



2024:DHC:3760-DB



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

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Date of decision: 07.05.2024

W.P.(C) 6467/2024 & CM APPL. 26953/2024

MRISHI MARCNDEY INDIA LTD. (FORMERLY KNOWN AS
SAMSUNG OVERSEAS LTD.)Petitioner

versus

SALES TAX OFFICER CLASS II/AVATO, DEPARTMENT OF
TRADE AND TAXES. Respondent

Advocates who appeared in this case:

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

For the Respondent: Appearance not given.

CORAM:-

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

HON'BLE MR. JUSTICE RAVINDER DUDEJA

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

1. Petitioner impugns order dated 21.12.2023, whereby the impugned show cause notice dated 26.09.2023 proposing a demand of Rs. 46,41,15,492/- 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"].



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2. Learned counsel for the petitioner submits that in response to Show Cause Notice dated 26.09.2023, petitioner on 25.10.2023, requested for some time to file a reply. In the response dated 25.10.2023, petitioner contended that it had concrete evidence to support that there was no excess claim of Input Tax Credit, and sought time on the ground that the Authorized Representative of the petitioner who was handling the accounts was not available during the said period.

3. Leaned counsel submits that there is sufficient material available with the petitioner to substantiate that there is no amount due from the petitioner. It is further contended that the GST Registration of the petitioner was cancelled vide order 24.06.2020 and in the said cancellation order, there was “nil” demand raised against the petitioner.

4. Issue notice. Notice is accepted by the learned counsel appearing for the respondent. With the consent of the parties, the petition is taken up for final disposal today.

5. Perusal of the order dated 21.12.2023 shows that the same has been passed solely on the ground that there was no response received from the petitioner. Petitioner has annexed the copies of certain account statements as well as invoices to contend that the petitioner had not availed Input Tax Credit, contrary to its entitlement.



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6. Keeping in view the peculiar facts and circumstances of the case, we are of the view that one opportunity should be granted to the petitioner to file a response to the Show Cause Notice. Thereafter, the Show Cause Notice shall be re-adjudicated in accordance with law.

7. In view of the above, the impugned order dated 21.12.2023 is set aside. The Show Cause Notice is restored on the file of proper officer.

8. Petitioner shall file a response to the Show Cause Notice within a period of two weeks from today. Thereafter, the Proper Officer shall adjudicate the Show Cause Notice in accordance with the law within the time prescribed under Section 75 (3) of the Act after giving an opportunity of a personal hearing.

9. It is clarified that this Court has neither considered nor commented on the merits of the contentions of either party. All rights and contentions of the parties are reserved.

10. Petition is disposed of in the above terms.

SANJEEV SACHDEVA, J

RAVINDER DUDEJA, J

MAY 07, 2024/vp

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