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

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Date of decision: 12.02.2024

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W.P.(C) 1983/2024 & CM APPLs. 8279-80/2024

PARAS ENTERPRISES THROUGH PROPRIETOR SULABH

GUPTA

..... Petitioner

versus

UNION OF INDIA & ORS.

..... Respondents

Advocates who appeared in this case:

For the Petitioner: Mr. Prabhat Kumar and Mr. Utkarsh Kumar,
Advocates.

Respondent: Mr. Raghvendra Shukla, SPC for R-1.
Mr. Rajeev Aggarwal, ASC.

CORAM:-

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

HON'BLE MR. JUSTICE RAVINDER DUDEJA

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

1. Petitioner impugns order dated 23.12.2023, whereby the show cause notice dated 28.09.2023, proposing a demand against the petitioner has been confirmed and a demand of Rs. 10,11,855.60/- 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.

2. Learned counsel for the petitioner submits that a detailed reply dated 25.10.2023 to the show cause notice was filed,



however, the impugned order dated 23.12.2023 does not take into consideration the reply submitted by the petitioner and is a cryptic order which merely records that reply was found not satisfactory.

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 25.10.2023 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 not satisfactory. It merely states that *“no further additional reply or explanation has been received from the taxpayer despite sufficient repeated opportunities which indicate that the taxpayer has nothing to say in the matter. Hence the undersigned is left with no other option to create a demand ex parte, in accordance with provisions of CGST/DGST Act.”* The Proper Officer has opined that reply is not clear and unsatisfactory.



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. Further petitioner was not provided with an adequate opportunity to defend the show cause notice by way of a hearing.

9. 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 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, 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.



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

SANJEEV SACHDEVA, J

RAVINDER DUDEJA, J

FEBRUARY 12, 2024/vp

HIGH COURT OF DELHI



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