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* IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: 16.04.2024

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W.P.(C) 5376/2024M/S. RPJ POLYMERS THROUGH ITS
PROPRIETOR SH. RAHUL JAIN

..... Petitioner

Versus

UNION OF INDIA & ORS.

..... Respondents

Advocates who appeared in this case:For the Petitioner: Mr. Vineet Bhatia and Mr. Aananya Jagannath
Mishra, Advocates.For the Respondents: Mr. Nawal Kishore Jha, SPC with Ms. Kalpana Jha,
Advocate for UOI/R-1
Mr. Rajeev Aggarwal, ASC with Ms. Samridhi
Vats, 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 24.09.2023, proposing a demand of Rs. 1,38,12,142.00 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 24.10.2023, however, the impugned order dated 28.12.2023 does not take into consideration the reply submitted by the Petitioner and is a cryptic order.

4. Perusal of the Show Cause Notice dated 24.09.2023 shows that the Department has given separate headings i.e., excess claim of Input Tax Credit [“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.

5. The impugned order, however, after recording the narration records that the reply uploaded by the taxpayer is not supported with complete relevant documents. It states that *“And whereas reply filed by the taxpayer was examined and following is observed: 1. ITC claimed from cancelled dealers, return defaulters & non filers (Rs. 6577210/-): (i) The Taxpayer has availed Input Tax Credit from M/s SURENDER KUMAR JAIN (GSTIN 07ADUPJ5030C1ZQ) which was*



Cancelled Suo moto from the date of registration for the reason “Issues any invoice or bill without supply of goods and/or services in violation of the provisions of this Act, or the rules made thereunder leading to wrongful availment or utilization of input tax credit or refund of tax”. (ii) The Taxpayer has availed Input Tax Credit from M/s VYAPAK POLYMERS PRIVATE LIMITED (GSTIN 07AAGCV2223F1ZM) which was Cancelled Suo-moto from the date of registration for the reason” Non-existent taxpayer”. As such, the taxpayer has not provided relevant document and also failed to establish the actual movement of goods. Further the above mentioned suppliers were cancelled from the date of registration and all the ITC passed by them becomes ineligible. Therefore the taxpayer is not entitled to get the benefit on the basis of its reply which is not supported with complete relevant documents. Hence the taxpayer is liable to pay the requisite demand along with interest & penalty. In view of the aforesaid circumstances, the undersigned, being the Proper Officer, is left with no other option but to create demand, in accordance with the provisions of CGST /DGST Act & Rules, 2017, as per discrepancies already conveyed through SCN/ DRC-01.” The Proper Officer has opined that the reply is not supported with complete and relevant documents.

6. The observation in the impugned order dated 28.12.2023 is not sustainable for the reasons that the reply dated 24.10.2023 filed by the



Petitioner is a detailed reply with supporting documents. Proper Officer had to at least consider the reply on merits and then form an opinion. He merely held that the reply is not supported with complete relevant documents, which ex-facie shows that Proper Officer has not applied his mind to the reply submitted by the petitioner.

7. Further, if the Proper Officer was of the view that any further details or documents 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.

8. In view of the above, 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, impugned order dated 28.12.2023 is set aside and the matter is remitted to the Proper Officer for re-adjudication.

9. 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.

10. 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.

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

12. Petition is disposed of in the above terms.

SANJEEV SACHDEVA, J

RAVINDER DUDEJA, J

APRIL 16, 2024/NA