2024:DHC:2894-DB

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* IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: 08.04.2024

\+ W.P.(C) 4524/2024 & CM APPL. 18468-69/2024

SURINDER KUMAR GARG PROPRIETOR
SHRI BALAJI POLYMERS ..... Petitioner

versus

THE UNION OF INDIA REVENUE SECRETARY,
MINISTRY OF FINANCE & ANR. ..... Respondents

Advocates who appeared in this case:

For the Petitioner: Mr. Rajesh Jain, Mr. Viraj Tiwari, Mr. Rishabh Jain, Mr. Ramashish and Ms. Tanya Saraswat, Advocates

For the Respondents: Mr. Rajiv Aggarwal, ASC with Ms. Samridhi Vats, Advocate

CORAM:-
HON'BLE MR. JUSTICE SANJEEV SACHDEVA
HON'BLE MR. JUSTICE RAVINDER DUDEJA

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

1. Petitioner impugns order dated 31.12.2023, whereby the impugned Show Cause Notice dated 26.09.2023, proposing a demand of Rs.2,60,20,062.00 against the Petitioner has been disposed of and a

demand 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. Issue notice. Notice is accepted by learned counsel appearing for respondent.

3. With the consent of the parties, petition is taken up for final disposal today.

4. Learned counsel for Petitioner submits that Petitioner had filed a detailed reply dated 26.10.2023, however, the impugned order dated 31.12.2023 does not take into consideration the reply submitted by the Petitioner and is a cryptic order.

5. Perusal of the Show Cause Notice dated 26.09.2023 shows that the Department has given separate headings i.e., excess claim of 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 disclosures under each of the heads.

6. The impugned order, however, after recording the narration records that the reply uploaded by the taxpayer is insufficient and unsatisfactory. It states that *"And whereas, it is noticed that the Taxpayer has submitted his/her reply and the same is not found*

satisfactory. And whereas, after going through the contents of the SCN explained therein, it has been evident that the taxpayer has not replied properly." The Proper Officer has opined that the reply is insufficient and unsatisfactory.

7. The observation in the impugned order dated 31.12.2023 is not sustainable for the reasons that the reply dated 26.10.2023 filed by the Petitioner is a detailed reply. Proper Officer had to at least consider the reply on merits and then form an opinion. 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.

8. 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.

9. In view of the above, the impugned order dated 31.12.2023 cannot be sustained, and the matter is liable to be remitted to the Proper Officer for re-adjudication. Accordingly, the impugned order dated 31.12.2023 is set aside and the matter is remitted to the Proper Officer for re-adjudication.

10. Petitioner shall file a reply to the Show Cause Notice within a period of 30 days from today. 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.

11. 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.

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

13. Petition is disposed of in the above terms.

SANJEEV SACHDEVA, J

RAVINDER DUDEJA, J

APRIL 8, 2024
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