$~53

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

\+ W.P.(C) 10497/2024 CM APPL. 43154/2024 CM APPL. 43155/2024

HANUMAN INDUSTRIAL CORPORATION THROUGH ITS PROPRIETOR PRASHANT BANSAL .....Petitioner

Through: Mr. M.A. Ansari and Ms. Tabbassum Firdause, Advs.

versus

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

Through: Mr. Rajeev Aggarwal, ASC and Mr. Shubham Goel, Adv. for R-2 and 3.

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

O R D E R

% **31.07.2024**

1. Issue notice.

2. Learned counsel for the respondents accept notice.

3. The petitioner has filed the present petition impugning the order dated 20.04.2024 (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*) /the Delhi Goods and Services Tax Act, 2017 (hereafter *the DGST Act*), whereby an aggregate demand of ₹46,27,512/- was confirmed on account of excess utilisation of the Input Tax Credit (hereafter *ITC*) as well as interest and penalty.

4. The impugned order was passed pursuant to the Show Cause Notice dated 24.12.2023 (hereafter *the SCN*), whereby the petitioner was called upon to show cause as to why the proposed demand not be confirmed.

5. The SCN is the usual template followed by the assessing authorities in various cases. The SCN referred to Section 16(2)(c) of the CGST Act which stipulates that a person shall be entitled to avail the ITC on supply of goods and services, subject to the condition that the tax charged in respect of such supply has been paid to the Government. It is alleged that the petitioner has availed the ITC from suppliers who had not paid the tax on their outward supplies. The SCN also mentioned the names of two tax payers whose registrations were cancelled with retrospective effect.

6. The petitioner had responded to the SCN stating that the petitioner had received the supplies from the suppliers in question and had paid the entire amount due to them. It was asserted that the said suppliers were duly registered with the GST authorities at the material time and the GST portal reflected that they had paid the taxes on the supplies.

7. The impugned order does not consider the said contention and has mechanically confirmed the liability on the ground that the petitioner had availed the ITC from "cancelled dealers, return defaulters & tax non payers" without specifying the dealers that had not paid taxes or had not filed returns at the material time.

8. There is no finding that the suppliers from whom the petitioner had availed supplies during the material time had not discharged their tax liability by depositing tax with the Government either in cash or by availing ITCs, as set out in Section 16(2)(c) of the CGST Act.

9. Section 16(1) and Section 16(2)(c) of the CGST Act are set out below:

> "**16. Eligibility and conditions for taking input tax credit.—** (1) Every registered person shall, subject to such conditions and restrictions as may be prescribed and in the manner specified in section 49, be entitled to take

> credit of input tax charged on any supply of goods or services or both to him which are used or intended to be used in the course or furtherance of his business and the said amount shall be credited to the electronic credit ledger of such person.
>
> (2) Notwithstanding anything contained in this section, no registered person shall be entitled to the credit of any input tax in respect of any supply of goods or services or both to him unless,—
>
> (a)...
>
> (b)…
>
> (c) subject to the provisions of section 41, the tax charged in respect of such supply has been actually paid to the Government, either in cash or through utilisation of input tax credit admissible in respect of the said supply; and
>
> (d)...."

10. As apparent from the plain language of Section 16(2)(c) of the CGST Act, the ITC would be available only in respect of such supplies where the tax is actually being paid to the government, either in cash or through utilisation of the ITC admissible in respect of the said supply. There is no specific finding in the impugned order that the suppliers, from whom the petitioner had availed supplies, have not paid the tax in respect of their outward supplies to the petitioner, either in cash or by utilisation of admissible liability.

11. Mr. Aggarwal, who appears for the respondents on advance notice submits that the matter be remanded to the Adjudicating Authority for consideration afresh.

12. In view of the said submission, we set aside the impugned order and remand the matter to the concerned Adjudicating Authority.

13. The Adjudicating Authority shall decide afresh after affording the petitioner an opportunity of hearing as expeditiously as possible, preferably within a period of eight weeks from date.

14. The present petition is disposed of in the aforesaid terms.

15. All pending applications are also disposed of.

VIBHU BAKHRU, J

SACHIN DATTA, J

JULY 31, 2024
cl