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* IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: 22.05.2024

+ W.P.(C)-7417/2024 & CM APPL. 30942-43/2024

FUTURE GENERALI INDIA INSURANCE
COMPANY LIMITED

..... Petitioner

versus

GOODS AND SERVICE TAX OFFICER (GSTO)
WARD 203 & ANR.

..... Respondents

Advocates who appeared in this case:

For the Petitioner: Mr., Advocates

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

CORAM:-

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

HON'BLE MR. JUSTICE RAVINDER DUDEJA

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

1. Petitioner impugns order dated 29.04.2024 whereby the impugned Show Cause Notice dated 09.12.2023 proposing a demand of Rs.11,50,530.00/- 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 09.01.2024 and an additional reply dated 27.02.2024, however, the impugned order dated 29.04.2024 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 raised grounds under separate headings i.e., under declaration of output tax; the tax on outward supplies under declared on reconciliation of data in GSRT-09; excess claim of ITC; scrutiny of ITC reversals; ITC to be reversed on non-business transaction & exempt supplies and ITC claimed from cancelled dealers, return defaulters and tax non payers. 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 the reply uploaded by the taxpayer is not properly replied/filed. It states that *“The taxpayer has submitted his reply on the GSTIN portal. The undersigned examined the reply and the documents submitted by him on the GSTIN portal and found the taxpayer has not properly replied/filed*



*explanation despite of sufficient and repeated opportunities provided to him.***** Now, therefore, the undersigned is left without any option and accordingly, a demand is being created towards Tax /Interest amount already confirmed through SCN/ DRC-01 (Copy attached) in accordance with the provisions of CGST / DGST Act & Rules, 2017.” The Proper Officer has opined that the reply is not properly replied/filed.*

6. The observation in the impugned order dated 29.04.2024 is not sustainable for the reasons that the reply dated 09.01.2024 and 27.02.2024 filed by the Petitioner are detailed replies 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 properly replied/filed 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 29.04.2024 cannot be sustained and is set aside. The Show Cause Notice is remitted to the Proper Officer for re-adjudication.

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. The challenge to Notification No. 56 of 2023 with regard to the extension of time is left open.

12. Petition is disposed of in the above terms.

SANJEEV SACHDEVA, J

MAY 22, 2024
MR

RAVINDER DUDEJA, J