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

\+ W.P.(C) 3776/2024 & CM APPL. 28572/2024 (Addl. Facts & Document)

SMW METAL PRIVATE LIMITED THROUGH ITS DIRECTOR MOHINDER JAIN .....Petitioner

Through: Mr. Pradeep Singh Rawat and Mr. Girish Chandra, Advs.

versus

THE ASSISTANT COMMISSIONER, STATE TAX WARD 201, ZONE 11 DELHI AND ANR. .....Respondents

Through: Mr. Rajeev Aggarwal, ASC along with Mr. Shubham Goel, Adv.

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA
HON'BLE MR. JUSTICE RAVINDER DUDEJA

O R D E R

% **25.09.2024**

CM APPL. 25761/2024 (E.H.)

Bearing in mind the disclosures made in the application, it is allowed.

The application stands disposed of.

The date of 27 January 2025 stands cancelled.

W.P.(C) 3776/2024 & CM APPL. 28572/2024 (Addl. Facts & Document)

1. The writ petitioner is aggrieved by the order of 25 December 2023 and pursuant to which the respondents have created a demand and a tax liability under the Delhi Goods and Services Tax Act, 2017 [‘**DGST**’].

2. We take note of the following reasons which have come to be recorded in the order impugned:-

"**Point No. 1 - The tax on outward supplies under declared on reconciliation of data in GSTR-09**:- Reply accepted, the taxpayer has deposited due tax alongwith interest through DRC- 03 vide ARN No. AD0711230077585 dated 21-11-2023.

Point No. 2 - Excess claim of ITC :- Reply accepted, the taxpayer has deposited due tax alongwith interest through DRC-03 vide ARN No. AD0711230077585 dated 21-11-2023.

Point No. - Under declaration of Ineligible ITC :- Reply submitted by the taxpayer is rejected since the relevant documents like copy of invoice, duly mapped with payment details/bank statement not uploaded in the reply of the taxpayer. The taxpayer has furnished plain reply which is not duly supported with proper relevant documents.

Pont No. 1 ITC claimed from cancelled dealers, return defaulters & tax non payers: As per list attached with DRC-01 the taxpayer has availed ITC from cancelled (retrospectively). The taxpayer has not submitted any supporting document to prove the genuineness of the transactions. Benefit of invalid transactions from a cancelled supplier cannot be allowed under the provisions of GST Act.

A registered person does not enter into business transactions of huge volume with an unknown persons. Further proper legal action is initiated by a businessman in case his suppliers acts in a manner which causes loss to the recipient. The connivance between two persons can never be in writing, if purpose of same is to take some illegal/unethical benefit. It is only actions of parties concerned which can be inferred upon to take whether there was any connivance or not. In the instant case the registered person has not submitted any proof of action taken by him against cancelled taxpayer despite the fact that his action has caused him loss of finance and reputation."

3. As is manifest from the above, Point Nos. 1 and 2 were ultimately decided in favour of the petitioner assessee after taking into consideration the reply which had been submitted. The authority, however, while proceeding to deal with the allegation of under declaration of ineligible ITC has merely observed that since the writ petitioner had failed to produce the relevant documents, the same would not be sufficient to drop the aforesaid charge. The impugned order fails to allude to the material which was lacking or specify the

documents which were required for evaluating the claim.

4. Point No. 4 pertained to the ITC which had been availed of from suppliers whose registration at the relevant time had been cancelled. It is, however, the case of the writ petitioner that subsequently those registrations have been validated and revived.

5. In our considered opinion, the authority has clearly failed to assign or record any reasons while deciding Point No. 3. Insofar as the revalidation of registration of the supplying dealers is concerned, the same would merit examination afresh by the authority concerned.

6. We accordingly set aside the order of the Assistant Commissioner dated 25 December 2023 insofar as it deals with Point Nos. 3 and 4. The same shall stand remitted to the concerned authority for being examined afresh bearing in mind the observations made hereinabove.

7. We additionally accord liberty to the writ petitioner to move an additional representation bringing on record such other material that is proposed to be relied upon.

8. The writ petition shall stand disposed of on the aforesaid terms.

YASHWANT VARMA, J.

RAVINDER DUDEJA, J.

SEPTEMBER 25, 2024/RW