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* IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: 02.04.2024

+ W.P.(C) 4718/2024 & CM APPL. 19296/2024

BONA VITA TECHNOLOGIES PVT. LTD. Petitioner

versus

THE SALES TAX OFFICER CLASS-II AVATO
WARD 94 ZONE 8 NEW DELHI 110002 Respondents**Advocates who appeared in this case:**For the Petitioner: Mr. Ashwini Chandrasekaran, Ms. Priyanka Rathi,
Ms. S. Gupta and Mr. Abhishek Jain, AdvocatesFor 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 28.12.2023, whereby the impugned Show Cause Notice dated 22.09.2023, proposing a demand of Rs. 3,05,43,710.00 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. Learned counsel for Petitioner submits that Petitioner had filed a detailed reply dated 06.12.2023, however, the impugned order dated 28.12.2023 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., under declaration of output tax; the tax on outward supplies under declared on reconciliation of data in GSTR-09; reconciliation of GSTR-01 with GSRT-09; excess claim Input Tax Credit ["ITC"]; scrutiny of ITC reversals and under declaration of ineligible ITC. 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 taxpayer is incomplete, not duly supported by relevant documents. It merely states that *"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 the*



aforesaid circumstances, the undersigned, being the Proper Officer, is left with no other option but to create demand, in accordance with the provisions of CGST / DGST Act & Rules, 2017, as per discrepancies already conveyed through SCN/ DRC-01.” The Proper Officer has opined that the reply is incomplete and not duly supported by relevant documents.

5. The observation in the impugned order dated 28.12.2023 is not sustainable for the reasons that the reply dated 06.12.2023 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 incomplete and not supported by relevant documents 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 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.

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 28.12.2023 is set aside and the matter is remitted to the Proper Officer for re-adjudication.



8. As noticed hereinabove, the impugned order records the reply furnished by the Petitioner is incomplete and not duly supported by adequate documents. 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

APRIL 2, 2024/‘rs’