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

\+ W.P.(C) 7460/2024 & CM APPL. 31023/2024 (Interim Stay)

MITSUBISHI ELECTRIC INDIA PRIVATE LIMITED .....Petitioner

Through: Mr. Rajat Bose and Mr. Ankit Sachdeva, Advs.

versus

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

Through: Mr. Shubham Tyagi, Sr. SC for R-1 and R-2.
Mr. Rajeev Aggarwal, ASC with Mr. Shubham Goel, Adv. for R-3 & R-4.

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA
HON'BLE MR. JUSTICE DHARMESH SHARMA

O R D E R

% **25.11.2024**

1. This writ petition has been preferred impugning the order dated 26 April 2024 pertaining to the tax period of July 2018 to March 2019. In terms thereof, the respondents have proceeded to conclude and finalize an exercise referable to Section 73 of the Central Goods and Services Tax Act, 2017.

2. From the facts which stand disclosed on the record, we gather that the respondents had initiated a special audit in respect of the affairs of the petitioner. Upon conclusion of that audit, the petitioner submitted a detailed response raising various preliminary objections and denying the additional tax demands which were raised.

3. This was followed by the issuance of a Show Cause Notice ["**SCN**"] of 20 January 2024 where it was alleged as follows: -

> "And whereas, the reply / response of the Taxpayer of Special Audit Report has been found incomplete / inconclusive."

4. The petitioner despite the cryptic recital in the SCN and which has merely alleged the taxpayers' response to the audit report had been found to be "incomplete/inconclusive", filed a detailed reply dated 27 February 2024 and which was supplemented by a further reply of 23 April 2024.

5. However, the respondents have ultimately and in terms of the order impugned before us rejected those objections by observing as follows: -

"**GOVT. OF NCT OF DELHI**

DEPARTMENT OF TRADE & TAXES

OFFICE OF THE GST OFFICER, WARD-202

VYAPARBHAWAN, IPESTATE, NEW DELHI-110002

F.No.KCS/W-202/2023-24/546 Dated 26/4/24

Order (AnnexuretoDRC-07)

(u/s73(9) of CGST/DGSTAct,2017)

Tax Period: July 2018 to March 2019

Whereas, SCN/ DRC-1 [See Rule 100(2) & 142(1)(a)] was issued alongwith complete calculation of Tax// interest liabilities of the Taxpayer under Section 73 of CGST / DGST Act & Rules, 2017, on account of the Special Audit conducted by M/s M.K. AGGARWAL & CO. authorized Chartered accountant/Cost accountant under Section 66 of CGST/DGST Act, 2017 on the basis of documents/information available on GSTN portal and provided by the Tax Payer M/S MITSUBISHI ELECTRIC INDIA PRIVATE LIMITED, GSTIN 07AAGCM7782A1ZF. On the basis of the observation of the Special Audit the above said SCN has been issued to the taxpayer.

And whereas, the Taxpayer was directed to provide reply/details of Tax/lnterest amount paid in Form DRC-06 within (30) days from the date of the receipt of the notice.

And whereas, it is noticed that the Taxpayer has failed to deposit Tax/lnterest amount through DRC-03 or provide any plausible explanation regarding non-deposit of the Tax/lnterest amount within stipulated time.

And whereas, the Taxpayer was allowed opportunity to explain Tax deficiencies during Personal Hearing before Proper Officer on the given date and time.

Further, another opportunity to submit reply and observing Principles of natural justice, opportunity for Personal Hearing, as per provision of Section 75(4) CGST/DGST Act, was also provided to the taxpayer by issuing **"REMINDER'*** through the GST portal.

And whereas, Sh. Nikhil Gupta, CA appeared on the behalf of the firm on 23/04/2024 and submitted their explanation that is already mentioned in the reply filed by the taxpayer.

<u>The undersigned has gone through the reply of the taxpayer and found there is no substantial fact to counter the observation of the auditor who has conducted Special Audit under section 66 of GST Act.</u>

<u>And whereas, the undersigned with the consider opinion that the observations/facts derived during the course of audit must be confirmed.</u>

<u>And whereas, further as per Section 73(7) Notice of tax and interest is to be given while Section73(9) prescribes for imposition of penalty equivalent to 10% of tax or Rs.10000/- whichever is higher in case reply is not found to be satisfactory.</u>

<u>Accordingly, a demand is being created towards Tax /Interest amount already confirmed through SCN/ DRC-01(Copy attached) in accordance with the provisions of CGST / DGST Act & Rules, 2017. The said Tax/interest amount is required to be deposited within 30 days of issuance of this demand order failing which recovery proceedings shall be initiated as per relevant provisions of CGST/SGST Act, 2017</u>."

6. As is *ex facie* apparent, the order impugned is wholly unreasoned and fails to engage with or deal with the various objections which had been urged by the petitioner in respect of the audit findings as well as the proposed additions.

7. Faced with the aforesaid, learned counsel appearing for the

respondents stated that rather than the matter being retained on our board, the ends of justice would warrant the matter being remitted to the Goods and Service Tax ["**GST**"] Officer concerned for examining the matter afresh.

8. Accordingly, we allow the instant writ petition and quash the impugned order of 26 April 2024.

9. It shall consequently be open to the GST Officer to proceed to undertake a fresh consideration of the SCN as well as the reply which was submitted by the writ petitioners. All contentions of respective parties on merits are kept open.

YASHWANT VARMA, J

DHARMESH SHARMA, J

NOVEMBER 25, 2024/gunn