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

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Date of decision: 24.04.2024

W.P.(C) 3873/2024 & CM APPL. 15976/2024

M/S CENTRAL GOVT EMPLOYEES CONSUMER COOP

SOCIETY LTD POPULARY KNOWN

AS KENDRIYA BHANDAR

..... Petitioner

versus

COMMISSIIIONER STATE GOODS AND SERVICE TAX DELHI
& ANR.

..... Respondents

Advocates who appeared in this case:

For the Petitioner: Mr. Ruchir Bhatia and Ms. Deeksha Gupta,
Advocates.

For the Respondent: Mr. Rajeev Aggarwal, ASC.

CORAM:-

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

HON'BLE MR. JUSTICE RAVINDER DUDEJA

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

1. Petitioner impugns order dated 31.12.2023 whereby the impugned Show Cause Notice dated 24.09.2023 proposing a demand of Rs 17,89,56,282.00/- against the petitioner had been disposed of and demand 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. Issue notice. Notice is accepted by learned counsel appearing for respondent. With the consent of the parties, petition is taken up for final disposal today.
3. Learned counsel for Petitioner submits that Petitioner had filed a detailed reply dated 20.10.2023, however, the impugned order dated 31.12.2023 does not take into consideration the reply submitted by the Petitioner and is a cryptic order.
4. Perusal of the Show Cause Notice dated 25.09.2023 shows that the Department has given reasons under separate headings i.e., under declaration of output tax; excess claim of Input Tax Credit ["ITC"]; Scrutiny of ITC availed; ITC to be reversed on non-business transaction and exempt supplies; under declaration of ineligible ITC and ITC claimed from cancelled dealers, return defaulters and tax non payers. To the said Show Cause Notice, a detailed reply was furnished by the petitioner giving disclosures under each of the heads.
5. The impugned order, however, after recording the narration records that no proper reply/ explanation have been received from the Taxpayer. It states that *"And whereas, the Taxpayer was allowed opportunity to explain Tax deficiencies during Personal Hearing before Proper Officer on the given date and time, Further, another opportunity to submit reply and observing Principles of natural justice, opportunity for Personal Hearing, as per provision of Section 75(4) CGST/DGST Act, was also provided to the taxpayer by issuing "REMINDER" through the GST portal. Now, since no proper reply /*



explanation have been received from the Taxpayer despite sufficient and repeated opportunities, which indicate that the Taxpayer has nothing to say in the matter. And whereas, further as per Section 73(7) Notice of tax and interest is to be given while Section 73(9) prescribes for imposition of penalty equivalent to 10% of tax or Rs. 10000/- whichever is higher in case reply is not found to be satisfactory. Now, therefore, the undersigned is left without any option and accordingly, a demand is being created towards Tax /interest amount already confirmed through SCN/ DRC-01 (Copy attached) in accordance with the provisions of CGST / DGST Act fit Rules, 2017.” The Proper Officer has opined that no proper reply/explanation has been received from the Taxpayer.

6. The observation in the impugned order dated 31.12.2023 is not sustainable for the reasons that the reply dated 20.10.2023 filed by the Petitioner is a detailed reply with supporting documents. Proper Officer had to at least consider the reply on merits and then form an opinion. He merely held that the no proper reply/explanation has been received which ex-facie shows that Proper Officer has not applied his mind to the reply submitted by the petitioner.

7. Further, if the Proper Officer was of the view that 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.



8. In view of the above, the impugned order dated 31.12.2023 cannot be sustained, and the matter is liable to be remitted to the Proper Officer for re-adjudication. Accordingly, the impugned order dated 31.12.2023 is set aside and the matter is remitted to the Proper Officer for re-adjudication.

9. Petitioner may file a further reply to the Show Cause Notice within a period of 30 days from today. 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.

10. 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.

11. Petition is disposed of in the above terms.

SANJEEV SACHDEVA, J

RAVINDER DUDEJA, J

APRIL 24, 2024/vp