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

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Date of decision: 24.04.2024

W.P.(C) 5728/2024 & CM APPLs. 23602-03/2024

KALPATRU PROJECTS INTERNATIONAL LIMITED (EARLIER
KNOWN AS JMC PROJECTS (INDIA) LIMITED) Petitioner

versus

GOODS AND SERVICE TAX OFFICER (GSTO) WARD 49, 52
AND 53 & ANR. Respondents

Advocates who appeared in this case:

For the Petitioner: Mr. Yogendra Aldak, Mr. Agrim Arora and Mr.
Sumit Khadaria, Advocates.

For the Respondent: Mr. Umesh K. Burnwal, SPA with Mr. Parul
Sagar, Advocate for R-2.

CORAM:-

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

HON'BLE MR. JUSTICE RAVINDER DUDEJA

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

1. Petitioner impugns order dated 28.12.2023, whereby the impugned Show Cause Notice dated 24.09.2023, proposing a demand of Rs. 7,86,84,337.00 against the Petitioner has been disposed of and a 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 07.11.2023, however, the impugned order dated 28.12.2023 does not take into consideration the reply submitted by the Petitioner and is a cryptic order.

4. Perusal of the Show Cause Notice dated 24.09.2023 shows that the Department has given separate headings i.e., under declaration of output tax; excess claim of Input Tax Credit [“ITC”]; scrutiny of ITC availed, and ITC claimed from cancelled dealers, return defaulters and tax nonpayers. To the said Show Cause Notice, a detailed reply was furnished by the petitioner giving disclosures under each of the heads.

5. The impugned order, however, after recording the narration records that the reply uploaded by the taxpayer is not found to be satisfactory. It states that *“And whereas, in response to the DRC-01. the Taxpayer submitted his reply in DRC-06 and the reply of the registered person, as well as data available on GST Portal has been checked/examined and the reply/submission of the Taxpayer is not found to be satisfactory. ***** Now, since No further additional reply/explanation has been received from the taxpayer despite sufficient and repeated opportunities, which indicate that the taxpayer has nothing to say in the matter. In view of aforesaid circumstances, the undersigned is left with no other option to create demand ex-parte, in accordance with the provisions of CGST/ DGST Act & Rules, 2017.”* The Proper Officer has opined that the reply is not found to be



satisfactory and since no further additional reply/explanation has been received from the taxpayer a demand *ex-parte* is being created.

6. The observation in the impugned order dated 28.12.2023 is not sustainable for the reasons that the reply dated 07.11.2023 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 not found to be satisfactory, 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 or documents 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, impugned order dated 28.12.2023 cannot be sustained, and the matter is liable to be remitted to the Proper Officer for re-adjudication. Accordingly, impugned order dated 28.12.2023 is set aside and the matter is remitted to the Proper Officer for re-adjudication.

9. Petitioner shall file a 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. The challenge to Notification No. 9 of 2023 with regard to the initial extension of time is left open.

12. Petition is disposed of in the above terms.

SANJEEV SACHDEVA, J

RAVINDER DUDEJA, J

APRIL 24, 2024/*vp*