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* IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: 02.04.2024

\+ W.P.(C) 4739/2024 & CM APPL. 19450/2024

M/S A. B TRADERS ..... Petitioner

versus

COMMISSIONER OF DELHI GOODS AND SERVICE TAX & ANR. ..... Respondents

Advocates who appeared in this case:

For the Petitioner: Mr. Rajesh Mahna, Mr. Ramanand Roy, Mr. Mithlesh Kumar Tiwari, Mr. Mayank Kouts, Mr. Shiva Narang and Mr. Silky Wadhwa, 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 25.12.2023, whereby the impugned Show Cause Notice dated 26.09.2023, proposing a demand of Rs. 44,48,488.00 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 23.10.2023, however, the impugned order dated 25.12.2023 does not take consideration the reply submitted by the Petitioner in full consideration and has passed 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; excess claim Input Tax Credit ["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.

4. The impugned order, however, after recording the narration, records that the reply uploaded by the taxpayer is insufficient and unsatisfactory. It merely states that *"And whereas, the Taxpayer filed reply/explanation on dated 23.10.2023 and 26.10.2023. And whereas, reply filed by the taxpayer was examined as per the detail given below: Point 1. Under declaration of output tax: Reconciliation of GSTR-01 with GSTR-09 Reply given by the taxpayer in this regard is insufficient as it does not clear the amount of revision of bills. Accordingly demand is created. Point 2: Excess claim of ITC: Reply filed by the taxpayer in this regard is considered. Hence, the demand*

is not pressed. Point 3: Scrutiny of ITC reversal this point is not replied by the taxpayer, accordingly, demand is created. Point 4: ITC claimed from cancelled dealers, return defaulters & tax non payers: The taxpayer has submitted that it has made genuine transactions with the supplier M/s ETA GENERAL PVT LTD stated in SCN and has made payment of tax to the Govt exchequer before cancellation of GST registration. The same was found not satisfactory as per the detail given below." The Proper Officer has opined that the reply is insufficient and unsatisfactory.

5. The impugned order does not specifically deal with the reply dated 23.10.2023 given by the petitioner, however, refers to certain judgment to hold that the burden to prove admissibility of any input tax credit cannot be shifted to the Tax Authorities. The Proper Officer has not even considered the reply of the petitioner along with the enclosed documents and merely held that the burden cannot be shifted on the Tax Authorities. The Proper Officer had to examine the documents submitted by the petitioner and then hold whether the input tax credit is admissible or not. The Proper Officer has not stated as to why such transactions are not acceptable.

6. The impugned order dated 25.12.2023 is accordingly set aside. The matter is remitted to the Proper Officer to re-adjudicate the issues i.e. Point No. 1, 3 and 4. Point No. 2 has already been held in favour

of the petitioner wherein the demand has been dropped and the same need not be referred back to the Proper Officer.

7. In case the petitioner is required to file any further documents, petitioner shall file the same within two weeks from today in support of his reply to the Show Cause Notice and 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.

8. 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.

9. Petition is disposed of in the above terms.

SANJEEV SACHDEVA, J

RAVINDER DUDEJA, J

APRIL 2, 2024
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