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

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Date of Decision : 10.09.2024+ **W.P.(C) 12459/2024 & CM APPL. 51863/2024****INFINITI RETAIL LIMITED**

.....Petitioner

Through: Mr Prakash Shah, Mr Mihir
Deshmukh, Mr Rajat Mittal and Mr
Suprateek Neogi, Advocates.

versus

UNION OF INDIA & ORS.

.....Respondents

Through: Mr Puneet Yadav, Sr PC and R1/UOI.
Mr Anurag Ojha, Sr SC and Mr
Subham Kumar, Advocate for
R6/CGST West.

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*, impugning the Show Cause Notice dated 01.08.2024 (hereafter *the impugned SCN*) issued 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*).

2. The impugned SCN is premised on an audit conducted under Section 65 of the CGST Act and the DGST Act, for the financial year 2017-18 and 2018-19. The notice for conducting the said audit was issued on 22.04.2021



and the petitioner was called upon to produce all documents as mentioned in the notice. The petitioner claims that it had provided all the documents as required by respondent no.5 (The Deputy Commissioner, CGST Audit-II, New Delhi) during the period from 29.03.2022 to 20.04.2022. The petitioner claims that thereafter it was once again called upon to provide further documents, which it submitted by emails dated 06.05.2022 and 10.05.2022. The petitioner claims that despite providing all documents, respondent no.3 (The Assistant Commissioner, CGST Audit-II, New Delhi) issued reminder letter dated 16.11.2023, which was received by the petitioner through email on 05.01.2024, alleging that the petitioner has not provided any documents as sought for.

3. The petitioner claims that it immediately responded to the said reminder letter and also called upon respondent no.2 (The Commissioner, CGST Audit-II, New Delhi) to drop further proceedings in connection with the audit as the last date for completion of the audit for the financial year 2017-18 had passed. However, the said contention was not addressed. By another notice dated 13.05.2024 respondent no.3 called upon the petitioner to provide further documents pertaining to the financial years 2017-18 to 2020-21. The petitioner once again responded to the said notice by a letter dated 21.05.2024 and stated that it had provided the documents as sought for. The petitioner claims that its authorised representative also visited the office of respondent no.3 on 21.06.2024.

4. The petitioner asserts that respondent no.3 had not issued any notice regarding the discrepancies as provided in the Rule 101(4) of the Central Goods and Services Tax Rules, 2017, yet had proceeded to issue an audit



report dated 04.07.2024 directing the petitioner to pay certain dues including the interest and penalty. The petitioner states that it had submitted its response to the audit memo by its emails dated 09.07.2024 to 13.07.2024. The petitioner also filed detailed reply to the audit memo on 19.07.2024.

5. Thereafter, on 26.07.2024, respondent no.4 issued a corrigendum and imposed additional tax liability in respect of the difference in the input tax credit (ITC) as availed by the petitioner and the purchase register. Thereafter, the adjudicating authority issued the impugned SCN.

6. As noted above, the impugned SCN is premised on the audit report. The petitioner is essentially aggrieved in the manner in which the audit was conducted and contends that its responses have been completely disregarded.

7. *Prima facie*, there does appear to be certain gaps in the communications. The petitioner has been throughout asserting that it had provided all the documents as sought for and on the other hand, the respondents have been issuing reminders to the petitioner to provide such documents.

8. The petitioner seeks to contest the demands as proposed in the impugned SCN and contends that the same are not maintainable.

9. The learned counsel appearing on behalf of the petitioner also submits that the petitioner would be satisfied if the order is passed directing the adjudicating authority to consider the responses to the show cause notices uninfluenced by the observations made in the audit memo or audit report.



10. In view of the above controversy, this Court consider it apposite to direct that the adjudicating authority shall not implicitly rely on the observations made in the audit memo or audit report. The adjudicating authority shall examine the petitioner's response/reply to the impugned SCN and independently take the decision in regard to the proposed demand.

11. The petitioner is also at liberty to file all the documents as considered necessary to contest the demands as proposed under the impugned SCN.

12. In view of the above directions, the petitioner will not be prejudiced by the audit report/audit memo in so far as the adjudication of the impugned SCN is concerned.

13. All rights and contentions of the parties are reserved.

14. The petition is disposed of in view of the above observations. Pending application also stands disposed of.

VIBHU BAKHRU, J

SACHIN DATTA, J

SEPTEMBER 10, 2024

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Click here to check corrigendum, if any