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

% Date of decision: 10.04.2024

\+ W.P.(C) 5288/2024 & CM APPL. 21601/2024

M/S. VISHAL CHEM (INDIA) .... Petitioner

versus

ASSISTANT COMMISSIONER, DEPARTMENT OF TRADE AND TAXES ..... Respondent

Advocates who appeared in this case:

For the Petitioner: Ms. Anjali Jha Manish, Mr. Priyadarshi Manish and Ms. Divya Rastogi, Advocates.

For the Respondents: Mr. Anurag Ojha, SSC with Mr. Subham Kumar, Advocate.

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

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

1. Petitioner impugns order dated 28.12.2023, whereby the impugned Show Cause Notice dated 28.09.2023, proposing a demand of Rs. 34,51,018.00 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. With the consent of the parties, petition is taken up for

final disposal today.

3. Learned counsel for Petitioner submits that Petitioner had filed a detailed reply dated 11.10.2023 and uploaded the same on 24.10.2023, however, the impugned order dated 26.12.2023 does not take into consideration the reply submitted by the Petitioner and is a cryptic order.

4. Learned Counsel for Petitioner submits that Chartered Accountant had visited the office of proper officer and tendered documents, however, the proper officer declined to accept the documents and accordingly she prays that an opportunity be granted to the petitioner to file further reply along with supporting documents.

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; the tax on outward supplies under declared on reconciliation of data in GSTR-09; excess claim Input Tax Credit ["ITC"]; Scrutiny of ITC availed 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 unsatisfactory. It states that *"And whereas, it is noticed that the Taxpayer has filed his reply with regard to above mentioned DRC 01 and the same has not been found satisfactory **** And whereas, a further opportunity to submit his reply for the sake of principal of natural justice and*

*opportunity for Personal Hearing, under Section 75(4) DGST Act, was granted to the taxpayer by issuing "ADJOURNMENT" through the GST portal. The taxpayer however did not prefer to avail the opportunity of being heard. And whereas, no further explanation/ supporting documents has been received from the taxpayer despite sufficient opportunities afforded to him, which indicates that the taxpayer has nothing more to say in the matter. As such, the taxpayer is not entitled to get benefit on the basis of his plain reply which is not duly supported with proper calculations/reconciliation and relevant documents.*****In view of the facts aforesaid, the undersigned, being the Proper Officer, is left with no other option but to create demand ex-parte"* The Proper Officer has opined that the reply is unsatisfactory.

7. The observation in the impugned order dated 28.12.2023 is not sustainable for the reasons that the reply dated 11.10.2023 (uploaded on portal on 24.10.2023) 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 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 28.12.2023 cannot be sustained, and the matter is liable to be remitted to the Proper Officer for re-adjudication. Accordingly, the impugned order dated 28.12.2023 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 one week. 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 10, 2024/*vp*