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

% Date of decision: 16.04.2024

\+ W.P.(C) 5342/2024 & CM APPL. 21907/2024

AKSHIT PETROCHEM PVT. LTD. THROUGH ITS DIRECTOR, SH. VIVEK SHANKER .... Petitioner

versus

GOVT. OF NCT OF DELHI THROUGH CHIEF SECRETARY & ORS. ..... Respondents

Advocates who appeared in this case:

For the Petitioner: Mr. A. K. Babbar & Mr. Surinder Kumar, Advocates.

For the Respondents: Mr. Rajeev Aggarwal, ASC with Ms. Samridhi Vats, Advocate.
Mr. Abhishek Khanna, SPC with Mr. Parvesh Khanna, Mr. Rahul Sabharwal, Ms Priyanka Sabhawal & Mr. Aartha Rathore, Advocates for R-4.
Mr. Anurag Ojha, SSC with Mr. Subham Kumar & Mr Vipul Teotia, Advocates for R-5.

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

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

1. Petitioner impugns the order dated 29.12.2023 whereby an order has been passed against under Section 73 of the Central Goods and Services Tax Act and a demand created against the petitioner.

2. Petitioner impugns the order dated 29.12.2023 to the limited extend that it confirms the demand in respect of denial of ITC to the petitioner with respect to the suppliers whose GST registration has been cancelled retrospectively.

3. Learned counsel for the petitioner submits that a specific request was made to the proper officer for a right of cross-examination of the witnesses whose statement was being relied upon as also the authors of documents which was sought to be relied upon by the proper officer during adjudication proceedings. He submits that the said request for cross-examination has been denied on account of paucity of time and the impugned order has been issued.

4. Learned counsel further submits that petitioner was made to deposit a sum of Rs 20 Lakhs under coercion at the time of search and survey. He submits that despite the issue being raised by the petitioner and noticed by the proper officer in the proceedings, same has not been considered nor dealt with in the impugned order.

5. Reference may be had to the proceedings sheet dated 01.12.2023 wherein the proper officer has noted as under:-

> " *Present Sh. AK Babbar, advocate on behalf of M/s Akshit Petrochem Pvt. Ltd, GSTIN No. 07AAICA229201W in r/o DRC-01 for FY-2017-18. The taxpayer has filed reply on common portal. The taxpayer has also submitted as request for cross-examination of cancelled dealers whose ITC is proposed to be denied to the taxpayer. The same is taken on record. The taxpayer also brings to notice that an enforcement survey was also carried out. However, the said proceedings are not part of instant DRC-01 notice. The undersigned do intend to summon the cancelled dealers/suppliers*

of the taxpayer for cross-examination due to paucity of time the request can't be allowed.

The taxpayer wishes to make addl. Submissions. The same is allowed. It has also been conveyed, that in the interest of revenue, no relief on accounts of availing ITC from cancelled dealers will be granted. NOH: 13/12/2023."

6. Perusal of the proceedings sheet dated 01.12.2023 shows that a specific request was made by the petitioner for cross-examination of the cancelled dealers whose ITC was proposed to be denied to the petitioner. The proper officer has noted that the proper officer intended to summon the cancelled dealers/suppliers of tax payer for cross-examination, however, on account of paucity of time, the request was disallowed.

7. Denial of the right of cross-examination can cause grave and serious prejudice to an entity. In the instant case, the proper officer has himself noticed that the proper officer has intended to summon the said person, however on account of paucity of time declined to do so. Such a course cannot be countenance for the same caused grave prejudice to the person against whom the said statement or document is sought to be relied upon.

8. Reference may be had to the judgment of a Co-ordinate Bench of this Court dated 30.01.2024 in WP (C) 15808/2022 title *Naman Gupta vs Commissioner of Customs Airports and General* wherein one of us (HMJ Ravinder Dudeja) was a party, and the Co-ordinate Bench has held that denial of a right of cross-examination results in serious prejudice.

9. Accordingly in view of the above and specially in view of the fact that the proper officer himself intended to summon the said witnesses, however did not do so on account of paucity of time, the impugned order to

the limited extent, of the denial of input credit tax in respect of cancelled dealers, cannot be sustained and is accordingly set aside. The Show Cause Notice is remitted to the proper officer for re-adjudication on the said aspect after summoning the said dealers/suppliers for the purpose of cross-examination and giving an opportunity of hearing to the petitioner.

10. Further, it may be noticed that in the proceedings sheet dated 13.12.2023, the proper officer has specifically noticed the request of the petitioner for refund of Rs 20 Lakhs that were allegedly got deposited during search and survey proceedings on 15.07.2022 and was alleged not to be a voluntary deposit and a deposit made under pressure in presence of the visiting team. Said issue has also not been dealt with in the impugned order.

11. Reference may also be had to the judgment of a Coordinate Bench of this Court dated 05.12.2023 in *WP (C) 17171/2022 titled Santosh Kumar Gupta Vs. Commissioner of Delhi Goods & Service Tax Act,* wherein an involuntary deposit was directed to be refunded.

12. Since the contention of the petitioner is that the deposit was not voluntary and was under coercion and a request for refund was made to the proper officer, the proper office should have considered the same in accordance with law. Accordingly, while reconsidering the issue with regard to denial of input tax credit for cancelled dealer, the proper officer shall also consider the request of the petitioner for refund of the said amount of Rs. 20 lacs in accordance with law keeping in view the various pronouncements rendered by this Court with regard to involuntary deposit.

13. It is clarified that this Court has neither considered nor commented upon the nature of deposit made by the petitioner i.e. as to whether the same was voluntary or involuntary and also with regard to the contention of the respondent that even if the amount is held to be an involuntary deposit, the same is liable to be adjusted against a demand that is liable to be created against the petitioner.

14. All rights and contentions of the parties are left open.

15. Petition is accordingly petition is allowed in the above terms with a limited order of remit to the proper officer as noticed hereinabove.

16. Further, the challenge to Notification No. 9 of 2023 with regard to the initial extension of time is left open.

SANJEEV SACHDEVA, J

RAVINDER DUDEJA, J

APRIL 16, 2024/*sk*