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

% Date of decision: 27.05.2024

W.P.(C) 5966/2024 & CM APPL. 24768/2024

M/S. JINDAL TRADING CO. THROUGH ITS PROPRIETOR SH.
SURESH JINDAL Petitioner

versus

UNION OF INDIA AND ORS. Respondents

Advocates who appeared in this case:

For the Petitioner: Mr. Vineet Bhatia, Advocate.

For the Respondents: Mr. Ajay Jain, SPC with Mr. M.N. Mishra, Ms. Bijay Laxmi, Mr. Krishna Sharma and Ms. Anjali Sharma, Advocates for R-1.

Mr. Rajeev Aggarwal, ASC with Mr. Prateek Badhwar, Ms. Shaguftha H. Badhwar, Ms. Samridhi Vats, Advocates for R-2, 3 and 4.

CORAM:-

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

HON'BLE MR. JUSTICE RAVINDER DUDEJA

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

1. Petitioner impugns orders dated 24.12.2023 and 28.12.2023 whereby the impugned Show Cause Notices dated 22.09.2023 and 29.09.2023 proposing a demand of Rs. 5,35,393.00/- and 1,89,65,230.00 respectively has been disposed of demand including penalty has been created against the petitioner. The orders have 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 unable to file a reply to the Show Cause Notice dated 22.09.2023.

3. He further submits that Petitioner has filed a detailed reply dated 29.10.2023 to the Show Cause Notice 29.09.2023, however, impugned order dated 28.12.2023 does not take into consideration the reply submitted by the Petitioner and the order is cryptic order.

4. Perusal of the Show Cause Notice dated 22.09.2023 shows that the said notice is a vague and unreasoned notice whereby the Department has merely stated that *“taxpayer had shown less liability amounting to Rs. 0/- in GSTR-3B as compared to GSTR-1 or claimed excess ITC amounting in GSTR-3B as compared to ITC accrued in GSTR-2A/2B”*. It further states *“Whereas, ASMT10 was issued to the taxpayer at the GST portal on dated 13.04.2023. However, the reply found not to be satisfactory as figures mentioned do not tally with GST Portal and no supporting evidence enclosed. Whereas, taxpayer has not filed its reply/explanation or deposited the due tax, interest voluntarily till date, the undersigned has no option but to initiate proceedings under Section 73 of Delhi Goods and Services Act, 2017”*.

5. Further, Show Cause Notice dated 29.09.2023 was issued



whereby the Department has raised grounds under separate headings i.e., excess claim of ITC; scrutiny of ITC availed 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.

6. Thereafter, impugned order dated 24.12.2023 was issued on Show Cause Notice 22.09.2023. However, after recording the narration records that demand as *ex-parte* is created. It states that *“And whereas, it is noticed that the Taxpayer has not filed any reply/explanation with regard to above mentioned DRC 01 within stipulated period.*** Now, since no reply / explanation has been received from the taxpayer despite sufficient opportunities, which indicate that the taxpayer has nothing to say in the matter. In view of aforesaid circumstances, the undersigned, being the Proper Officer, is left with no other option but to create demand ex-parte, in accordance with the provisions of CGST / DGST Act & Rules, 2017, as per discrepancies already conveyed through SCN/ DRC-01.”* The Proper Officer has opined that despite providing another opportunity, neither an online reply has been filed nor has the petitioner appeared in person or through an authorized representative.

7. Further, impugned order 28.12.2023 was issued on Show Cause Notice 29.09.2023. However, after recording the narration



records that the taxpayer has filed plain reply which is not supported with proper calculations/ reconciliation and relevant documents. It states that:-

“And whereas reply filed by the taxpayer has been examined and following is observed (point-wise):

1. The taxpayer claimed excess ITC for Rs. 210134/-. In this regard, the taxpayer has not replied to the query with proper calculations/reconciliation and relevant documents. Hence, the taxpayer is liable to pay the requisite demand.

2. ITC claimed from cancelled dealers, return defaulters and tax non-payers:

i) The Taxpayer has availed Input Tax Credit from M/s JAIN SONS ENTERPRISES (GSTIN 07AIYPM7296A1ZO) which was Cancelled Suomoto from the date of registration for the reason “Taxpayer found Non- Functioning/Not Existing at the Principal Place of Business”. Further, GSTR 2A of suppliers of M/s JAIN SONS ENTERPRISES (GSTIN 07AIYPM7296A1ZO) is NIL which indicates NIL purchases.

ii) The Taxpayer has availed Input Tax Credit from M/s GANPATI ENTERPRISES (GSTIN 07BCIPN1237R1Z3) which was Cancelled Suomoto on 01.07.2017 i.e. the date of registration for the reason “In case, Registration has been obtained by means of fraud, wilful misstatement or suppression of facts.”

iii) The Taxpayer has availed Input Tax Credit from M/s ADIENCE ENTERPRISES (GSTIN 07GUFPS2891E1Z8) which was Cancelled Suomoto from the date of registration for the reason “Any Taxpayer other than composition taxpayer has not filed returns for a continuous



period of six months”. Further, the purchase chain of M/s ADIENCE ENTERPRISES (GSTIN 07GUFPS2891E1Z8) is suspicious as its one & only supplier has filed 10% (approx.) inward supplies in GSTR 2A returns comparatively to its outward supplies in GSTR 1 & GSTR 3B returns.

iv) The Taxpayer has availed Input Tax Credit from M/s PAVIOUR ENTERPRISES (GSTIN 07GUFPS4380J1Z1) which was Cancelled Suomoto on 01.07.2017 i.e. the date of registration for the reason “Any Taxpayer other than composition taxpayer has not filed returns for a continuous period of six months”. Further, the purchase chain of M/s PAVIOUR ENTERPRISES (GSTIN 07GUFPS4380J1Z1) is suspicious as its one & only supplier has filed 10% (approx.) inward supplies in GSTR 2A returns comparatively to its outward supplies in GSTR 1 & GSTR 3B returns.

v) The Taxpayer has availed Input Tax Credit from M/s GUPTA TRADING CO. (GSTIN 07EPBPS0751C1Z5) who filed NIL outward supplies in its GSTR 3B returns during the specified period and the firm is Cancelled Suomoto at present.

Whereas, the taxpayer has filed plain reply only which is not supported with proper calculations/reconciliation and relevant documents and has failed to establish the actual movement of goods from its suppliers;

As such, taxpayer is not entitled to get any relief on account of demand mentioned in DRC 01. In view of the aforesaid circumstances, the undersigned, being the Proper Officer, is left with no other option but to create demand, in accordance with the provisions of CGST / DGST Act & Rules, 2017, as per discrepancies already conveyed through SCN/ DRC-01.”



The Proper Officer has opined that the reply is a plain reply which is not supported with proper calculations/ reconciliation and relevant documents

8. The observation in the impugned order dated 24.12.2023 is not sustainable. Since the only reason for passing the impugned order is that petitioner had not filed any reply/explanation, one opportunity needs to be granted to the petitioner to respond to the Show Cause Notice. The matter is liable to be remitted to the Proper Officer for re-adjudication.

9. Further, the observation in the impugned order dated 28.12.2023 is also not sustainable for the reasons that the reply dated 29.10.2023 filed by the Petitioner is a detailed reply with supporting documents including invoices, ledger accounts, invoices of weighing bridge and bank statements showing payment made to the supplier. Proper Officer had to at least consider the reply on merits and then form an opinion. He merely held that the reply is a plain reply which is not supported with proper calculations/ reconciliation and relevant documents which ex-facie shows that Proper Officer has not applied his mind to the reply submitted by the petitioner.

10. 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.

11. In view of the above, the impugned orders dated 24.12.2023 and 28.12.2023 cannot be sustained and are set aside. The Show Cause Notices dated 22.09.2023 and 29.09.2023 are remitted to the Proper Officer for re-adjudication.

12. 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.

13. 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.

14. Petition is disposed of in the above terms.

SANJEEV SACHDEVA, J

RAVINDER DUDEJA, J



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MAY 27, 2024/vp