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* IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: 01.05.2024

\+ W.P.(C) 6098/2024

KARAN KUMAR AGARWAL AND
HUF PROP MANYATA ENTERPRISES ..... Petitioner

versus

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

Advocates who appeared in this case:

For the Petitioner:	Mr. Bharat Kumar Tripathi and Mr. Rahul Chauhan, Advocates
For the Respondents:	Mr. Rajeev Aggarwal, ASC with Ms. Samridhi Vats, Advocate for CBIC/R-1 & R-3

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

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

1. Petitioner impugns order dated 05.12.2023 whereby the impugned Show Cause Notice dated 25.09.2023 proposing a demand of Rs. 1,08,84,820.00/- against the petitioner has been disposed of and 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 however, the impugned order dated 05.12.2023 does not take into consideration the reply submitted by the Petitioner and is a cryptic order.

4. Perusal of the Show Cause Notice dated 25.09.2023 shows that the Department has given reasons under separate headings i.e., excess claim of Input Tax Credit ["ITC"]; scrutiny of ITC availed; under declaration of ineligible 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 response under each of the heads with supporting documents.

5. The impugned order, however, after recording the narration records that the reply is not satisfactory. It states that *"A DRC 01 along with notice was issued to the tax payer. However, neither the registered person has filed/submitted the proper reply justifying the facts of the case, along with the supporting documents, nor appeared before this office. It clearly appears that he has nothing to submit and thus, this improper reply found to be not satisfactory. Therefore, demand (DRC-07) is created/issued for the amount mentioned in the*

DRC 01, along with applicable interest/penalty, with the direction to deposit the entire amount." The Proper Officer has opined that no proper reply justifying the facts of the case along with supporting documents has been submitted nor has the taxpayer appeared for a hearing. Further, he opined that the reply is not satisfactory.

6. The observation in the impugned order dated 05.12.2023 is not sustainable for the reasons that the reply dated 11.10.2023 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 that the reply is not satisfactory and no proper reply justifying the facts of the case along with supporting documents have been submitted nor has the taxpayer appeared for a hearing.

7. Despite the fact that petitioner has filed a reply, the Proper Officer has held that neither he has filed a proper reply nor appeared for a hearing which ex-facie shows that the 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 05.12.2023 cannot be sustained and is set aside. The Show Cause Notice is remitted to the Proper Officer for re-adjudication.

10. Petitioner may file a further 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

MAY 1, 2024/'*rs*' **RAVINDER DUDEJA, J**