2024:DHC:1126-DB

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* IN THE HIGH COURT OF DELHI AT NEW DELHI

% Date of decision: 12.02.2024

+ **W.P.(C) 1969/2024 & CM APPL. 8256/2024**

GAC SHIPPING INDIA PRIVATE LTD. ..... Petitioner

versus

THE SALES TAX OFFICER CLASS II DELHI ..... Respondent

Advocates who appeared in this case:

For the Petitioner: Mr. Joseph Kodianthara, Senior Advocate with Mr. V. Shyamohan, Ms. Eshita Baruah, Mr. Abraham Joseph Markos and Ms. Tissy Annie Thomas, Advocates.

Respondent: Mr. Rajeev Aggarwal, ASC with Ms. Samridhi Vats, Advocate.

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 show cause notice dated 25.09.2023, proposing a demand against the petitioner has been confirmed, raising a demand of Rs. 29,44,686/- against the petitioner. The order has been passed under Section 73 of the Central Goods and Services Tax Act, 2017.

2. Learned Senior Counsel for the petitioner submits that no intimation of hearing was given to the petitioner and the order is a

very cryptic order and does not give any reasons and merely states that "the reply submitted by the tax payer was not found to be satisfactory and that the tax payer has not been able to submit substantial proof in support of his reply".

3. Issue notice. Notice is accepted by learned counsel for respondent.

4. With the consent of learned counsel for parties, petition is taken up for final disposal.

5. A perusal of the show cause notice shows that the Department has given specific details of alleged under declaration of output tax, excess claim Input Tax Credit ["ITC"], under declaration of ineligible ITC and ITC claim from cancelled dealers, return defaulters and tax non-payers. To the said show cause notice, a detailed reply dated 18.10.2023 along with Form GST DRC-06 dated 19.10.2023 was furnished by the petitioner giving full disclosures under each of the heads.

6. The impugned order, however, after recording the narration, records that the reply uploaded by the tax payer is unsatisfactory and taxpayer has not been able to submit substantial proof in support of his reply. The Proper Officer has opined that the reply is unsatisfactory and taxpayer failed to appear for personal hearing despite being given repeated opportunities.

7. In case the Proper Officer was of the view that reply is incomplete and further details were required, the same could have

been 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. We note that hearing was fixed on 07.11.2023, which was prior to the reply furnished by the petitioner. Further, petitioner was not provided with an adequate opportunity to defend the show cause notice by way of hearing.

9. In view thereof, the order cannot be sustained and the matter is liable to be remitted to the Proper Officer for re-adjudication. Accordingly, the impugned order and show cause notice is set aside. The matter is remitted to the Proper Officer for re-adjudication.

10. As noticed hereinabove, the impugned order records that petitioner has not furnished the requisite details. Proper Officer is directed to intimate to the petitioner details/documents, as maybe required to be furnished by the petitioner within a period of one week from today. On such intimation being given, e petitioner shall furnish the requisite explanation and documents within one week thereof. Thereafter, the Proper Officer shall re-adjudicate the show cause notice within a period of two weeks after giving an opportunity of hearing.

11. 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.

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12. A copy of this order be given *dasti* under Signatures of Court Master.

SANJEEV SACHDEVA, J

RAVINDER DUDEJA, J

FEBRUARY 12, 2024/*vp*