$~61

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

\+ **W.P.(C) 4014/2024**

MANISH KUMAR GAUTAM

.....Petitioner

Through: Mr Ashwini Chandrasekaran, Ms Priyanka Rathi and Ms Shubhangi Gupta, Advocates.

versus

THE JOINT COMMISSIONER, ANTI EVASION, CGST DELHI SOUTH

.....Respondent

Through: Mr Aditya Singla, SSC, Mr Sahil Parashar, Ms Medha and Ms Umang, Advocates.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU
HON'BLE MR. JUSTICE SACHIN DATTA

O R D E R

% **11.09.2024**

CM APPL. 52992/2024(for amendment)

1. The petitioner has filed the present application seeking amendment of the above captioned petition. The petitioner now seeks to impugns the Show Cause Notice dated 03.08.2024 (hereafter *the impugned SCN*) issued by the respondent under Section 74 of the Central Goods and Services Tax Act, 2017 (hereafter *the CGST Act*).

2. In essence, the petitioner seeks to contest the basis for proposing a demand under the CGST Act and the State Goods and Services Tax Act, 2017 (hereafter *the SGST Act*).

3. The respondent has proposed the demand on the basis that the petitioner cannot claim export of the services on the ground that that it did not receive the consideration in convertible foreign exchange. The petitioner does not dispute that it has not received the consideration in convertible

foreign exchange.

4. It is the petitioner's case that though it has not received the consideration for the services in convertible foreign exchange, a third party has received the same and the same is sufficient for its services to qualify as export of services within the meaning of Section 2(6) of the Integrated Goods and Services Tax Act, 2017.

5. It would not be apposite to examine this question in these proceedings as the same is required to be adjudicated by the adjudicating authority in the first place.

6. In view of the above, the present application is dismissed.

W.P.(C) 4014/2024 and CM APPL. 52993/2024(Stay)

7. The petitioner has filed the above captioned petition, *inter alia,* impugning a letter dated 27.02.2024 issued by the Joint Commissioner, Anti-Evasion, CGST, Delhi South calling upon the petitioner to deposit its tax liability along with the applicable interest and penalty on the export of services for the financial year 2017-18 and 2018-19.

8. It is the petitioner's case that the said demand has been issued without issuance of any show cause notice and therefore, is contrary to the law. The petitioner's grievance in this regard is addressed as the respondent has filed the counter affidavit and has affirmed that the said letter dated 27.02.2024 should only be considered as a letter and not a demand. Further, a show cause notice under Section 74 of the CGST Act has been issued to the petitioner and now the petitioner has full opportunity to contest the said demand. The principal premise on which the present petition is founded, thus, no longer holds good.

9. In view of the above, the present petition is disposed of. It is clarified

that the petitioner is not precluded from raising all contentions regarding its alleged tax liabilities before the adjudicating authority. Needless to state that the petitioner would be afforded full opportunity of being heard and the adjudicating authority shall take an informed decision as to the petitioner's liability.

10. The petition is disposed of in the aforesaid terms.

11. The hearing scheduled on 19.11.2024 is cancelled.

VIBHU BAKHRU, J

SACHIN DATTA, J

SEPTEMBER 11, 2024

M

Click here to check corrigendum, if any