$~63

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

\+ W.P.(C) 9310/2024

ABBHISHEK TUBES LIMITED THROUGH
ITS DIRECTOR NIPUN BHARDWAJ .....Petitioner

Through: Mr A.K. Babbar, Mr Ankur Sethi and Mr Bharat Tirpathi, Advocates.

versus

GOVT OF NCT OF DELHI THROUGH
CHIEF SECRETARY & ORS. .....Respondents

Through: Mr Udit Malik, ASC (Civil) for GNCTD with Mr Vishal Chanda, Advocates for R-1 to 3.
Ms Avshreya Pratap Singh Rudy, SPC with Mr Hussain Adil Taqvi and Ms Usha Jamnal, Advocates for R-4.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU
HON'BLE MR. JUSTICE SACHIN DATTA

O R D E R

% 10.07.2024

CM APPL. 38131/2024

1. Exemption is allowed, subject to all just exceptions.

2. The application stands disposed of.

W.P.(C) 9310/2024 and CM APPL. 38130/2024

3. Issue notice.

4. The learned counsel appearing for the respondents accept notice.

5. The petitioner has filed the present petition, *inter alia*, impugning an order dated 30.12.2023 (hereafter *the impugned order*) passed under Section 73 of the Central Goods and Services Tax Act, 2017/State Goods and Services Tax Act, 2017 (CGST Act and SGST Act respectively), whereby

an aggregate demand of ₹9,02,77,804/- [CGST ₹4,51,38,902/- including interest and SGST ₹4,51,38,902/- including interest] has been raised.

6. The petitioner also impugns a notice dated 31.03.2023 issued under Section 168A of the CGST Act, extending the time for making an order under Section 73 of the CGST Act.

7. The learned counsel for the petitioner submits that the impugned order is unreasoned and completely ignores the reply furnished by the petitioner.

8. The Annexure to the impugned order notes that the petitioner had furnished its reply to the Show Cause Notice dated 23.09.2023 (hereafter *the SCN*) but the same was not found to be satisfactory. However, no specific reason has been provided as to why the petitioner's reply was not accepted.

9. The petitioner was issued the SCN which called upon the petitioner to show cause why the demand of ₹9,02,77,804/- not be raised. It was alleged that excess input tax credit (ITC) had been availed by the petitioner. The SCN also referred Section 16(2)(c) of the CGST Act, and stated that a registered taxpayer is entitled to take credit for ITC on supply of goods and services subject to the condition that the tax charged in respect of such supplies has, in fact, been paid to the Government. It was stated that the petitioner had availed of ITC in respect of supplies from taxpayers whose registrations were cancelled before the date of the invoices.

10. The petitioner responded to the SCN raising several contentions, *inter alia*, stating that supplies were received from suppliers who were registered with the Department at the time when the transactions were entered into with them. The petitioner also referred to various decisions in support of his contention that it was entitled to avail of the ITC and has rightly availed the same.

11. As noted above, the impugned order does not specify any reason for rejecting the petitioner's contention. We find merit in the petitioner's contention that the impugned order is an unreasoned order. It, therefore, is unsustainable and is liable to be set aside.

12. In view of the above, the present petition is allowed and the impugned order is set aside. The concerned officer is directed to consider the petitioner's response to the SCN and decide afresh within a period of eight weeks from date after affording the petitioner an opportunity to be heard.

13. The petition is allowed in the aforesaid terms. All pending applications are disposed of.

14. It is clarified that this order would not preclude the petitioner from challenging the notification issued under Section 168A of the CGST Act at a later date, if necessary. All contentions of the parties are reserved.

VIBHU BAKHRU, J

SACHIN DATTA, J

JULY 10, 2024
RK