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

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Date of decision: 01.04.2024

+ W.P.(C) 3950/2024 & CM APPL. 16231/2024

JULLUNDUR MOTOR AGENCY
DELHI LIMITED

.... Petitioner

versus

UNION OF INDIA & ORS

..... Respondents

Advocates who appeared in this case:For the Petitioner: Mr. Pulkit Verma and Mr. Peyush Pruthi,
Advocates.For the Respondents: Mr. Prasanta Varma, SCGC with Mr. Pankaj
Kumar, Ms. Pragya Verma and Mr. Rakesh
Kumar Palo, Advocates for UOI.**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 29.09.2023, proposing a demand against the petitioner has been disposed of and a demand of Rs. 2,23,79,924.00 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 27.10.2023 was filed to the Show Cause Notice and pursuant to the reply an authorized representative of the Petitioner attended the personal hearing and provided further clarification. Further, in continuation to the reply dated 27.10.2023, another reply dated 28.11.2023 was filed by the Petitioner. 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 under declaration of output tax, excess claim Input Tax Credit [“ITC”], and ITC claimed from cancelled dealers, returns defaulters and Tax non payers. To the said Show Cause Notice, detailed replies were 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 duly supported by adequate documents, not clear and not satisfactory. It merely states that *“However, during the personal hearing, the taxpayer reiterated the contents of the reply filed in form DRC-06. On scrutiny of the same, it has been observed that the same is incomplete, not duly supported by adequate documents and unable to clarify the issue. 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 not clear and unsatisfactory.

5. Learned counsel for petitioner submits that a demand has been raised on account of claim of Input Tax Credit from the cancelled dealer M/s Rane Brake Lining Limited. He further submits that the GST registration of M/s Rane Brake Lining Limited has been restored vide order dated 16.02.2024 in W.P. (C) 2259/2024.

6. 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 unsatisfactory, incomplete and not duly supported by adequate documents. He merely held that the reply is not duly supported by adequate documents, clear and unsatisfactory 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 the reply is not clear and 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.

8. 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.

9. 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.

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

12. Petition is disposed of in the above terms.

SANJEEV SACHDEVA, J

RAVINDER DUDEJA, J

APRIL 01, 2024/vp