



2024:DHC:3761-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) 6503/2024 & CM APPL. 27103/2024, CM APPL. 27104/2024

CHEMROW INDIA PRIVATE LIMITED THROUGH ITS
DIRECTORPetitioner

versus

COMMISSIONER OF DELHI GOODS AND SERVICE TAX AND
OTHERS Respondents

Advocates who appeared in this case:

For the Petitioner: Mr. Rakesh Kumar, Mr. P. K. Gambhir & Ms. Neera Gupta, Advocates.

For the Respondent: Mr. Rajeev Aggarwal, ASC with Ms. Shaguftha Badhwar & Mr. Prateek Badhwar, Advocates.

CORAM:-

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

HON'BLE MR. JUSTICE RAVINDER DUDEJA

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

1. Petitioner impugns order dated 30.12.2023 whereby the impugned Show Cause Notice dated 27.09.2023 proposing a demand of Rs.1,84,49,974.00/- 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



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Services Tax Act, 2017 (hereinafter referred to as the Act). Petitioner also impugns rectification order dated 30.03.2024 whereby demand of Rs. 1,01,28,145.00/- has been raised against the Petitioner.

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 10.10.2023, however, the impugned order dated 30.12.2023 does not take into consideration the reply submitted by the Petitioner and is a cryptic order.

4. Perusal of the Show Cause Notice dated 27.09.2023 shows that the Department has given reasons under separate headings i.e., under declaration of output tax; 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 non payers. 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 dated 30.12.2023, however, after recording the narration records that the reply uploaded by the taxpayer is incomplete, not duly supported by adequate documents and unable to clarify the issue. It states that "*And whereas, the taxpayer had filed*



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their objections/reply in DRC-06 and appeared personally. However, during the personal hearing, the taxpayer reiterated the contents of the reply filed in form DRC-06. On scrutiny of the same, it has been observed that the same is incomplete, not duly supported by adequate documents and unable to clarify the issue. Since, the reply filed is not clear and satisfactory, the demand of tax and interest conveyed via DRC-01 is confirmed.” The Proper Officer has opined that the reply is incomplete, not duly supported by adequate documents and unable to clarify the issue.

6. Pursuant to the impugned order dated 30.12.2023, Petitioner filed rectification application dated 15.03.2024 which has been considered and relief was granted partly to petitioner vide order dated 30.03.2024 while maintaining the earlier order.

7. It is noticed that in the reply dated 10.10.2023 petitioner had taken a plea on the duplication of Input Tax Credit (ITC) amounting to Rs. 91,96,278.00/-. However, there is no consideration of the reply filed by the petitioner in the first instance and in the consequent rectification order dated 30.03.2024, a mere adjustment has been granted to the demand earlier raised.

8. Therefore, the observation in the impugned order dated 30.12.2023 is not sustainable for the reasons that the reply dated 10.10.2023 filed by the Petitioner is a detailed reply with supporting



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documents. Proper Officer had to at least consider the reply on merits and then form an opinion. He merely held that the reply is incomplete, not duly supported by adequate documents and unable to clarify the issue which ex-facie shows that Proper Officer has not applied his mind to the reply submitted by the petitioner.

9. 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.

10. In view of the above, the impugned order dated 30.12.2023 cannot be sustained and is set aside. The Show Cause Notice is remitted to the Proper Officer for re-adjudication.

11. Further the contention of the petitioner is that ITC was erroneously taken twice in TRAN-1 and that the ITC was duly reversed in the next financial year with interest and this plea was not taken into account by the proper officer. Accordingly, the proper officer shall also examine the contention of petitioner about reversal of the erroneously availed ITC TRAN-I in accordance with law.

12. 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



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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.

13. 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.

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

15. Petition is disposed of in the above terms.

SANJEEV SACHDEVA, J

RAVINDER DUDEJA, J

MAY 07, 2024/sk