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

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Date of decision: 09.04.2024

+ W.P.(C) 5200/2024& CM APPLs. 21293-94/2024

M/S BIBA FASHION LTD

.... Petitioner

versus

GOVT OF NCT OF DELHI AND ORS & ORS.

..... Respondents

Advocates who appeared in this case:

For the Petitioner: Mr. Dhananjai Shekhawat, Mr. Archit Jain, Mr. Rishab Singhla and Mr. Sandeep Goyal, Advocates.

For the Respondents: Mr. Varun Vats, SPC for UOI.

CORAM:-

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

HON'BLE MR. JUSTICE RAVINDER DUDEJA

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

1. Petitioner impugns order dated 26.12.2023, whereby the impugned Show Cause Notice dated 24.09.2023, proposing a demand of Rs.56,32,814.00 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. Issue notice. Notice is accepted by learned counsel appearing for respondent.



3. With the consent of the parties, petition is taken up for final disposal today.

4. Learned counsel for Petitioner submits that Petitioner had filed a detailed reply dated 18.12.2023, however, the impugned order dated 26.12.2023 does not take into consideration the reply submitted by the Petitioner and is a cryptic order.

5. Perusal of the Show Cause Notice dated 24.09.2023 shows that the Department has given separate headings i.e., under declaration of output tax; reconciliation of GSTR-01 with GSRT-09; excess claim Input Tax Credit [“ITC”]; Scrutiny of ITC availed under ISD; ITC to be reversed on non-business transactions & exempt supplies; under declaration of ineligible ITC; and ITC claimed from cancelled dealers, return defaulters & tax non payers. To the said Show Cause Notice, a detailed reply was furnished by the petitioner giving disclosures under each of the heads.

6. The impugned order, however, after recording the narration records that the reply uploaded by the taxpayer is incomplete, not duly supported by adequate documents, unclear and unsatisfactory. It states that *“On the basis of reply uploaded by the taxpayer, it has been observed that the same is incomplete, not duly supported by adequate documents and unable to clarify the issue. 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. Since, the reply filed is not clear and satisfactory” The Proper Officer has opined that the reply is incomplete, not duly supported by adequate documents, not clear and unsatisfactory.

7. The observation in the impugned order dated 26.12.2023 is not sustainable for the reasons that the reply dated 18.12.2023 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, not duly supported by adequate documents, not clear and unsatisfactory, which ex-facie shows that Proper Officer has not applied his mind to the reply submitted by the petitioner.

8. 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.

9. In view of the above, the impugned order dated 26.12.2023 cannot be sustained, and the matter is liable to be remitted to the Proper Officer for re-adjudication. Accordingly, the impugned order dated 26.12.2023 is set aside and the matter is remitted to the Proper Officer for re-adjudication.

10. Petitioner shall file a reply to the Show Cause Notice within a period of 30 days from today. 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.

11. 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.

12. The challenge to Notification No. 9 of 2023 with regard to the initial extension of time is left open.

13. Petition is disposed of in the above terms.

SANJEEV SACHDEVA, J

RAVINDER DUDEJA, J

APRIL 09, 2024/vp