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

% ***Date of Decision: 19.09.2024***

\+ **W.P.(C) 13103/2024 CM APPL. 54766/2024**

GUJARAT CO-OPERATIVE
MILK MARKETING FEDERATION LIMITED .....Petitioner

Through: Mr. V.P. Gupta, Mr. Anuj Bansal and Mr. Anunav Kumar, Advs.

versus

SALES TAX OFFICER CLASS II / AVATO & ANR......Respondents

Through: Mr. Rajeev Aggarwal, ASC alongwith Mr. Shubham Goel, Advocate.

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

VIBHU BAKHRU, J.(Oral)

1. Issue notice.

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

3. The petitioner has filed the present petition impugning an order dated 31.08.2024 (hereafter *the impugned order*) passed by the adjudicating authority under Section 73 of the Central Goods and Services Tax Act, 2017 (hereafter *the CGST Act*)/ Delhi Goods and Services Tax Act, 2017 (hereafter *the DGST Act*) confirming a demand of ₹1,06,52,96,461/- including interest and penalty. The impugned order is passed pursuant to a Show Cause Notice dated 15.05.2024 (hereafter *the SCN*) raising the said demand.

4. It is alleged in the SCN that the petitioner had not declared the

correct tax value in filing its annual return under the FORM GSTR-09. A substantial part of the demand proposedis founded on the allegation that the petitioner had wrongfully availed the input tax credit (hereafter *ITC*) in respect of the exempted supplies.

5. The petitioner responded to the SCN by a letter dated 15.06.2024. The petitioner asserted that it had not claimed any ITC in respect of the exempted supplies. In addition, the petitioner also furnished a reconciliation statement. It is material to note that the petitioner's response to the SCN spans fifteen pages. It is apparent from a plain reading of the impugned order that the response submitted by the petitioner to the SCN has been disregarded. The impugned order rejects the response furnished by the petitioner to various grounds in the following words:-

> "And whereas, the submissions of the taxpayer and explanation of the AR during personal hearing has been considered and after examination of the updated reply, it is found that the reply is lack of supporting document and clarity and thus found not satisfactory.
>
> In view of the above, and after having gone through the final reply filed on the GST portal by the taxpayer in respect of each point, it is observed that the reply filed by the taxpayer is still not comprehensible, conceivable and perspicuous and therefore, the proposed demand mentioned in the Show Cause Notice i.e. conveyed through notice DRC-01 is confirmed."

6. This is yet another case where the adjudicating authority has simply confirmed the demand on the last date before expiry of the period of limitation for passing an order under Section 73 of the CGST Act in respect of the financial year 2019-20.

7. Mr. Aggarwal, learned counsel appearing for the

respondentssubmits that the impugned order may be set aside and the matter be remanded to the adjudicating authority for deciding it afresh.

8. It is relevant to note that remanding a matter to the concerned authority has the effect of providing further time of two years for the adjudicating authority to adjudicate the SCN. In the aforesaid manner the authority haseffectively frustrated the legislative provisions stipulating the period of limitation for adjudicating the assessments.

9. In similar matters [W.P.(C) 10591/2024 being Khemka Aviation Private Limited v. Sales Tax Officer Class II/AVATO Ward 1 & Ors. and connected matters], the respondents had made a statement that if the matter is remanded to the concerned adjudicating authority, the same would be disposed of within a period of six months from date.

10. In the given circumstances, we set aside the impugned order and remand the matter to the adjudicating authority to consider it afresh. We further direct that the adjudicating authority shall complete the adjudication within a period of six months from date after affording the petitioner an opportunity to be heard.

11. It is clarified that if the adjudication is not completed within the aforesaid period, the proceedings shall lapse.

12. The present petition is disposed of in the aforesaid terms.

13. All pending applications are also disposed of.

VIBHU BAKHRU, J

SACHIN DATTA, J

SEPTEMBER 19, 2024
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