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

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Date of decision: 10.04.2024

+ W.P.(C) 4187/2024 & CM APPL. 17137/2024 (interim relief),
CM APPL. 17136/2024 (exemption)

SPINCLABS PRIVATE LIMITED
versus

.... Petitioner

THE COMMISSIONER OF DELHI GOODS AND SERVICES TAX
AND ORS. Respondents

Advocates who appeared in this case:

For the Petitioner: Mr. Rakesh Kumar, Mr. Narender Ahuja, Mr. Subhash Chandra Gupta, Mr. P. K. Gambhir & Mr. Akul Mangla, Advocates.

For the Respondents: Mr. Rajeev Aggarwal, ASC with Ms Shaguftha Hameed & Ms. Samridhi Vats, Advocates.

CORAM:-

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

HON'BLE MR. JUSTICE RAVINDER DUDEJA

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

1. Petitioner impugns two orders both dated 31.12.2023, whereby impugned Show Cause Notices dated 05.09.2023 and 29.09.2023 proposing a demand of Rs.42,74,423.00 and Rs.33,32,254.00 respectively against the Petitioner have been disposed of and demand including penalty has been created against the Petitioner. The orders have 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 Petitioner had filed detailed replies dated 14.12.2023 and 03.10.2023, however, the impugned orders dated 31.12.2023 do not take into consideration the replies submitted by the Petitioner and are cryptic orders.

3. Perusal of the Show Cause Notices dated 05.09.2023 and 29.09.2023 shows that the Department has issued both the notices on similar grounds and headings i.e., excess claim Input Tax Credit [“ITC”]; Scrutiny of ITC availed and scrutiny of ITC reversals, to the said Show Cause Notices, detailed replies were furnished by the petitioner giving disclosures under each of the heads. Pursuant to the said Show Cause Notices, Petitioner was issued reminders dated 21.12.2023 thereafter Petitioner filed replies dated 26.12.2023 to the said reminders.

4. Impugned order dated 31.12.2023 issued on Show Cause Notice dated 29.09.2023, after recording the narration records that the reply uploaded by the taxpayer is unsatisfactory. It states that “*And whereas, in response to the DRC-01, the Taxpayer submitted his reply in DRC-06. The reply of the registered person as well as data available on GST Portal has been checked / examined and the reply / submission of the taxpayer is not found satisfactory due to the following reasons:- 1. Excess claim of ITC on reconciliation of information scrutiny of ITC availed. The Taxpayer has not uploaded the copies of invoices duly mapped with corresponding bank payment details. The taxpayer has furnished plain reply which is not duly supported with proper*



*calculations/reconciliation and relevant documents. 2. Excess claim of ITC on reconciliation of information scrutiny of ITC reversals. The Taxpayer has not uploaded the copies of invoices duly mapped with corresponding bank payment details. The taxpayer has furnished plain reply which is not duly supported with proper calculations/reconciliation and relevant documents. **** Keeping in view above provisions it is clear that imposition of penalty is mandatory and by default in case reply is found not be satisfactory. Therefore, the decision to impose a penalty is being taken after considering the reply of the taxpayer which has been found not to be satisfactory.” The Proper Officer has opined that the reply is unsatisfactory.*

5. Further, impugned order dated 31.12.2023 issued on Show Cause Notice dated 05.09.2023, after recording the narration records that the reply uploaded by the taxpayer is not comprehensive and not supported with relevant documents. It states that “*And whereas, it is noticed that the Taxpayer has filed the reply with regard to above mentioned DRC 01 and the reply was not found comprehensive and not supported with relevant documents, an opportunity to submit reply and for the sake of Principal of natural justice opportunity for Personal Hearing g, as per provision of Section 75(4) DGST Act, was also provided to the taxpayer by issuing "REMINDER-' through the GST portal. Now, since no further explanation supporting documents has been received from the taxpayer despite sufficient opportunities, which indicates that the taxpayer could not explain/justify its reply*



supported with relevant documents. As such, taxpayer is not entitled to get benefit on the basis of its plain reply which is not supported with proper calculations reconciliation and relevant documents. In view of afore said circumstances, the undersigned, being the Proper Officer, is left with no other option to create demand, in accordance with the provisions of CGST I DGST Act & Rules, 2017, as per discrepancies already conveyed through SCNI DRC-01.” The Proper Officer has opined that the reply is not comprehensive and not supported with relevant documents/calculations.

6. The observation in the impugned orders dated 31.12.2023 is not sustainable for the reasons that the replies dated 14.12.2023 and 03.10.2023 filed by the Petitioner are detailed replies with supporting documents. Proper Officer had to at least consider the reply on merits and then form an opinion. He merely held that the reply dated 03.10.2023 is unsatisfactory and reply dated 14.12.2023 is not supported with proper calculations/reconciliation and relevant documents, which ex-facie shows that the Proper Officer has not applied his mind to the replies 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, impugned orders dated 31.12.2023 cannot



be sustained, and the matter is liable to be remitted to the Proper Officer for re-adjudication. Accordingly, impugned orders dated 31.12.2023 are set aside and the matter is remitted to the Proper Officer for re-adjudication.

9. Petitioner shall file replies to the Show Cause Notices within a period of 30 days from today. Thereafter, the Proper Officer shall re-adjudicate the Show Cause Notices 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 10, 2024/sk