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

% *Date of Decision : 21.08.2024*

\+ **W.P.(C) 11522/2024 & CM APPL. 47803-04/2024**

MAGICON IMPEX PRIVATE LIMITED
.....Petitioner

Through: Mr Rajesh Mahana, Mr Ramanand Roy, Mr Mayank Kouts, Ms Silky Wadhwa and Mr Shiv Narang, Advocates.

versus

COMMISSIONER OF CENTRAL GOODS AND SERVICE TAX & ORS.
.....Respondents

Through: Mr Anurag Ojha, SSC Mr Subham Kumar, Mr Kumar Abhishek, Advocates.

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

VIBHU BAKHRU, J. (*ORAL*)

1. The petitioner has filed the present petition, *inter alia,* praying as under:-

> "i. Issue a writ of certiorari or any other appropriate writ, order or direction in the nature thereof quashing the repeated audit memos issued on various dated like 11.01.2024, 13.01.2024, 03.07.2024 and 23.07.2024 issued by Respondent No. 3 for being barred by limitation as prescribed under sub-section (4) of section 65 of the Central

Goods and Services Tax Act 2017.

ii. Issue a writ of mandamus or any other appropriate writ, order or direction in the nature thereof directing the Respondent No. 3 to submit the original note sheet wherein the permission of the Commissioner under Section 65 (1) of the CGST Act was granted to carry out the audit of business of the Petitioner for the specific period i.e. 2017-18 to 2019-20 which was later extended to 2020-21.

iii. Issue a writ of certiorari or any other appropriate writ, order or direction in the nature thereof quashing the intimation vide GST DRC-01A dated 27.07.2024 and demand-cum-show cause notice (GST DRC-01) dated 01.08.2024 issued by Respondent No.3 for being issued pursuant to the repeated audit memos covering the same period which are already barred by limitation prescribed under Section 65 (4) of the CGST Act, 2017 and despite the fact that the petitioner has already voluntarily paid the tax liability initially created by the initial audit memo dated 11.08.2023.

iv. Issue a writ of mandamus or any other appropriate writ, order or direction in the nature thereof directing the Respondents not to initiate further proceedings against the demand-cum-show cause notice (GST DRC-01) dated 01.08.2024 for the proceeding against the petitioner has reached finality as the petitioner has already paid the tax liability created by the initial audit memo dated 11.08.2023 and subsequent actions of issuance of audit memos revising the liability of the petitioner are illegal and non-est in terms of Section 65 (4) of the CGST Act, 2017."

2. The petitioner is, essentially, aggrieved by the Show Cause Notice dated 01.08.2024 (hereafter *the impugned SCN*) issued by the adjudicating

authority under Section 74 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*) read with Section 20 of the Integrated Goods and Services Tax Act, 2017 (hereafter *the IGST Act*).

3. The impugned SCN has been issued purportedly pursuant to the finding of the audit conducted under Section 65 of the CGST Act/DGST Act. The petitioner claims that it filed an application for refund of tax for the months of October, 2017; January, 2018; and February, 2018. On 19.12.2019 the petitioner's case was referred to Anti-Evasion Wing to examine and investigate the petition's refund. Thereafter on 27.04.2021, respondent no.3 issued a notice to the petitioner for conducting the audit for the financial years 2017-18 to 2019-20.

4. In terms of the additional notice dated 22.04.2022, the audit period was extended to cover the financial year 2020-21 as well.

5. It is the petitioner's case that pursuant to the said notice, an audit was conducted under Section 65 of the CGST Act/the DGST Act much beyond the period as stipulated under Section 65(4) of the CGST Act /the DGST Act. The petitioner states that it continued to receive the audit memos from time to time indicating that the petitioner was liable to pay certain amounts plus tax and the petitioner has duly discharged the same.

6. The petitioner also objected to the audit memos (dated 11.04.2024 and 03.07.2024) as the same were time barred.

7. The petitioner's grievance regarding the multiple audit memo appears

to be justified. In terms of Section 65(6) of the CGST Act /the DGST Act, the proper officer is required to inform the registered person about the findings of the audit, his rights and obligations and the reasons for such findings. The CGST Act / DGST Act does not provide for issuance of the multiple audit memos determining the liability of a tax payer.

8. In the present case, we find that the audit memos not only indicated the findings of the auditors, but also called upon the petitioner to pay the tax as determined, along with the interest and penalties as applicable.

9. Mr Ojha, the learned counsel appearing on behalf of the respondents has been unable to point out any statutory provision or rule, which contemplates issuance of such demand letters during the course of an audit.

10. Having stated the above, we are unable to accept that the impugned SCN is liable to be quashed for the said reason. Although, the impugned SCN may be premised on the findings of the audit report, the same is within the statutory framework. Any irregularities in issuing the audit memos does not impinge the validity of the impugned SCN.

11. In view of the above, we are unable to accept that the impugned SCN is liable to be set aside at the threshold stage. The petition is, accordingly, disposed of.

12. It is clarified that the petitioner would not be precluded from advancing such contention as advised in response to the impugned SCN. The adjudicating authority shall consider the reply of the petitioner to the impugned SCN, if filed, within a period of three weeks from date and may

pass any order as consider appropriate. It is clarified that all the rights and contentions of both the parties are reserved.

13. The petition stands disposed of in the aforesaid terms. Pending applications also stand disposed of.

VIBHU BAKHRU, J

SACHIN DATTA, J

AUGUST 21, 2024

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Click here to check corrigendum, if any