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

% *Date of Decision : 29.07.2024*

\+ **W.P.(C) 10374/2024**

CHILD EDUCATION SOCIETY .....Petitioner
Through: Mr.Vineet Bhatia, Mr Bipin Punia, Mr.Keshav Garg, Advocates.

versus

UNION OF INDIA AND ORS. .....Respondents
Through: Mr.Udit Malik, ASC and Mr.Vishal Chanda, Advocate for GNCTD.

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, *inter alia,* impugning orders dated 09.03.2024 and 28.04.2024 (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*).

4. The said orders were passed pursuant to the Show Cause Notice dated 09.12.2023 (hereafter *the impugned SCN*) calling upon the petitioner to

show cause as to why the demand of ₹12,03,494/- including the interest and penalty be not confirmed. The demand was proposed on the basis of an allegation that there was difference of ₹4,29,564/- in the net tax as reflected in the returns filed by the petitioner. It was also alleged that the petitioner had claimed excess Input Tax Credit (hereafter *ITC*) for the period in question (Financial Year 2018-19). The registration of one supplier (M/s Nath Motors Private Limited) from whom the petitioner had availed the supplies in the month of September, 2018 had been cancelled with retrospective effect from 01.07.2017. The petitioner had allegedly availed ITC in respect of supplies from the said supplier.

5. The petitioner responded to the impugned SCN. It claimed that it had paid the tax which was the subject of the proposed demand and had also paid the interest on the same, therefore, no further demand could be raised.

6. In respect of the allegations regarding excess ITC, the petitioner clarified that it had not availed any ITC from the supplier in question during the relevant period.

7. It is relevant to note that the tabular statement set out in the impugned SCN also indicates that the petitioner had not discharged its liability in respect of the period by availing ITC.

8. It is apparent that the adjudicating authority has not considered the reply to the impugned SCN submitted by the petitioner and has confirmed the demand as proposed, by the impugned order.

9. The impugned order does not indicate any reason as to why the reply

of petitioner – that it had paid the subject tax with interest and had not availed ITC – was rejected. The only reason for rejecting the response of the petitioner to the impugned SCN reads as: -

> "And whereas, the taxpayer had filed their objections/reply in DRC-06.
>
> However, on scrutiny of the same, it has been observed that the same is not acceptable being incomplete, not duly supported by adequate documents, without proper justification and thus unable to clarify the issue.
>
> Since, the reply filed is not clear and satisfactory, the demand of tax, interest and penalty conveyed via DRC-01 is confirmed, with the direction to deposit the amount mentioned in DRC-07 within three months from the date of receipt of this demand notice."

10. It is apparent from the above that the impugned order is not informed by reason.

11. We, accordingly, set aside the impugned order and remand the matter to the adjudicating authority to consider the petitioner's response to the impugned SCN and decide afresh after affording an opportunity of hearing to the petitioner.

12. The petitioner has also challenged the notification extending the time for making the order under Section 73(9) of the CGST Act being Notification No.9/2023 - Central Tax; and Notification No.56/2023 - Central Tax as *ultra vires* to the provisions of Section 168A of the CGST Act. However, the learned counsel for the petitioner does not seek to press the said challenge in this petition while reserving its rights to do so at later

stage, if necessary.

13. In this view, no orders are required to be passed in respect of the challenge of the petitioner to the aforementioned notifications.

14. The petitioner also does not press for its challenge to several orders regarding the constitution of the appellate authority at this stage. No orders are required in that regard as well.

15. The petition is disposed of in the aforesaid terms.

VIBHU BAKHRU, J

SACHIN DATTA, J

JULY 29, 2024
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Click here to check corrigendum, if any