2024:DHC:4312-DB

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* IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: 22.05.2024

\+ W.P.(C)-7379/2024 & CM APPL. 30859-60/2024

RCUBE INTERNATIONAL ..... Petitioner

versus

SALES TAX OFFICER & ANR. ..... Respondents

<u>Advocates who appeared in this case:</u>

For the Petitioner: Ms. Gayatri Verma and Mr. Abhishek, Advocates

For the Respondents: Mr. Avishkar Singhvi, ASC with Mr Shubham Kumar, Mr. Naved Ahmed and Mr. Vivek Kr. Singh, Advocates for GNCTD

CORAM:-
HON'BLE MR. JUSTICE SANJEEV SACHDEVA
HON'BLE MR. JUSTICE RAVINDER DUDEJA

<u>JUDGMENT</u>

<u>SANJEEV SACHDEVA, J. (ORAL)</u>

1. Petitioner impugns order dated 21.03.2024 whereby the impugned Show Cause Notice dated 11.12.2023 proposing a demand of Rs 3,50,60,125.00/- against the petitioner has been disposed of and

demand including penalty has been raised against the petitioner. The order has been passed under Section 73 of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as the Act).

2. Issue notice. Notice is accepted by learned counsel appearing for respondent. With the consent of the parties, petition is taken up for final disposal today.

3. Learned counsel for Petitioner submits that Petitioner had filed a detailed reply dated 11.01.2024, however, the impugned order dated 21.03.2024 does not take into consideration the reply submitted by the Petitioner and is a cryptic order.

4. Perusal of the Show Cause Notice dated 11.12.2023 shows that the Department has raised issues under separate headings i.e., under declaration of output tax; excess claim of Input Tax Credit ["ITC"]; Scrutiny of ITC availed; ITC to be reversed on non-business transaction and exempt supplies and under declaration of ineligible ITC. To the said Show Cause Notice, a detailed reply was furnished by the petitioner giving response under each of the heads with supporting documents.

5. The impugned order, however, after recording the narration records that the reply uploaded by the taxpayer devoid of merits without any justification. It states that *"And whereas, the taxpayer has*

filed their objections/reply online on portal through DRC-06 which has been examined thoroughly and was found to be devoid of merits. Therefore, following principle of natural justice before passing any adverse order, further personal hearing opportunity was given to the taxpayer. And whereas, neither the taxpayer nor their representative appeared for personal hearing despite giving sufficient opportunities, therefore, the undersigned is left with no other option but to re-examine the reply and documents available on the portal. And whereas, on examination of the reply/documents furnished by the taxpayer, it has been observed that since the reply is devoid of merits without any justification or proper reconciliation, the demand raised in SCN/DRC-01 is hereby upheld. DRC-07 is issued accordingly."
The Proper Officer has opined that the reply is devoid of merits without any justification.

6. The observation in the impugned order dated 21.03.2023 is not sustainable for the reasons that the reply dated 11.01.2024 filed by the Petitioner is a detailed reply with supporting documents. Proper Officer had to at least consider the reply on merits and then form an opinion. He merely held that the reply is devoid of merits without any justification which ex-facie shows that Proper Officer has not applied his mind to the reply submitted by the petitioner.

7. Further, if the Proper Officer was of the view that any further details were required, the same could have been specifically sought

from the Petitioner. However, the record does not reflect that any such opportunity was given to the Petitioner to clarify its reply or furnish further documents/details.

8. In view of the above, the impugned order dated 21.03.2024 cannot be sustained and is set aside. The show cause notice is remitted to the Proper Officer for re-adjudication.

9. Petitioner may file a further reply to the Show Cause Notice within a period of 30 days from today. Thereafter, the Proper Officer shall re-adjudicate the Show Cause Notice after giving an opportunity of personal hearing and shall pass a fresh speaking order in accordance with law within the period prescribed under Section 75 (3) of the Act.

10. It is clarified that this Court has neither considered nor commented upon the merits of the contentions of either party. All rights and contentions of parties are reserved.

11. Petition is disposed of in the above terms.

SANJEEV SACHDEVA, J

MAY 22, 2024 **RAVINDER DUDEJA, J**

MR