2024:DHC:2336-DB

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* IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: 19.03.2024

+ **W.P.(C) 4149/2024 & CM. APPLS. 16949-50/2024**

RUCHIKA JAIN (PROPRIETOR OF M/S. SHREE METALS)
..... Petitioner

Versus

SALES TAX OFFICER CLASS II/AVATO, WARD 71 & ANR.
..... Respondents

Advocates who appeared in this case:

For the Petitioner: Mr. Puneet Rai and Ms. Srishti Sharma, Advocates.

For the Respondents: Mr. Rajeev Aggarwal, Additional Standing Counsel with Mr. Prateek Badhwar, Ms. Shaguftha H. Badhwar and Ms. Samridh 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 30.12.2023, whereby the impugned Show Cause Notice dated 22.09.2023, proposing a demand of Rs. 1,96,12,996.10 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. Learned counsel for Petitioner submits that Petitioner was served with a Reminder Notice dated 28.11.2023 asking him to furnish a reply to the Show Cause Notice dated 22.09.2023. He further submits that the Petitioner filed a detailed reply dated 29.11.2023 and an additional reply dated 07.12.2023 to the Show Cause Notice. However, the impugned order dated 30.12.2023 does not take into consideration the replies submitted by the Petitioner and is a cryptic order.

3. Perusal of the Show Cause Notice shows that the Department has given separate headings i.e., excess claim 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 full disclosures under each of the heads.

4. The impugned order, however, after recording the narration, records that the reply uploaded by the tax payer is devoid of merits. It

merely 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 as no substantive proof in support of movement of goods and for actual supply/receipt of goods has been attached. In support of payment against the said supply, the reconciliation of bank statement vis-a-vis the tax invoices is also not available. Apart from that there is no document available in the reply to substantiate the clause of the tax charged in respect of such supply if the same has been actually paid to the Government in respect of the said supply. Furthermore, only on the basis of the documents uploaded/attached by the taxpayer, compliance of 2 proviso of Section 16 of CGST Act, 2017 cannot be ascertained. 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 issue DRC-07 on the basis of 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 and without any justification or proper reconciliation, the demand raised in SCN/DRC-01 is hereby upheld along with penalty.*" The Proper Officer has opined that the reply is devoid of merits.

5. The observation in the impugned order dated 30.12.2023 is not sustainable for the reasons that the reply filed by the Petitioner is a detailed reply. Proper Officer had to at least consider the reply on merits and then form an opinion whether the reply was devoid of merits. He merely held that the reply is devoid of merits which ex-facie shows that Proper Officer has not applied his mind to the reply submitted by the petitioner.

6. Further, if the Proper Officer was of the view that 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.

7. In view of the above, the order cannot be sustained, and the matter is liable to be remitted to the Proper Officer for re-adjudication. Accordingly, the impugned order dated 29.12.2023 is set aside. The matter is remitted to the Proper Officer for re-adjudication.

8. As noticed hereinabove, the impugned order records the reply furnished by the Petitioner is devoid of merits nor their taxpayer appeared for personal hearing. Proper Officer is directed to intimate to the petitioner details/documents, as maybe required to be furnished by

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the petitioner. Pursuant to the intimation being given, petitioner shall furnish the requisite explanation and documents. 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.

9. 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.

10. Petition is disposed of in the above terms.

SANJEEV SACHDEVA, J

RAVINDER DUDEJA, J

MARCH 19, 2024
NA