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

\+ W.P.(C) 16108/2024 and CM APPL. 67698/2024 (Interim Relief)

M/S D.P. PACKAGING THROUGH ITS PARTNER SH. PARAG GOEL .....Petitioner

Through: Mr. Gaurav Gupta & Mr. Deepanshu Saini, Advs.

versus

UNION OF INDIA & ANR. .....Respondents

Through: Ms. Babita Saini, SPC with Mr. Kapil Dev Yadav, Adv. for R1.

Ms. Mehak Nakra, ASC with Ms. Bhavya Nakra, Ms. Salony & Mr. Mayank, Advs. for R2.

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA
HON'BLE MR. JUSTICE DHARMESH SHARMA

O R D E R

% **21.11.2024**

CM APPL. 67699/2024 (Ex.)

Exemption is allowed, subject to all just exceptions.

The application is disposed of.

W.P.(C) 16108/2024 and CM APPL. 67698/2024 (Interim Relief)

1. The writ petitioner is aggrieved by the final order dated 27 April 2024 passed in terms of Section 73 of the **Central Goods and Services Tax Act, 2017**[1]. Aggrieved by the fact that the order was wholly unreasoned, the petitioner thereafter appears to have moved an

[1] CGST Act

application for rectification. That application has come to be rejected by way of a separate order dated 31 July 2024.

2. The proceedings under Section 73 emanated from a **Show Cause Notice**[2] dated 20 December 2023 and pertained to the tax period of April 2018 to March 2019. On receipt of the aforesaid SCN, the petitioner had submitted a detailed reply dated 19 January 2024 in terms of which the demand as raised was contested. However, the proceedings have thereafter culminated in the passing of a final order dated 27 April 2024 and which stands impugned before us. We deem it apposite to extract the following parts of the final order which has come to be passed:-

"1. Excess claim of ITC

• Excess ITC availed in GSTR-3B compared to the tax on inward supplies declared by the suppliers:

You have availed excess ITC in GSTR-3B as compared to the tax declared by your suppliers on the supplies made to you.GSTR-1 filed by supplier up to the tax period of September of following FY till the cut-off date has been considered for availability of ITC. For the FY: **Apr 18-Mar 19**, the cut-off date is **2019-10-20**.

S. No	Issue	Table No. in GSTR-3B	SGST	CGST	IGST	CESS	Total
1	2	3	4	5	6	7	8
1	ITC availed in GSTR-3B	4A(3) +4A(5)	677482	677482	0	0	1354964
2	Tax declared by the suppliers on the supplies made to you	Cumulative figures of GSTR-01 filed by suppliers	396008	396008	0	0	792016
3	Invalid ITC as the supplier has filed GSTR-01 after the cutoff date	Cumulative figures of GSTR-01 filed by suppliers	0	0	0	0	0

[2] SCN

		after the cut-off date					
4	Excess ITC availed S. No.1 (-) {S.No.2-S.NO. 3}		281474	281474	0	0	562948

Observations and conclusion of the assessing authority:

Agreed with SCN amount

Specific reasons entered

The taxpayer to submit 8A with sum of ITC for further examination as to whether ITC availed was eligible. DRC 3 in r/o liability admitted not submitted.

Collections:

Total
SGST Rs:0 CGST Rs: 0 IGST Rs: 0 CESS Rs: 0 Interest Rs: 0 Penalty Rs: 0

Final Amounts determined by the Assessing Authority in this Order:

SGST Rs: 281474 CGST Rs: 281474 IGST Rs: 0 CESS Rs: 0

Summary:

Annexure with details for the above discrepancies are already sent with show cause notice.

The total tax payable on account of these deficiencies after giving credit to the payments made in cash and ITC adjusted is arrived as follows:

1. **Item wise summary**

S. No	Issue	ACT	SCN Amount	AA Determined Amounts	Total Tax Collections	Amount to be determined In DRC 07
1	2	3	4	5	6	7
1	Excess ITC availed in GSTR-3B compared to the tax on	SGST CGST IGST CESS	281474 281474 0 0	281474 281474 0 0	0 0 0 0	281474 281474 0 0

	inward supplies declared by the suppliers					
	Total Tax liability	**SGST** **CGST** **IGST** **CESS**	**281474** **281474** **0** **0**	**281474** **281474** **0** **0**	**0** **0** **0** **0**	**281474** **281474** **0** **0**

3. As is manifest from the above, there has been an abject failure on the part of the competent authority to either consider or deal with the objections which had been taken by the writ petitioner to the proposed demand. All that has been observed in this respect is that the authority was in agreement with the amount as suggested in the original SCN.

4. Since the order ultimately framed is devoid of any reasoning, we find ourselves unable to sustain the same. While the petitioner did move an application for rectification thereafter, in our considered opinion, the mistakes which beset the original order would perhaps not fall within the scope of a rectification as contemplated. We thus find no justification or occasion to engage with the challenge which stands raised to the order of 31 July 2024.

5. Faced with our aforesaid tentative conclusion, learned counsel appearing for the respondents submitted that rather than the matter being retained on the board of this Court, the ends of justice would warrant the matter being remitted to the concerned Sales Tax Officer to be examined afresh and in accordance with law.

6. We accordingly allow the instant writ petition and quash the impugned order 27 April 2024. The matter shall consequently stand revived on the board of the Sales Tax Officer concerned, who shall proceed to finalise the SCN proceedings bearing in mind the reply

which has been submitted by the writ petitioner.

7. All rights and contentions of respective parties, on merits, are kept open.

YASHWANT VARMA, J.

DHARMESH SHARMA, J.

NOVEMBER 21, 2024
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