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* IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: 18.03.2024

+ W.P.(C) 3912/2024 & CM APPL. 16134/2024

LAVA INTERNATIONAL LIMITED ..... Petitioner

versus

GOVT OF NCT OF DELHI & ORS. ..... Respondents

Advocates who appeared in this case:

For the Petitioner: Mr. Prashant Shukla and Mr. Rajneesh Kumar Verma, Advocates.

For the Respondents: Mr. Rajiv 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 30.12.2023, whereby the impugned Show Cause Notice dated 23.09.2023, proposing a demand against the petitioner has been disposed of and a demand of Rs. 57,11,36,600.00 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 21.10.2023 was filed to the Show Cause Notice, however, the impugned order dated 30.12.2023 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 i.e. under declaration of output tax, excess claim Input Tax Credit ["ITC"], 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 full disclosures under each of the heads.

4. The impugned order, however, after recording the narration, records that the reply uploaded by the taxpayer is not satisfactory. It merely states that "*And whereas, a notice for personal hearing was also issued to the tax payer along with notice DRC 01 to explain their reply/objections against proposed amount of tax and interest. And whereas, the taxpayer has filled his/her reply on the Portal on scrutiny of the documents along with supporting documents was/were not found satisfactory.*" The Proper Officer has opined that the reply is unsatisfactory.

5. The observation in the impugned order dated 30.12.2023 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 satisfactory or not. He merely held that the reply is 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, same could have been specifically sought for 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 30.12.2023 is set aside. The matter is remitted to the Proper Officer for re-adjudication.

8. As noticed hereinabove, the impugned order records that petitioner's reply is not satisfactory. 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 18, 2024
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