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* IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: 14.03.2024

+ W.P.(C) 3797/2024 & CM. APPLS. 15591/2024, 15592/2022

ETHOS LIMITED

..... Petitioner

Versus

ASSISTANT COMMISSIONER DEPARTMENT OF TRADE AND
TAXES & ANR.

..... Respondents

Advocates who appeared in this case:

For the Petitioner:

Mr. Kavita Jha, Mr. Shammi Kapoor, Ms. Swati
Agarwal, Mr. Sandeep Gupta and Ms. Prachi Jain,
Advocates.

For the Respondents:

Mr. Rajeev Aggarwal, Additional Standing Counsel with
Ms. Samridh Vats, Advocates.

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CORAM:-**HON'BLE MR. JUSTICE SANJEEV SACHDEVA****HON'BLE MR. JUSTICE RAVINDER DUDEJA****JUDGMENT****SANJEEV SACHDEVA, J. (ORAL)**

1. Petitioner impugns order dated 23.12.2023, whereby the impugned Show Cause Notice dated 25.09.2023, proposing a demand against the petitioner has been disposed of and a demand of Rs. 1,36,98,144.00 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 as the Act).

2. Learned counsel for Petitioner submits that a detailed reply dated 08.11.2023 was filed to the Show Cause Notice, however, the impugned order dated 23.12.2023 does not take into consideration the reply submitted by the petitioner and is a cryptic order.

3. Perusal of the Show Cause Notice shows that the Department has given separate headings under declaration of output tax, excess claim Input Tax Credit [“ITC”], ITC to be reversed on non-business transactions & exempt supplies and under declaration of ineligible ITC. To the said Show Cause Notice, a detailed reply was furnished by the petitioner giving full disclosures under each of the heads.

4. 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.” The Proper Officer has opined that the reply is unsatisfactory.

5. The observation in the impugned order dated 23.12.2023 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 unsatisfactory, incomplete and not duly supported by adequate documents. He merely held that the reply is not clear and unsatisfactory which *ex-facie* shows that Proper Officer has not applied his mind to the reply submitted by the petitioner.

6. Further, if the Proper Officer was of the view that the reply is unsatisfactory and if any 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.

7. 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 23.12.2023 is set aside. The matter is remitted to the Proper Officer for re-adjudication.

8. As noticed hereinabove, the impugned order records that it is



incomplete, not duly supported by adequate documents. 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.

9. 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.

10. The challenge to Notification No. 9 of 2023 with regard to the initial extension of time is left open.

11. Petition is disposed of in the above terms.

SANJEEV SACHDEVA, J

RAVINDER DUDEJA, J

MARCH 14, 2024

NA