



\$~78

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

+ W.P.(C) 11052/2024 & CM APPL. 45634/2024 (Stay)

DLF HOME DEVELOPERS LIMITED

.....Petitioner

Through: Ms. Kavita Jha, Sr. Advocate along
with Mr. Shammi Kapoor and Ms.
Swati Agarwal, Advocates.

versus

**SALES TAX OFFICER CLASS II AVATO WARD 107 SPECIAL
ZONE 12 DELHI & ANR.**

.....Respondents

Through: Mr. Rajeev Aggarwal, Additional
Standing Counsel along with Mr.
Shubham Goel, Advocate for R-1.
Mr. Harpreet Singh, Senior Standing
Counsel along with Ms. Suhani
Mathur, Mr. Jatin Kumar Gaur and
Mr. Akshay Saxena, Advocates for
R-2.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

HON'BLE MR. JUSTICE SACHIN DATTA

ORDER

04.09.2024

%

1. The petitioner has filed the present petition, *inter alia*, impugning the order dated 30.12.2023 (hereafter *the impugned order*) passed by respondent no.1 to the limited extent that it confirms the demand of ₹28,79,06,786/- including interest and penalty. The said order has been passed under Section 73 of the Central Goods and Services Tax Act, 2017 and the Delhi Goods and Services Tax Act, 2017 in respect of tax period from July 2017 to March 2018. The petitioner has partly accepted the demand raised and is contesting certain demands.

2. The present petition is confined only to the demand in respect of ITC



to be reversed on non-business transactions and exempt supplies. The petitioner's challenge to the said demand is premised on the basis that the Directorate General of GST Intelligence (hereafter *the DGGI*) has also issued a show cause notice dated 02.02.2024 for the tax period 01.07.2017 to 31.03.2021, which also includes the demand proposed on the aforesaid issue. It is the petitioner's case that two authorities cannot proceed simultaneously in respect of the same issue.

3. The impugned order indicates that respondent no.1 is also fully conscious of the same and therefore, it has proceeded to confirm the demand without adjudicating the same. The relevant extract of the impugned order is set out below :-

“.....

On ITC to be reversed on non-business transactions & exempt supplies: The taxpayer has informed that the proceeding under the subject has already been taken up by DGGI (HQ), New Delhi had referred section 6(2)(b) of CGST Act 2017 and stated that parallel proceeding cannot be started. Deputy Director Investigation (INV-DGGI (HQ) New Delhi vide letter no DGGI/INV/GST/2722-2023/INV/o/o/Pr.OGG(HQ)/2028 dated 20.12.2023 DGGI (HQ) has acknowledge the fact. Since the proceeding on the issue at being executed by DGGI (HQ), New Delhi, the demand raised through DRC01 stands as it is.”

4. We find merit in the contention that respondent no.1 cannot adjudicate a demand, which is also the subject matter of other proceedings. Since, the period covered under the impugned order is also subsumed in the show cause notice issued by the DGGI, both the proceedings cannot be carried on simultaneously.

5. Mr. Rajeev Aggarwal, the learned counsel appearing for respondent



no.1 states, on instructions, that the demand, in respect of ITC to be reversed on non-business transactions and exempt supplies, be set aside as the same would be adjudicated by the DGGI.

6. In view of the above, the impugned demand is required to be set aside to the extent as noted above. It is so directed.

7. It is clarified that the concerned Authority shall adjudicate the said issue pursuant to a show cause notice dated 02.02.2024 issued by the DGGI.

8. The present petition is allowed in the aforesaid terms. The pending application is also disposed of.

VIBHU BAKHRU, J

SACHIN DATTA, J

SEPTEMBER 04, 2024

r