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* IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: 28.05.2024

\+ W.P.(C) 7804/2024 & CM APPL. 32349-350/2024

DELHI SOCCER PVT. LTD. ..... Petitioner

versus

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

<u>Advocates who appeared in this case:</u>

For the Petitioner: Mr. Robin Ratnakar David, Mr. Dhiraj Abraham Philip, Mr. Abhinav Jaganath and Mr. Febin M. Varghese, Advocates

For the Respondents: Mr. Ajay Jain, SPC with Mr. M.N. Mishra, Ms. Bijay Laxmi, Mr. Kirshna Sharma and Ms. Anjali Sharma, Advocates
Mr. Harpreet Singh, SSC with Mr. Rabindra Prasad Sinha, Mr. Chander Kiran, Mr. Pawan Kumar, Mr. Sameer Gosain, Advocates for R-2
Mr. Rajeev Aggarwal, ASC with Mr. Prateek Badhwar, Ms. Shaguftha H. Badhwar and Ms. Samridhi Vats, Advocates

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

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

1. Petitioner impugns order dated 19.12.2023 whereby the impugned Show Cause Notice dated 22.09.2023 proposing a demand of Rs. 10,99,32,156.00/- 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 the petitioner submits that when petitioner was issued Show Cause Notice under Section 73 of the Act, petitioner was already facing proceeding under Section 61 of the Act and the said proceedings under Section 61 of the Act culminated as Form GST ASMT-12 was issued whereby the justification provided by the Petitioner were accepted. He further submits that Petitioner was under the impression that no further action will be taken against the petitioner and that the proceedings under Section 73 of the Act has also been closed, and thus petitioner did not file a reply. He further prays for an opportunity to file a reply.

4. Perusal of the Show Cause Notice dated 22.09.2023 shows that the Department has raised grounds under separate headings i.e., excess claim of Input Tax Credit ["ITC"]; scrutiny of ITC availed;

scrutiny of ITC reversals; ITC to be reversed on non-business transactions & exempt supplies; under declaration of ineligible ITC and ITC claimed from cancelled dealers, return defaulters and tax nonpayers.

5. Clearly, petitioner has made out a case that Petitioner was under the impression that the proceedings under Section 73 of the Act had been closed, since the proceedings under Section 61 of the Act had culminated because of which petitioner did not file a reply.

6. Keeping in view the peculiar facts of the present case and since the only reason for passing the impugned order is that petitioner had not filed any reply/explanation, one opportunity needs to be granted to the petitioner to respond to the Show Cause Notice. The matter is liable to be remitted to the Proper Officer for re-adjudication. Accordingly, the impugned order dated 19.12.2023 is set aside.

7. Petitioner may file a further reply to the Show Cause Notice within four weeks 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.

8. 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.

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

10. Petition is disposed of in the above terms.

SANJEEV SACHDEVA, J

MAY 28, 2024 **TUSHAR RAO GEDELA, J**
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