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* IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: 30.04.2024

+ **W.P.(C) 6053/2024 & CM APPL. 25086/2024**

SPS ENTERPRISES

..... Petitioner

Versus

COMMISSIONER OF DELHI GOODS AND SERVICE TAX &
ANR.

.... Respondents

Advocates who appeared in this case:

For the Petitioner: Mr. Rajesh Mahna, Mr. Ramesh Johri, Mr. Ramanand Roy, Mr. Mayank Kouts and Mr. Shiva Narang, Advocates.

For the Respondents: Mr. Rajeev Aggarwal, ASC with Ms. Shaguftha H. Badhwar, Mr. Prateek Badhwar and Ms. Samridhi Vats, Advocates.

CORAM:-

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

HON'BLE MR. JUSTICE RAVINDER DUDEJA

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

1. Petitioner impugns order dated 29.12.2023 whereby the impugned Show Cause Notice dated 28.09.2023 proposing a demand of Rs.5,46,288.00/- against the petitioner had 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 23.12.2023 however, the impugned order dated 29.12.2023 does not take into consideration the reply submitted by the Petitioner and is a cryptic order.
4. Perusal of the Show Cause Notice dated 28.09.2023 shows that the Department has given reasons under separate headings i.e., net tax under declared due to non-reconciliation of turnovers in other returns and e-way bill and excess claim of Input Tax Credit ["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 no satisfactory reply and no substantial documents were submitted by the taxpayer. It states that *"And whereas, for the sake of natural justice, another opportunity to submit reply and opportunity for Personal Hearing, as per provision of Section 75(4) DGST Act, was also provided to the taxpayer by issuing "REMINDER" through the GST portal. However, the taxpayer did not appear for personal hearing on the given date and time. Since, no satisfactory reply / no*



substantial documents submitted by the taxpayer despite sufficient and repeated opportunities as well as not appeared for personal hearing, 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 except to create demand, in accordance with the provisions of CGST / DGST Act & Rules, 2017, as per discrepancies already conveyed through SCN/ DRC-01.” The Proper Officer has opined that the taxpayer has not filed a satisfactory reply nor substantial documents.

6. The observation in the impugned order dated 29.12.2023 is not sustainable for the reasons that the reply dated 23.12.2023 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 satisfactory and no substantial documents have been submitted by the taxpayer which ex-facie shows that the 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 29.12.2023 cannot be sustained and is set aside. The Show Cause Notice is remitted to the Proper Officer for re-adjudication. The Proper Officer is directed to withdraw all punitive actions taken against the petitioner pursuant to impugned order dated 29.12.2023, *inter-alia*, blocking of credit ledger and the provisional attachment of property including bank account, if any.

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

RAVINDER DUDEJA, J

APRIL 30, 2024/NA