2024:DHC:4103-DB

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* IN THE HIGH COURT OF DELHI AT NEW DELHI

% Date of decision: 17.05.2024

W.P.(C) 6274/2024 & CM APPL. 26112/2024 (Stay)

M/S SHREE PADMA INDUSTRIES ..... Petitioner

versus

UNION OF INDIA & ORS. ..... Respondents

Advocates who appeared in this case:

For the Appellant: Mr. Pulkit Verma, Mr. Vibhu Gupta & Mr. Peyush Pruthi, Advocates

For the Respondent: Mr. Rajeev Aggarwal, ASC with Mr. Prateek Badhwar, Ms. Shaguftha H. 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 12.12.2023 whereby the impugned Show Cause Notice dated 29.09.2023 proposing a demand of Rs. 9,04,200.00/- against the petitioner had 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. Learned counsel for Petitioner submits that the Show Cause Notice dated 29.09.2023, issued in Form GSTR-01, stated that the working of Excess ITC under section 16(2)(c) of the Act was appended to the Notice as Annexure-B. Petitioner appeared before Respondent No. 3 and requested it to provide the tabular chart annexed as Annexure-B and further to activate the GST portal to enable the Petitioner to file the reply to show cause notice.

3. Learned counsel for the Respondent, under instructions, submits that there is no Annexure-B to the Show Cause Notice as mentioned in the attachment to the Show Cause Notice. He submits that Annexure-B is in tabular form, which is extracted in the said document itself and as such, there is no separate Annexure-B.

4. Perusal of the Show Cause Notice dated 29.09.2023 shows that the Department has given reasons under separate headings i.e., excess claim of ITC and scrutiny of ITC availed.

5. The impugned order, however, after recording the narration records that demand as *ex-parte* is created. It states that *"And whereas, it is noticed that the Taxpayer neither filed reply/explanation within stipulated period nor appeared for Personal Hearing before Proper Officer on the given date and time. Further, another opportunity to submit reply and for the sake of natural justice opportunity for Personal Hearing, as per provision of Section 75(4) DGST Act, was also accorded to the taxpayer by issuing **"REMINDER"** through the GST portal. ****** Now, since no reply / explanation has been received from the taxpayer despite sufficient and*

repeated opportunities, which indicates that the taxpayer has nothing to submit in the matter. In view of aforesaid circumstances, the undersigned is left with no other option but to decide the matter ex-parte, 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 despite providing another opportunity, neither an online reply has been filed nor has the petitioner appeared in person or through an authorized representative.

6. It may be noticed that the Show Cause Notice specifically states that there is an Annexure – B to the show cause notice and Petitioner claims to have requested the Proper Officer for a copy of Annexure – B to enable it to file a reply. Neither copy of Annexure B was supplied nor was petitioner informed that there is no annexure-B. It is only for the first time in these proceedings that the Respondents state that there is no Annexure-B and the table contained in the Show Cause Notice contains all the details.

7. The only reason for passing the impugned order is that petitioner had not filed any reply to the Show Cause Notice. In view of the stand of the Respondents that there is no Annexure-B, we are of the view that one opportunity needs to be granted to the Petitioner to respond to the Show Cause Notice.

8. Accordingly, the impugned order dated 12.12.2023 is set aside. The Show Cause Notice is remitted to the Proper Officer for re-adjudication.

9. Petitioner shall file a further reply to the Show Cause Notice within two weeks from today. Thereafter, the Proper Officer shall re-adjudicate the

Show Cause Notice after giving an opportunity of personal hearing to the Petitioner 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

MAY 17, 2024
RM