2024:DHC:4645-DB

$~37

* IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: 29.05.2024

\+ W.P.(C) 8019/2024 & CM APPL. 32988/2024

ORIENTAL TRIMEX EXPORT PVT. LTD. ..... Petitioner

versus

COMMISSIONER OF DELHI GOODS AND SERVICES TAX & ANR. ..... Respondents

Advocates who appeared in this case:

For the Petitioner: Mr. Rajesh Mahna, Mr. Ramanand Roy, Mr. Mayank Kouts, Mr. Shiva Narang and Mr. Samhir Chattarat, Advocates

For the Respondents: Mr. Rajeev Aggarwal, ASC with Mr. Prateek Badhwar, Ms. Shaguftha H. Badhwar, Ms. Samridhi Vats, Advocates.

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

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

1. Petitioner impugns order dated 29.04.2024 whereby the Show Cause Notice dated 02.12.2023 proposing a demand of Rs. 3,11,54,338.00/- 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 15.12.2023. He submits that a reminder notice was issued to the Petitioner on 04.03.2024 which was also duly replied to by the Petitioner on 02.04.2024. However, the impugned order dated 29.04.2024 does not take into consideration the reply submitted by the Petitioner and is a cryptic order.

4. Perusal of the Show Cause Notice dated 02.12.2023 shows that the Department has raised grounds under separate headings i.e., excess claim of Input Tax Credit ["ITC"]: Scrutiny of ITC availed; and ITC claimed from cancelled dealers, return defaulters & 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, however, after recording the narration merely records that the tax payer has submitted incomplete supporting documents on the GST Portal in support of availing the benefit of

cancelled dealer. It states that *"In response to the SCN issued to the taxpayer to submit reply/explanation alongwith the relevant documents, it has been observed that the taxpayer has submitted the supporting incomplete documents on GST Portal in support of availing the benefit of cancelled dealer. Hence the Proper Officer is left with no other option but to proceed for DRC-07against the taxpayer with the direction to deposit the same at earliest. Now as per GST Act, 2017 DRC-07 is hereby issued."* The Proper Officer has opined that incomplete supporting documents have been submitted on the GST Portal in support of availing the benefit of cancelled dealer.

6. The observation in the impugned order dated 29.04.2024 is not sustainable for the reasons that the reply dated 15.12.2023 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 that the tax payer has submitted incomplete supporting documents on the GST Portal in support of availing the benefit of cancelled dealer which ex-facie shows that the Proper Officer has not applied his mind to the reply submitted by the petitioner.

7. 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.

8. In view of the above, the impugned order dated 29.04.2024 cannot be sustained and is set aside. The Show Cause Notice is remitted to the Proper Officer for re-adjudication.

9. 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.

10. 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.

SANJEEV SACHDEVA, J

MAY 29, 2024 **RAVINDER DUDEJA, J**
'rs'