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

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Date of decision: 10.04.2024

+ W.P.(C) 5260/2024& CM APPLs. 21548-49/2024

KAYCEE POLYMERS PVT. LTD.

.... Petitioner

versus

THE UNION OF INDIA

REVENUE SECRETARY & ORS.

..... Respondents

Advocates who appeared in this case:

For the Petitioner: Mr. Rajesh Jain, Mr. Virag Tiwari, Mr. Ramashish and Ms. Tanya Saraswat, Advocates.

For the Respondents: Mr. Anurag Ojha, SSC with Mr. Subham Kumar, 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 30.03.2024, whereby the impugned Show Cause Notice dated 09.12.2023, proposing a demand of Rs.50,00,080.00 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 01.02.2024, however, the impugned order dated 30.03.2024 does not take into consideration the reply submitted by the Petitioner and is a cryptic order.

4. Perusal of the Show Cause Notice dated 09.12.2023 shows that the Department has given separate headings i.e., excess claim Input Tax Credit [“ITC”]; under declaration of ineligible ITC; and ITC claimed from cancelled dealers, return defaulters & tax non payers. 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 devoid of merits and 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**** Further, the reply on other issues is found devoid of merits without any justification or proper reconciliation, therefore, the demand raised with detailed reasons/explanations in SCN/DRC-01 is upheld. DRC-07 is issued accordingly”* The Proper Officer has opined that the reply is devoid of merits and without any justification.

6. The observation in the impugned order dated 30.03.2024 is not sustainable for the reasons that the reply dated 01.02.2024 filed by the



Petitioner is a detailed reply. 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 and 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 30.03.2024 cannot be sustained, and the matter is liable to be remitted to the Proper Officer for re-adjudication. Accordingly, the impugned order dated 30.03.2024 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 10, 2024/vp