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

% Date of decision: 28.05.2024

\+ W.P.(C) 7784/2024

MANPOWER GROUP SERVICES INDIA PVT LTD ..... Petitioner

versus

SALES TAX OFFICER CLASS II AVATO WARD 01 ZONE I DELHI 110002 .... Respondents

Advocates who appeared in this case:

For the Petitioner: Mr. Harish Bindumadhavan, Ms Priyanka Rathi, Mr. Ashwini Chandrasekaran & Ms. Shubhangi Gupta, Advocates.

For the Respondents: Mr. Rajeev Aggarwal, ASC

CORAM:-
HON'BLE MR. JUSTICE SANJEEV SACHDEVA
HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

1. Petitioner impugns order dated 30.04.2024 whereby the impugned Show Cause Notice dated 19.12.2024 proposing a demand of Rs. 10,04,94,110.00/- 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. 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 Writ Petition W.P(C) 4700/2024 on the ground that the summary notice issued was vague and merely on the risk of availment of excess ITC by the Petitioner on account of mismatch in GSTR-3B/9 and GTR-2A.

4. He further submits that the said petition was disposed off and direction was given to the Petitioner to submit a response and appear before Respondent on April 15, 2024 for the adjudication of summary notice.

5. Pursuant to the direction, Petitioner filed detailed reply dated 18.04.2024 and an additional reply dated 24.04.2024, however, the impugned order dated 30.04.2024 does not take into consideration the reply submitted by the Petitioner and is a cryptic order.

6. Perusal of the Show Cause Notice dated 19.01.2024 shows that the Department has issued the said notice on the audit observation. The said observation states " *there was a mismatch of Rs. 292394259 when ITC availed in GSTR 3B and GSTR9 Table 8C compared with the ITC available in GSTR 2A returns. **** To examine the correctness of ITC availed after considering subsequent year's adjustment Table 8D of GSTR9 was considered. The negative figures in GSTR9 Table 8D indicates that there is a risk of ITC being availed more than was available. On checking said table audit found that taxpayer availed*

ITC of Rs. 292938168 more than that was available during the year 2018-21." To the said observation, a detailed reply was furnished by the Petitioner.

7. The impugned order, however, after recording the narration records that the reply uploaded by the taxpayer is not satisfactory. It states that "*And whereas the taxpayer has filed the reply in DRC-06, along with detailed reply and supportive documents. The same has been examined in light of the clarification submitted along with attachment/annexure. The taxpayer has filed the reply is not satisfactory and the relevant/supporting documents not furnished by the taxpayer. Hence, the demand is still stand. Further, the audit observation reference #3(085-1156162) dated 02.01.2024. Accordingly, a notice was issued pertaining to NIL/exempt supplies was reversed during the Financial Year 2018-19 against short reversed of ITC of Rs.22737765/-. During the examined of the DRC - 01 dated 08.12.2023 it has been found that the said demand is already covered in this DRC-01. Accordingly, DRC-01 vide Reference No. ZD070424068786X dated 30.04.2021 has been withdrawn. Furthermore, the rest observation of audit concluded m DRC-01 vide reference no. ZD070424068578Y dated 30.04.2024."* The Proper Officer has opined that the reply is not satisfactory and relevant/supporting document not furnished.

8. The observation in the impugned order dated 30.04.2024 is not

sustainable for the reasons that the reply dated 18.04.2024 and 24.04.2024 filed by the Petitioner are detailed replies with supporting documents. Proper Officer had to at least consider the reply on merits and then form an opinion. He merely held that the reply is not satisfactory and relevant/supporting documents not furnished which ex-facie shows that Proper Officer has not applied his mind to the reply submitted by the petitioner.

9. As per the petitioner reference of an audit observation in the impugned order is also erroneous for the reason that there was no audit conducted of the petitioner in terms of Section 65 of Central Goods & Services Tax Act, 2017 and the reference of an audit observations appears to be cryptic on account of an audit which was conducted on the GST Department itself.

10. In view of the above, the impugned order dated 30.04.2024 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

TUSHAR RAO GEDELA, J

MAY 28, 2024/*sk*