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

\+ W.P.(C) 10520/2024 & CM APPL.43236/2024

BAGGA LINK MOTORS LIMITED .....Petitioner

Through: Mr. Ruchir Bhatia and Mr. Abhishek Anand, Advocates.

versus

COMMISSIONER STATE GOODS AND SERVICES TAX DELHI & ANR. .....Respondents

Through: Mr. Rajeev Aggarwal, ASC along with Mr. Shubham Goel, Advocate for R-1 and R-2.

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 22.04.2024 (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*) / Delhi Goods and Services Tax Act, 2017 (hereafter *the DGST Act*), whereby the Adjudicating Authority confirmed a demand of ₹8,37,39,686/- (Rupees Eight Crores Thirty Seven Lakhs Thirty Nine Thousand Six Hundred and Eighty Six) including interest and penalty.

4. The impugned order was passed pursuant to a Show Cause Notice dated 31.01.2024 (hereafter *the SCN*), whereby the Adjudicating Authority

had proposed to raise a demand on account of non-reversal of Input Tax Credit (ITC) in respect of exempted supplies.

5. The petitioner had responded to the SCN. In addition to referring to the various provisions of the law, the petitioner has also contested the assumption that its outward supplies were exempted from tax. Paras 25, 26 and 27 of the reply furnished by the petitioner are relevant and are set out below:-

> "25. That the Noticee would like to submit that the exempted supply amounting to Rs. 22,18,41,157/- declared under Table 5D of Form GSTR-9 by the Noticee for the disputed period consists of two components i.e., Rs. 12,49,054/- as interest income and remaining amount of Rs.22,05,92,103/ as sale of used motor vehicle under Rule 32(5) of the CGST Rules, 2017. Further, the amount of Rs. 22,05,92,103/- consists of two components i.e., selling price amounting to Rs. 3,60,93,500/- where the selling price is less than or equal to the purchase price and selling price excluding margin value amounting to Rs.18,44,98,603/- where selling price is more than the purchase price, which in fact is not an exempt supply, therefore it does not require reversal under section 17(2) of the CGST Act, 2017.
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> 26. The Noticee would like to advert Section 2(47) of the CGST Act, 2017, the essence of the same is reproduced below: -
>
> *"Exempt supply" means supply of any goods or services or both which attracts*
>
> • *nil rate of tax or*
>
> • *which may be wholly exempt from tax under section 11, or under section 6 of the Integrated Goods and Services Tax Act, and*

> • *includes non-taxable supply.*
>
> 27. On perusal of the above submission, it is crystal clear that ·sales of used motor vehicles amounting to Rs. 22,05,92,103/- under Rule 32(5) of the CGST Rules, 2017 is not an exempted supply. It may be a procedural reporting error, but it can't be considered as an exempt supply under GST by any stretch of imagination therefore no ITC shall liable to be reversed u/s 17(2)."

6. Although, the petitioner has furnished a detailed response to the SCN, the impugned order does not indicate that the same was considered by the Adjudicating Authority. The observations of the Adjudicating Authority in terms of which the petitioner's response has been rejected reads as under :-

> "Observations and conclusion of the assessing authority :
>
> On going through the reply/clarification made by the tax payer it has not been established that the exempted supply is income from sale of old vehicles. Therefore, tax payer is liable to reverse ITC claimed against exempted sale as per Section 17(2) read with Rule 42 of GST Act."

7. It is apparent from the above that the impugned order is unreasoned inasmuch as it does not consider the explanation as provided by the petitioner.

8. Mr. Rajeev Aggarwal, learned counsel appearing for the respondents submits that the matter may be remanded to the Adjudicating Authority for consideration afresh.

9. In view of the above, the impugned order is set aside and the matter is remanded to the Adjudicating Authority for considering afresh.

10. The Adjudicating Authority shall pass an order as expeditiously as possible and in any event, within a period of eight weeks from date after affording the petitioner an opportunity of being heard.

11. The petition is allowed in the aforesaid terms. Pending application is also disposed of.

VIBHU BAKHRU, J

SACHIN DATTA, J

JULY 31, 2024
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