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* IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: 18.03.2024

\+ W.P.(C) 4060/2024 & CM APPL. 16578-79/2024

KNOWLEDGE INFRASTRUCTURE SYSTEMS PVT LTD ..... Petitioner

versus

UNION OF INDIA & ORS. ..... Respondents

Advocates who appeared in this case:

For the Petitioner:	Mr. Danpen Gondhen, Sr. Advocate with Mr. S. Sethi and M. G. Sethi, Advocates.
For the Respondents:	Mr. Harpreet Singh, Sr. Standing Counsel with Ms. Suhani Mathur and Mr. Jatin Kumar Gaur, Advocate Ms. Avshreya Pratap Singh Rudy, SPC with Ms. Usha Jamnal, Advocate for UOI 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 2,72,81,448.00 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 08.12.2023 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., excess claim Input Tax Credit ["ITC"]; and ITC to be reversed on non-business transactions and exempt supplies. 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 clear and satisfactory. It merely states that "*The taxpayer filed their reply. On scrutiny of the same, it has been observed that the same is not acceptable as incomplete, not duly supported by adequate documents, without proper justification and thus 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, with the direction to deposit the amount mentioned in DRC-07 within three months from the date of receipt of this demand notice, failing which recovery*

proceedings u/s 79 of CGST Act will be initiated and the actions as per law will be initiated without further reference." The Proper Officer has opined that the reply is unsatisfactory and incomplete.

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 unsatisfactory. He merely held that the reply is incomplete, not duly supported by adequate documents and 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 reply is unsatisfactory, incomplete and not duly supported by adequate documents, and if any further details were required, the 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 incomplete, not duly supported by adequate documents and unsatisfactory. 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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