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

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Date of decision: 05.03.2024

+ **W.P.(C) 3357/2024 & CM APPLs. 13827-13828/2024**

SHRI KRISHNA INDUSTRIES THROUGH ITS PROPRIETOR MR.
MOHAN LAL Petitioner

versus

COMMISSIONER DELHI GOODS AND SERVICE TAX AND
OTHERS Respondents

Advocates who appeared in this case:

For the Petitioner: Mr. P. K. Gambhir & Mr. Rakesh Kumar,
Advocates.

For the Respondents: Mr. Rajeev Aggarwal, ASC for R-1 & 2.

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 against the petitioner has been disposed and a demand of Rs.51,64,782.00 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 the Act).

2. Learned counsel for Petitioner submits that a detailed reply



dated 10.10.2023 was filed to the Show Cause Notice, 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 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 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. It merely states that: *“And whereas. in response to the DRC-01, the Taxpayer submitted his reply in DRC-06 and the reply of the registered person as well as data available on OST Portal has been checked/examined and the reply/submission of the Taxpayer is not found to be satisfactory.*

Now, since No further additional reply/explaining has been received from the taxpayer despite sufficient and repeated opportunities. which indicate that the taxpayer has nothing to saying the matter. In view of aforesaid circumstances, the undersigned is left with no other option to create demand ex-parte. in accordance with the provisions of CGST/DGST act & rules.” The Proper Officer has opined that the reply is unsatisfactory.



5. The observation in the impugned order dated 28.12.2023 is not sustainable for the reasons that the reply filed by the petitioner is a detailed reply. Proper officer had to at least consider the reply on merits and then form an opinion whether the reply was not satisfactory. He merely held that the reply is not satisfactory 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 reply was not satisfactory and 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 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. 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

RAVINDER DUDEJA, J

MARCH 05, 2024

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