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

\+ W.P.(C) 11593/2024 CM APPL. 48184/2024 CM APPL. 48185/2024

BHAGIRATH MUTHA AND CO THROUGH ITS PROPRIETOR MR MADANLAL MUTHA .....Petitioner

Through: Mr. Rakesh Kumar, Mr. Praveen Kumar Gambhir and Mr. Dilip Kumar Srivastava, Advs.

versus

COMMISSIONER DELHI GOODS AND SERVICE TAX AND OTHERS .....Respondents

Through: Mr. Rajeev Aggarwal, Addl. SC and Mr. Shubham Kumar, Adv. for R-1 and 2.
Mr. Rakesh Kumar, SPC and Mr. Rahul Kumar Sharma, Adv. for R-3.
Mr. R. Ramachandran, Sr. SC for R-4.
Mr. Harpreet Singh, Sr. SC along with Ms. Suhani Mathur and Mr. Jatin Kumar Gaur, Advs.

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

ORDER

% **22.08.2024**

1. The petitioner has filed the present petition *inter-alia* impugning a Show Cause Notice (hereafter '*SCN*') dated 30.05.2024, issued under Section 73 of the Central Goods and Services Tax Act, 2017 (CGST Act)/Delhi Goods and Services Tax Act, 2017 (DGST Act) and an order dated 03.08.2024 (hereafter '*impugned order*'), passed pursuant to the said SCN.

2. The petitioner has also challenged the *vires* of Notification

No.09/2023-Central Tax dated 31.03.2023 and Notification No.56/2023 dated 28.12.2023 whereby the time limit for passing an order under Section 73(10) of the CGST Act has been extended.

3. The petitioner contends that he did not have any opportunity to contest the SCN as his requests for adjournment of the proceedings were not granted.

4. The petitioner states that on the first occasion, he sought an adjournment as neither the petitioner's Chartered Accountant nor the petitioner was available on the scheduled date of hearing. On the second occasion, the limitation for filing the Income Tax Returns was expiring; therefore, the petitioner's Chartered Accountant was not available. The learned counsel also referred to the reasons for confirming the demand and submits that the impugned order is unsustainable as it is passed on an *ex facie* erroneous premise. He submits that the substantial demand of ₹10,04,175/- is on account of cess, however, the petitioner deals in dry-fruits and no cess is leviable on such goods. He submits that a further demand of ₹7,41,553/- has been raised on account of non-reversal of Input Tax Credit ('ITC') on goods that were exempt. However, the petitioner had not availed any ITC on exempted goods.

5. After some arguments, Mr. Aggarwal, learned counsel for the respondents fairly submits that the petitioner may be granted one more opportunity to file a reply to the SCN.

6. Learned counsel for the petitioner is satisfied with the same and states, on instructions, that he is not pressing the challenge to the Notifications (Notification No.09/2023 dated 31.03.2023 and Notification No.56/2023 dated 28.12.2023).

7. In view of the above, the impugned order is set aside and the matter is remanded to the adjudicating authority for consideration afresh.

8. The petitioner shall be at liberty to file reply to the SCN dated 30.05.2024 within a period of two weeks from date. The adjudicating authority shall consider the same and pass an appropriate order after affording the petitioner an opportunity of hearing.

9. The petition is disposed of in the aforesaid terms.

10. It is clarified that the aforesaid order has been passed in the peculiar circumstances of this case. The same should not be construed as this Court accepting the petitioner's proposition that the impugned order was passed in violation of principles of natural justice.

VIBHU BAKHRU, J

SACHIN DATTA, J

AUGUST 22, 2024/cl