$~1

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

% Date of decision: 27.05.2024

W.P.(C) 6768/2024& CM APPLs. 28212-13/2024
P S ENTERPRISES THROUGH PROPRIETOR
PANKAJ SHARMA ..... Petitioner

versus

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

Advocates who appeared in this case:

For the Petitioner: Mr. Prabhat Kumar, Mr. Arun Kumar Singh and Mr. Utkarsh Kumar, Advocates.

For the Respondents: Mr. Ravi Kant Srivastava, SPC.
Mr. Rajeev Aggarwal, ASC for R-2 and 3.

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

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

1. Petitioner impugns order dated 24.04.2024 whereby the impugned Show Cause Notice dated 09.12.2023 proposing a demand of Rs.2,87,99,294.00/- against the petitioner has been disposed of and a demand including penalty has been created 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 04.04.2024, however, the impugned order dated 24.04.2024 does not take into consideration the reply submitted by the Petitioner and is a cryptic order.

4. Perusal of the Show Cause Notice dated 09.12.2023 shows that the Department has raised grounds under separate headings i.e. excess claim of ITC; the excess input tax credit (ITC) claimed on account of non-reconciliation of information 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. Perusal to the impugned order shows that impugned order categorically records that "*the tax payer has not uploaded supporting documents in r/o cancelled dealer. Despite giving sufficient opportunities, there is no other option but to upheld the demand raised in SCN/DRC-01. DRC-07 is issued accordingly.*"

6. The principal grounds for creating the demand is that taxpayer has not uploaded supporting documents in respect of cancelled dealer despite sufficient opportunity being given. However, it may be

noticed that petitioner had uploaded several documents as well as details of transactions done with the cancelled dealer.

7. As per the petitioner the transactions were bonafide and genuine and were carried out when the registration was valid. The registration of the dealer has been cancelled subsequently retrospectively.

8. Consequently, we are of the view that the observation in the impugned order dated 24.04.2024 is not sustainable for the reasons that the reply dated 04.04.2024 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 taxpayer has not uploaded supporting documents in respect of cancelled dealer 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 24.04.2024 cannot be sustained and is set aside. The Show Cause Notice is remitted to the Proper Officer for re-adjudication.

11. 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.

12. 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.

13. Petition is disposed of in the above terms.

SANJEEV SACHDEVA, J

RAVINDER DUDEJA, J

MAY 27, 2024/*vp*