted by the petitioner.

9. Further, if the Proper Officer was of the view that reply was not satisfactory 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.

10. 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.

11. 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. Pursuant to the intimation being given, petitioner shall furnish the requisite explanation and documents. Thereafter, the Proper Officer shall re-adjudicate the show cause notice after giving an opportunity of personal hearing and shall pass a fresh speaking order in accordance with law within the period prescribed under Section 75 (3) of the Act.

12. 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.

13. Petition is disposed of in the above terms.

SANJEEV SACHDEVA, J

RAVINDER DUDEJA, J

MARCH 11, 2024/vp