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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) 4662/2024 & CM APPL. 19089/2024 (Exemption), CM APPL. 19090/2024 (stay)

AMIT UPADHYAY (PROPRIETOR OF M/S. GAYATARI DIAMONDS) .... Petitioner

versus

SALES TAX OFFICER CLASS II/AVATO, WARD 45 & ANR ..... Respondents

Advocates who appeared in this case:

For the Petitioner: Mr. Puneet Rai & Mr. Kapil Sharma, Advocates.

For the Respondents: Mr. Rajeev 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 29.12.2023, whereby the impugned Show Cause Notice dated 23.09.2023, proposing a demand of Rs. 73,76,148.00 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. Perusal of the Show Cause Notice shows that the Department has given separate headings i.e., excess claim Input Tax Credit [“ITC”] and ITC claimed from cancelled dealers, return defaulters and tax nonpayers. To the said Show Cause Notice, a detailed reply dated 21.10.2023 was furnished by the petitioner giving full disclosures under each of the heads.

3. The impugned order, however, after recording the narration, records that “*RTP has neither filed online reply and personal hearing on this matter*”. It merely states that *“The taxpayer has filed online reply submitted the reply on the GST portal. Further as per record available and reply submitted by the taxpayer. As per the record the M/s Gayatri Diamond Deals in HSN Codes which belongs to the items in Gold and Diamond Jewellery. However the cancelled taxpayer i.e. M /s Geetika Enterprises deals in HSN codes which pertains to automobile parts. Moreover the taxpayer has not shown the bank payment proof of the following invoices hence the taxpayer is not eligible to claim the ITC under Section 16 of DGST Act 2017. And whereas, a reminder in terms of Section 75(4) of the CGST Act 2017 was also issued to the RTP as another opportunity to file online reply and personal hearing on this matter. However, the RTP has neither filed online reply nor appeared in person or through any authorize representative at the given date and time for personal hearing..”* The Proper Officer has opined that despite providing another opportunity, neither an online reply has been filed nor has the petitioner appeared

in person or through any authorize representative.

4. Learned counsel for Petitioner submits that Petitioner had filed a detailed reply dated 21.10.2023 responding to each of the points raised.

5. He further submits that impugned order records that the tax payer has not shown bank payment proof of the invoices and thus, the tax payer has been held to be not eligible to claim the input credit. He further submits that the representative of the petitioner had personally appeared however, he was not asked to produce any bank payment proof.

6. We note that impugned order refers to a reminder issued to the petitioner. Petitioner has produced in Court copy of the reminder dated 03.12.2023, same is taken on record.

7. Perusal of the letter dated 03.12.2023 shows that petitioner was given an opportunity to personally appear and there was no requirement stipulated therein to produce any bank payment proofs. As per the petitioner, if given an opportunity, petitioner shall be able to produce all proofs of payments made through bank channel.

8. In view of the above, impugned order dated 29.12.2023 is set aside. The matter is remitted to Proper Officer for re-adjudication. Proper Officer is directed to intimate to the petitioner details/documents, as maybe required to be furnished by the petitioner. Petitioner shall produce all the relevant documents as *inter-alia* the

clarification with regard to the HSN Code and also the proof of payment made through the banking channel before the proper officer within a period of one week from today thereafter, proper officer shall decide 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. In case any further documents are required, the proper officer shall duly intimate to the petitioner with regard to the same and petitioner shall thereafter produce the said documents.

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. Petition along with pending applications stands disposed of in the above terms.

SANJEEV SACHDEVA, J

RAVINDER DUDEJA, J

APRIL 01, 2024/*sk*