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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision : 15.07.2024

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W.P.(C) 9536/2024, CM APPL.39085/2024 (Exemption),
CM APPL. 39086/2024 (Stay)

M/S APN SALES AND MARKETING

.....Petitioner

Through: Mr. Pranay Jain, Advocate and Mr.
Karan Singh, Advocate.

versus

UNION OF INDIA & ANR.

.....Respondents

Through: Ms. Neha Rastogi, SPC along with
Mr. Animesh Rastogi and Mr. Vibhu
Singh, Advocates for R-1.
Mr. Rajeev Aggarwal, Advocate for
R-2.**CORAM:****HON'BLE MR. JUSTICE VIBHU BAKHRU****HON'BLE MR. JUSTICE SACHIN DATTA****VIBHU BAKHRU, J. (ORAL)**

1. Issue notice.
2. The learned counsel for the respondents accepts notice.
3. The petitioner has filed the present petition impugning the order dated 29.12.2023 (hereafter *the impugned order*) passed by the Adjudicating Authority under Section 73 of the Central Goods and Services Tax Act, 2017 (hereafter *the CGST Act*) and the Delhi Goods and Services Tax Act, 2017 (hereafter *the DGST Act*), whereby, the demand of ₹18,30,522/- has been raised on account of tax for the period July, 2017 to March, 2018 along



with interest and penalty.

4. The impugned order was passed pursuant to the show cause notice dated 26.09.2023 (hereafter *the impugned SCN*), whereby, the petitioner was called upon to show cause why a demand for tax aggregating ₹17,43,356/- along with interest and applicable penalty not be raised. The attachment to the impugned SCN states that the petitioner's GST returns (GSTR-09) for the financial year 2017-18 were examined, and on such examination, it was found that the petitioner had not correctly disclosed his tax liability. The attachment also sets out the allegation that the petitioner had availed excess Input Tax Credit (hereafter *ITC*).

5. The impugned SCN referred to Section 16(2)(c) of the CGST Act, which posits that registered persons are entitled to avail ITC on supply of goods or services subject to the condition that the tax charged on such supply has been paid to the Government either in cash or through utilization of admissible ITC. The impugned SCN alleged that the taxpayer had not correctly availed ITC on the inward supplies on re-conciliation of the turnovers reflected in the petitioner's returns (GSTR-09).

6. The impugned SCN includes a tabular statement, which indicates the reason for alleging that the petitioner had incorrectly availed ITC as: 'supplier registration cancelled before date of invoice'. The annexure to the impugned SCN further indicates that the proposed demand was on the basis that the petitioner had availed supplies from a dealer namely 'Modern Traders' during the month of March, 2018. However, the registration of the said dealer was cancelled with effect from 01.07.2017.

7. The petitioner responded to the said impugned SCN on 23.11.2023



enclosing therewith invoices from the dealer in question (Modern Traders); the ledger amount of the concerned dealer maintained in the books of the petitioner; and the details of the payments made to the said supplier.

8. It appears that the petitioner is being mulcted with the tax liability on account of the GST registration of one of its suppliers (Modern Traders) being cancelled with retrospective effect. The annexure to the impugned order does not set out any reasons for rejecting the petitioner's claim that it is a *bona fide* purchaser and it had purchased the goods from the dealer/supplier (Modern Traders) after payment of taxes. The impugned order also does not indicate that the supplier in question (Modern Traders) has not deposited the tax due on the supplies made to the petitioner, which was one of the allegations made in the impugned SCN.

9. The impugned order is unreasoned and the only ground for rejecting the petitioner's response to the impugned SCN is that the same "has not been found satisfactory" and the petitioner has not been able to submit "substantial proof in support of his reply".

10. Mr. Aggarwal submits that in terms of Section 16(2)(b) of the CGST Act, the petitioner can avail ITC only if the goods have been received. He submits that the petitioner has been unable to furnish proof of receipt of goods and therefore, this may be a case of 'Good-less invoices'. He submits that it was necessary for the petitioner to submit the e-way bills for the supplies received, which would establish that the petitioner had received the same. But the petitioner had failed to prove the receipt of supplies against which it had availed ITC.

11. The aforesaid contention is clearly unmerited as the impugned SCN



did not allege that the petitioner had not received the goods from the dealer in question. The impugned SCN is premised on Section 16(2)(c) of the CGST/DGST Act which, according to the Revenue, disentitles a taxpayer from availing ITC in respect of supplies, if the actual tax on the said supplies has not been deposited by the supplier. And, the impugned order does not indicate that the Adjudicating Officer had finally concluded that the dealer in question (Modern Traders) had not paid the taxes due on the supplies made to the petitioner.

12. Although, the petitioner has a remedy of preferring an appeal against the impugned order, considering that the impugned order is unreasoned, in the peculiar facts, we do not consider it apposite to relegate the petitioner to avail the remedy of an appeal.

13. The impugned order is set aside. The matter is remanded to the Adjudicating Officer to decide afresh in accordance with law after affording the petitioner an opportunity to be heard.

14. The petitioner is also at liberty to furnish such further documents including documents to substantiate that it had, in fact, received the supply from the named supplier (Modern Traders) during the relevant period or any other material that the petitioner considers relevant. This is considering the allegation that the invoices produced by the petitioner are “Good-less invoices”, that is, no goods had been supplied by the supplier against those invoices during the relevant tax period (Financial Year 2017-18).

15. The petitioner has also challenged the notification dated 31.03.2023 issued under Section 168A of the CGST Act. It is clarified that we have not examined that question and disposal of the present petition would not close



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the petitioner's right to agitate the same, at a later stage, if necessary.

16. The present petition is disposed of in the aforesaid terms. Pending applications are also disposed of.

VIBHU BAKHRU, J

SACHIN DATTA, J

JULY 15, 2024/ *r, dn*