2024:DHC:5502-DB

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

% *Date of Decision : 26.07.2024*

\+ **W.P.(C) 10288/2024 & CM APPL. 42095-42096/2024**

M/S SHREE PAWAN TRADERS THROUGH LEGAL HEIR OF PROPRIETOR MAHABIR PRASAD KHANDAL .....Petitioner

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

versus

UNION OF INDIA & ANR. .....Respondents

Through: Mr.Asheesh Jain, CGSC and Mr.Gaurav Kumar, Advocate for R1/UOI.

Mr.Udit Malik, ASC and Mr.Vishal Chanda, Advocate for GNCTD/R2.

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 Show Cause Notice dated 30.09.2023 (hereafter *the impugned SCN*) issued under Section 73 of the Central Goods and Services Tax Act, 2017 (hereafter *the*

CGST Act)/ the Delhi Goods and Services Tax Act, 2017 (hereafter *the DGST Act*) issued to her deceased husband. The petitioner also assails the order dated 31.12.2023 (hereafter *the impugned order*) passed pursuant to the impugned SCN.

4. In addition, the petitioner impugns the Notification No.9/2023-Central Tax dated 31.03.2023 (hereafter *the impugned Notification*), whereby the time for passing an order under Section 73(9) of the CGST Act in respect of the financial years from 2017-18 to 2019-20 was extended.

5. The Adjudicating Authority had issued the impugned SCN under Section 73 of the CGST Act/the *DGST Act* in respect of the tax period from July 2017 to March 2018 proposing a demand aggregating to an amount of ₹29,31,73,600/- including the interest.

6. The tax payer has since expired and therefore, his widow (petitioner in the present case) filed the reply to the impugned SCN informing the Adjudicating Authority that her husband (late Mahabir Prasad Khandal) had expired on 04.05.2021. She also forwarded the copy of his death certificate. She informed the Adjudicating Authority that the Goods and Services Tax (GST) registration of her deceased husband has since been cancelled. Additionally, she filed a detailed reply as to the allegations made in the impugned SCN. She claimed that the concern of her deceased husband had fully discharged the tax liability quantified at ₹5,38,282/- and carried forward the balance of ₹21,276/- in the electronic credit ledger. She also contended that the calculation of tax of under Rule 42 and 43 of the Central Goods and Services Tax Rules, 2017 for the period in question was

erroneous as her husband was maintaining separate account in respect of taxable items and non-taxable items.

7. She explained that her husband was entitled to avail the Input Tax Credit (ITC) in respect of the supplies from Shri Krishna Enterprises as on the date of the supplies, the registration of said supplier was active and the GST portal indicated that the tax on such supplies was paid.

8. It is apparent from the plain reading of the impugned order that the Adjudicating Authority has not considered any of the contentions advanced by the petitioner. The only reason provided in the impugned order for confirming the demand and rejecting the petitioner's contentions reads as under: -

> "Now, since no proper reply/explanation have been received from the Taxpayer despite sufficient and repeated opportunities, which indicate that the Taxpayer has nothing to say in the matter"

9. Plainly, the impugned order is an unreasoned order and therefore, cannot be sustained.

10. In view of the above, we consider it apposite to set aside the impugned order and remand the matter to the Adjudicating Authority to consider afresh after affording an opportunity to the petitioner of being heard. It is so directed.

11. The learned counsel for the petitioner does not press the challenge to the impugned Notification at this stage. Therefore, no orders are required to be passed in that regard.

12. The petition is disposed of in the aforesaid terms. Pending applications also stand disposed of.

VIBHU BAKHRU, J

SACHIN DATTA, J

JULY 26, 2024

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<u>*Click here to check corrigendum, if any*</u>