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* IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: 02.04.2024

+ W.P.(C) 4715/2024

KAILASH INTERNATIONAL

..... Petitioner

versus

COMMISSIONER OF DELHI GOODS AND
SERVICE TAX & ANR.

..... Respondents

Advocates who appeared in this case:

For the Petitioner: Mr. Rajesh Mahna, Advocate

For the Respondents: Mr. Rajiv 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 28.12.2023, whereby the impugned Show Cause Notice dated 23.09.2023, proposing a demand of Rs. 5,17,43,004.00 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. Learned counsel for Petitioner submits that Petitioner had filed



a detailed reply dated 23.10.2023, however, the impugned order dated 28.12.2023 does not take into consideration the reply 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”]; under declaration of ineligible ITC 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 not satisfactory and no substantial documents have been submitted by the taxpayer. It merely states *“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) CGST 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 I DGST Act & Rules, 2017, as per discrepancies already conveyed through SCN/ DRC-01.” The Proper Officer has opined that the taxpayer did not appear for the personal hearing on the given date and time and no satisfactory reply and substantial documents have been submitted by the taxpayer.

5. The observation in the impugned order dated 28.12.2023 is not sustainable for the reasons that the reply dated 23.10.2023 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 not satisfactory nor any substantial documents were submitted by the taxpayer 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 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.

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 28.12.2023 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 as not satisfactory nor duly supported by adequate documents. Proper Officer is directed to intimate to the Petitioner details/documents, as maybe required to be furnished by 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. The challenge to Notification No. 9 of 2023 with regard to the initial extension of time is left open.

11. Petition is disposed of in the above terms.

SANJEEV SACHDEVA, J

APRIL 2, 2024/‘rs’

RAVINDER DUDEJA, J