$~73

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

%

Date of decision: 02.04.2024

\+ W.P.(C) 4747/2024 & CM APPLs. 19462-63/2024

SAFE FLY AVIATION SERVICES PRIVATE LIMITED .... Petitioner

versus

UNION OF INDIA AND ORS ..... Respondents

Advocates who appeared in this case:

For the Petitioner:	Mr. Karan Aggarwal and Mr. Amarinder Singh Baweja, Advocates.
For the Respondents:	Mr. Rajeev Aggarwal, ASC with Mr. Prateek Badhwar, Ms. Shaguftha H. Badhwar, Ms. Samridhi Vats, Advocates for R-2 and 3.

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 23.09.2023, proposing a demand of Rs.2,92,00,768.00 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 20.10.2023, however, the impugned order dated 30.12.2023 does not take into consideration the reply submitted by the Petitioner and is a cryptic order.

3. Perusal of the Show Cause Notice shows that the Department has given separate headings i.e., under declaration of output tax; excess claim of ITC; ITC to be reversed on non-business transactions and exempt supplies; under declaration of ineligible ITC and ITC claimed from cancelled dealers, return defaulters and tax nonpayers. 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 tax payer is not satisfactory. It merely states *"And whereas, a notice for personal hearing was also issued to the taxpayer along with notice DRC 01 to explain their reply/objections against proposed amount of tax and interest . And whereas, the taxpayer has filed his/her reply on the Portal on scrutiny of the documents along with supporting documents was/were not found satisfactory."* The Proper Officer has opined that the reply is not satisfactory.

5. The observation in the impugned order dated 30.12.2023 is not sustainable for the reasons that the reply dated 20.10.2023 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 not satisfactory 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 if 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 30.12.2023 is set aside. 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 not satisfactory. Proper Officer is directed to intimate to the Petitioner 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.

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 02, 2024/*vp*