$~20

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

% Date of decision: 22.05.2024

W.P.(C) 5236/2024 & CM APPL. 21456/2024

M/S. DELHI MSW SOLUTIONS LIMITED ..... Petitioner

versus

THE ASSISTANT COMMISSIONER OF STATE TAX & ORS. ..... Respondents

Advocates who appeared in this case:

For the Appellant: Mr. Aayush Aggarwal, Advocate.

For the Respondent: Mr. Rajeev Aggarwal, ASC with Ms. Shaguftha H. Badhwar & Mr. Prateek Badhwar & Ms. Samridhi Vats, Advocates.

CORAM:-
HON'BLE MR. JUSTICE SANJEEV SACHDEVA
HON'BLE MR. JUSTICE RAVINDER DUDEJA

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

1. Petitioner impugns order dated 29.12.2023, whereby the impugned Show Cause Notice dated 24.09.2023, proposing a demand of Rs.8,79,33,598.00/- against the Petitioner has been disposed of and a demand including penalty has been created 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 30.10.2023 and uploaded it online on 01.11.2023 and 07.11.2023. However, the impugned order dated 29.12.2023 does not fully take into consideration the reply submitted by the Petitioner and has passed a cryptic order.

3. Perusal of the Show Cause Notice shows that the Department has raised grounds under separate headings i.e., under declaration of output tax; the tax on outward supplies under declared on reconciliation of data in GSTR-09; excess claim Input Tax Credit [“ITC”]; scrutiny of ITC availed; 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 detailed disclosures under each of the heads with supporting documents.

4. The impugned order however, after recording the narration, records that the reply uploaded by the taxpayer is partially found not satisfactory. It states that

> *“And whereas reply filed by the taxpayer was examined and partially found not satisfactory as:*
>
> *Point 1: Under declaration of output tax:*
>
> - *The tax on outward supplies under declared on reconciliation of data in GSTR-09: Explanation submitted by the taxpayer examined and <u>found satisfactory and considered accordingly</u>.*
>
> *Point 2: Excess claim of ITC:*
>
> - *The excess input tax credit (ITC) claimed on account of*

non-reconciliation of information: Explanation submitted by the taxpayer examined and found not-satisfactory and not considered, as the taxpayer could not provide the supporting documents.

• ITC to be reversed on non-business transactions & exempt supplies: Explanation submitted by the taxpayer examined and found satisfactory and considered accordingly.

• Under declaration of ineligible ITC: Explanation submitted by the taxpayer examined and found not-satisfactory and not considered, as the taxpayer could not provide the supporting documents.

• ITC claimed from cancelled dealers, return defaulters & tax non payers: Explanation submitted by the taxpayer examined and found not satisfactory, as the taxpayer could not provide the supporting documents to fulfil the conditions of section 16(2).

And whereas, further as per section 73(7) notice of tax and interest is to be given while section 73(9) prescribed for imposition of penalty equivalent to 10% of tax or Rs. 10000/- whichever is higher. The penalty is consequently and mandatory as per Act. As such the registered person is liable to pay penalty equivalent to 10% of tax along with tax amount in each head already conveyed through SCN/ DRC-01."

(underlining supplied)

The Proper Officer has opined that the reply is partially found not satisfactory.

5. The observation in the impugned order dated 29.12.2023 does not take into consideration all the points raised in the reply by the petitioner. Proper Officer had to at least examine the complete reply along with documents submitted by the petitioner and then form an opinion. He merely held that the reply filed by the petitioner is partially found non satisfactory

which ex-facie shows that Proper Officer has not applied his mind to the complete reply submitted by the petitioner.

6. The impugned order dated 29.12.2023 is accordingly set aside in respects of the points where the reply has been held to be not satisfactory. The matter is remitted to the Proper Officer to re-adjudicate issues arising from Point No. 2 i.e.,

> *(i) The excess input tax credit (ITC) claimed on account of non-reconciliation of information.*
>
> *(ii) Under declaration of ineligible ITC.*
>
> *(iii) ITC claimed from cancelled dealers, return defaulters & tax non payers.*

7. Further, since Point No. 1 i.e., Tax on outward supplies under declared on reconciliation of data in GSTR-09 and bullet point 3 of Point No. 2: ITC to be reversed on non-business transactions & exempt supplies have already been held in favour of the petitioner and the said demand has been dropped, the order in that respect is not interfered with.

8. Petitioner may file a supplementary reply 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.

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 extension of time is left open.

11. Petition is disposed of in the above terms.

SANJEEV SACHDEVA, J

RAVINDER DUDEJA, J

MAY 22, 2024/*sk*