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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
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Date of decision: 02.04.2024

+ W.P.(C) 4731/2024 & CM APPLs. 19323-24/2024

CHARU OVERSEAS PVT. LTD.

.... 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. Virag Tiwari, Mr. Ramashish and Ms. Tanya Saraswat, Advocates.

For the Respondents: Mr. Sahaj Garg, SPC for R-1.
Mr. Rajeev Aggarwal, ASC with Mr. Prateek Badhwar, Ms. Shaguftha H. Badhwar, Ms. Samridhi Vats, Advocates for R-2.

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 24.09.2023, proposing a demand of Rs. 44,24,400.00 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., under declaration of output tax; excess claim Input Tax Credit [“ITC”]; ITC to be reversed on non-business transaction and exempt supplies; 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.

3. The impugned order, however, after recording the narration, records that the reply uploaded by the taxpayer is incomplete, not supported by adequate documents, unclear and unsatisfactory. 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-O1 is confirmed.”* The Proper Officer has opined that the reply is incomplete, not supported by adequate documents, unclear and unsatisfactory.

4. Learned counsel for Petitioner submits that Petitioner had filed a detailed reply dated 23.10.2023, however, the impugned order dated 30.12.2023 does not take into consideration the reply submitted by the Petitioner and is a cryptic order.



5. Learned counsel for Petitioner submits that the Proper Officer has erred in not noticing the tax liability was paid in advance in terms of Section 12(2)(b) read with explanation 2 of the Central Goods and Services Tax Act, 2017 and has erred in adding the same towards the demand even though the amount already stands paid.

6. 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. He merely held that the reply is incomplete, not supported by relevant documents, not clear and unsatisfactory which *ex-facie* shows that Proper Officer has not applied his mind to the reply 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, 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 and the matter is remitted to the Proper Officer for re-adjudication.

9. As noticed hereinabove, the impugned order records the reply furnished by the Petitioner as incomplete, not supported by adequate documents, unclear and unsatisfactory. Proper Officer is directed to



intimate to the petitioner if any details/documents, as may be 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.

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 02, 2024/vp