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

\+ **<u>W.P.(C) 11345/2024 and CM No.46975/2024</u>**

JITENDRA MISHRA (ERSTWHILE PARTNER OF M/S. PSRJ JEWELLERS) & ANR. .....Petitioners

Through: Mr Puneet Rai, Mr Sanjay Sharma and Ms Srishti Sharma, Advocates.

versus

SALES TAX OFFICER CLASS II/AVATO, WARD 46, ZONE 3, DELHI & ANR. .....Respondents

Through: Mr Udit Malik, ASC (Civil) for GNCTD/R-1 & 2 with Mr Vishal Chanda, Advocate.

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

<u>O R D E R</u>

% **10.09.2024**

<u>CM No.46974/2024</u>

1. Exemption is allowed, subject to all just exceptions.

2. The application stands disposed of.

<u>W.P.(C) 11345/2024 and CM No.46975/2024</u>

3. Issue notice.

4. The learned counsel appearing for the respondents accepts notice.

5. The petitioner has filed the present petition impugning an order dated 28.12.2023 (hereafter *the impugned order*) passed by the adjudicating authority under Section 73 of the Central Goods and Services Tax Act, 2017 /Delhi Goods and Services Tax Act, 2017 for the tax period July 2017 to March 2018.

6. In terms of the impugned order, the demand proposed under the Show

Cause Notice dated 24.09.2023 (hereafter *the impugned SCN*) was confirmed.

7. The impugned SCN had proposed the demand, essentially, on two grounds. First, that there was an excess claim for input tax credit (ITC) as was apparent from the returns available on the portal and the reconciliation turnover in GSTR-9. Second, that the petitioner had availed ITC in respect of supplies from the suppliers, whose GST registration was cancelled retrospectively.

8. The petitioner filed a response to the impugned SCN on 21.10.2023. He submitted that it had claimed ITC as was reflecting in Form GSTR-2A, but the same was not fully reflected in Table-8A of GSTR-9. The petitioner contends that there is a technical error. The petitioner also enclosed therewith the reconciliation statement in support of its contention.

9. Insofar as ITC availed in respect of supplies from the dealers whose registration has been cancelled, the petitioner submitted that the transactions with the said dealers were genuine and they were registered at the material time. The petitioner also stated that ITC was availed on the basis of tax on outward supplies as reflected in the returns filed by the dealers. The petitioner was issued a reminder notice dated 04.12.2023 issued by respondent no.1. Thereafter, the petitioner had filed another reply dated 15.12.2023, which was on similar lines as earlier reply dated 21.10.2023. The impugned order is *ex facie* unreasoned and has not considered any of the submissions made by the petitioner. The adjudicating authority has rejected the reply submitted by the petitioner with the observations that it "*is found to be vague and miserably fails to counter the demands mentioned in DRC-01*". Additionally, the proper officer noted that no invoices,

certificates, or proof of payment had been attached in support of his claim for excess ITC. The petitioner's contention that it had not claimed any excess ITC and the difference was only on account of a technical glitch, was not addressed.

10. Since the impugned order is unreasoned, we consider it apposite to set aside the same on the aforesaid ground. It is so directed.

11. The matter is remanded to the adjudicating authority for considering afresh after affording the petitioner a reasonable opportunity to be heard.

12. The petitioner is also at liberty to file additional documents in support of its contentions, within a period of two weeks from date.

13. The petition is disposed of in the aforesaid terms. The pending application is also disposed of.

VIBHU BAKHRU, J

SACHIN DATTA, J

SEPTEMBER 10, 2024

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Click here to check corrigendum, if any