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

\+ W.P.(C) 10512/2024, CM APPL. 43216/2024-(STAY)

ADITYA BIRLA FASHION AND RETAIL LIMITED .....Petitioner

Through: Mr. Prakash Shah, Sr. Adv. with Mr Rajat Mittal, Mr. Suprateek Neogi, Ms. Priyanshu, Advs.

versus

GOVERNMENT OF NCT OF DELHI & ORS......Respondent

Through: Mr. Sumit Batra, SSC.

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\+ W.P.(C) 10538/2024, CM APPL. 43324/2024-(STAY)

ADITYA BIRLA FASHION AND RETAIL LIMITED .....Petitioner

Through: Mr. Prakash Shah, Sr. Adv. with Mr Rajat Mittal, Mr. Suprateek Neogi, Ms. Priyanshu, Advs.

versus

GOVERNMENT OF NCT OF DELHI & ORS......Respondent

Through: Mr. Sumit Batra, SSC.

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA
HON'BLE MR. JUSTICE HARISH VAIDYANATHAN SHANKAR

ORDER

% **18.02.2025**

1. This writ petition has been preferred seeking the following reliefs: -

> "i) Issue a writ of certiorari or writ in the nature of certiorari quashing the Impugned Order, dated 29.04.2024, bearing Order Reference No. ZD0704240668370 passed by the Respondent No 3.

ii) To issue appropriate writ in the nature of certiorari or directions/order quashing the Impugned Show Cause Notice dated 30.12.2023 as the same is bad in law, against the principles of natural justice and contrary to the provisions of the CGST Act.

iii) issue a writ of Prohibition or a writ in the nature of Prohibition or any other writ, order or direction, directing the Respondent, his sub- ordinates, servants and agents from in any manner whatsoever initiating recovery proceedings under the CGST Act, 2017 pursuant to the Impugned Order, dated 29.04.2024, bearing Order Reference No. ZD0704240668370 passed by the Respondent No 3.

iv) to grant such further and other reliefs as the nature and circumstances of the case may require."

2. We take note of the detailed order that came to be passed on 31 July 2024 and where the principal grounds of challenge came to be noticed in the following terms:-

"3. The petitioner has filed the present petition impugning an order dated 29.04.2024 (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*) and the Delhi Goods and Services Tax Act, 2017 (hereafter *the DGST Act*) in respect of the financial year 2018-19.

4. The impugned order was passed pursuant to the Show Cause Notice dated 30.12.2023 (hereafter the *impugned SCN*).

5. The impugned SCN was based on the report of a special audit. The observations made in the audit report on the basis of which the impugned SCN was issued, included the observations as to the difference in turnover reflected in GSTR-1 and GSTR-3B; difference in tax liability as reflected in GSTR-1 and GSTR-3B; reconciliation of turnover; and difference in the amount of Input Tax Credit reported, amongst others.

6. The petitioner responded to the impugned SCN and submitted a detailed reply on the points as raised in the impugned SCN.

7. It is apparent from the plain reading of the impugned order that the petitioner's response has not been considered. The Adjudicating Authority has passed the impugned order confirming the demand as set out in the impugned SCN and rejected the reply furnished by the petitioner.

8. The only reason set out in the impugned order for rejecting the reply of the petitioner reads as under: -

> "The taxpayer has submitted his reply on the GSTIN portal. The undersigned examined the reply and the documents submitted by taxpayer on the GSTIN portal and found the taxpayer has not properly replied/filed explanation despite of sufficient opportunities provided."

9. In view of the above, we are *prima facie,* of the view that the Adjudicating Authority has passed the impugned order without considering the reply of the petitioner to overcome the period of limitation.

10. *Prima facie,* we also find merit in the contentions of the petitioner that such an order has been passed without adjudication of the matter to overcome the period of limitation and the same is fraud on the statute. It is noticed that a large number of unreasoned orders are being passed by the Adjudicating Authority by simply confirming the demands raised in the show cause notice without even alluding to the response submitted by the tax payer.

11. In the given circumstances, let a counter affidavit be filed by the respondent within a period of four weeks from date. Rejoinder thereto, if any, be also filed before the next date of hearing.

12. The respondent shall specifically submit their response as to why such orders may not be set aside without remanding the same to the Adjudicating Authority. This is considering that, *prima facie,* the Adjudicating Authority has failed to pass a proper order within the stipulated period and remanding the matter would merely serve as extending the period of time available for making the proper order which should not be in conformity with the legislative intent of specifying a specific period for passing such orders."

3. Learned counsel appearing for the respondents, on instructions, states that the Adjudicating Authority had clearly failed to bear in consideration the reply as submitted by the petitioner and that the petitioner was also perhaps not provided an opportunity of hearing. In view of the above, it was suggested that the ends of justice would merit the matter being remanded for consideration afresh.

4. Accordingly and for the aforesaid reasons, we allow the instant petition and quash the order dated 29 April 2024.

5. The matter shall stand remitted to the Adjudicating Authority for consideration afresh and bearing in mind the response which had

been submitted by the petitioner.

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

YASHWANT VARMA, J.

HARISH VAIDYANATHAN SHANKAR, J.

FEBRUARY 18, 2025/*neha*