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

\+ W.P.(C) 16914/2024 and CM APPL. 71673/2024 (Stay)

SANJAY MAHESHWARI .....Petitioner

Through: Mr. Nikhil Goyal, Adv.

versus

UNION OF INDIA & ORS. .....Respondents

Through: Ms. Sangita Malhotra, SPC for UOI with Ms. Pallavi Talwar, Adv.
Mr. Rajeev Aggarwal, ASC with Mr. Shubham Goel and Mr. Mayank Kamra, Advs. for R2-R4.
Mr. Anurag Ojha, SSC with Mr. Subham Kumar and Mr. Dipak Raj, Advs. for R-5.

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

**ORDER**

% **11.12.2024**

**CM APPL. 71674/2024 (Ex.)**

Allowed, subject to all just exceptions.

The application stands disposed of.

**W.P.(C) 16914/2024 and CM APPL. 71673/2024 (Stay)**

1. The petitioner is aggrieved by the final order passed by the Goods and Services Tax ["**GST**"] Officer dated 27 August 2024, in terms of which the Show Cause Notice ["**SCN**"] proceedings have come to be concluded against the petitioner/assessee.

2. The GST Officer has while disposing of the said SCN proceedings observed as follows:-

"A DRC 01 along with notice was issued to M/s Sakshi Polymers (GSTN- 07AOIPM5259F1ZR) for the financial year 2019-20 proposing to assess the registered tax payer for the net tax payable indicated in the attachment to the DRC-01 notice under Section 73 of the CGST/SGST/IGST Act with the direction that the registered tax payer may pay the tax along with the interest and penalty as per applicable provision of CGST/SGST/IGST Act and rules and he may submit the reply and avail opportunity of personal hearing within stipulated time.

The authorized representative appeared before this office on 5.7.2024 and submitted that the tax payer has not declared output liability for some month and also not availed ITC towards the items such as Granite/Sanitary Goods, taps etc. He was directed to submit the proof for the same by next date of hearing i.e., on 07.8.2024, however, no one has appeared. During hearing, it was also directed that the benefit of ITC towards cancelled firms cannot be allowed. It has been observed that the registered person of M/s Sakshi Polymers has taken ITC from the following firms, which are cancelled and their suppliers are also reflected as cancelled and thus, ITC towards these firms cannot be allowed:

1. M/s Shri Sai Traders GSTN- 07ADVFS9411P1Z1

2. M/s Kirtika Enterprises GSTN07AAUFK8531G1ZW

3. M/s Sidhi Vinayavk Enterprises GSTN- 07ADZFS931081ZS

4. M/s Maneet Enterprises GSTN-07ABMFM8192J1ZK

Further, ITC cannot be allowed in respect of the firms who have filed GSTR-3B with Nil turnover and did not declare or pay tax corresponding to the invoices declared in GSTR-01. Therefore, the tax payer has failed to justify his version, and therefore, demand (DRC-07) is created/issued for the amount as mentioned in the DRC 01/as under, with the direction to deposit the entire amount within the stipulated time.

| Particulars | SGST | CGST | IGST |
|---|---|---|---|
| Tax | 5574165 | 5574165 | 375300 |
| Interest | 4618158 | 4618158 | 310933 |
| Penalty | 557417 | 557417 | 37530 |
| Total | 10749740 | 10749740 | 723763 |

3. As is manifest from the above all that has been observed is that during the hearing, which was conducted on 07 August 2024, none had appeared on behalf of the assessee.

4. The dispute itself had arisen in the backdrop of the registration of the four identified firms coming to be cancelled subsequently. Learned counsel appearing in support of the writ petitioner has drawn our attention to the following particulars which were provided along with his reply to the original SCN.

| **Dealer** | **CGST** | **SGST** | **Month** | **Cancellation Remark** | **Last 3B filed** |
|---|---|---|---|---|---|
| Shri Sai Traders | 653067 | 653067 | May | Cancelled Suo Moto | July 2020 |
| Shri Sai Traders | 1129653 | 1129653 | June | Cancelled Suo Moto | July 2020 |
| Kritika Enterprises | 202347 | 202347 | Sep | Cancelled on request of Taxpayer | Aug 2020 |
| Sidhi Vinayak Enterprises | 1686897 | 1686897 | Jan | Cancelled on request of Taxpayer | R1 filed 14-02-2020 and 3B status is 'yes' |
| Maneet Enterprises | 564098 | 564098 | Feb | Cancelled Suo Moto | Jun 2020 |
| Maneet Enterprises | 185796 | 185796 | Mar | Cancelled Suo Moto | Jun 2020 |
| Total | 4421858 | 4421858 | | | |

5. It is in the aforesaid backdrop that it is contended that the mere subsequent cancellation of registration of those suppliers would not have justified the passing of the final order impugned before us.

6. Insofar as the mismatch between the disclosures appearing in GSTR-3B and GSTR-01 is concerned, it is submitted that only a small percentage of the total demand pertains to those transactions.

7. In the absence of the GST Officer having borne in consideration the reply which had been submitted and having failed to assign any reasoning for rejecting the contentions which were raised, we find ourselves unable to sustain the order impugned.

8. In view of the aforesaid, Mr. Aggarwal, learned counsel appearing for the respondents, submitted that rather than the matter being kept pending on the board of this Court, the ends of justice would warrant the impugned order being set aside, subject to liberty being reserved to the respondents to decide the matter afresh.

9. We accordingly allow the instant writ petition and quash the final order dated 27 August 2024. The GST Officer shall proceed to decide the SCN proceedings afresh bearing in mind the reply which has been submitted by the writ petitioner and by passing a reasoned and speaking order. All rights and contentions of respective parties on merits are kept open.

10. The challenge to Notification No.9/2023- Central Tax dated 31 March 2023 and Notification No. 56/2023- Central Tax dated 28 December 2023 is kept open to be addressed in appropriate proceedings and if need so arise.

**YASHWANT VARMA, J.**

**DHARMESH SHARMA, J.**

**DECEMBER 11, 2024/gunn**