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* IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: 04.01.2024

+ **W.P.(C) 15518/2023 & CM. APPLS. 62158/2023**

M/S MITTAL FOOTCARE THROUGH ITS PROPRIETOR MR.
ASHWANI MITTAL Petitioner

Versus

THE COMMISSIONER OF CENTRAL GOODS AND SERVICES
TAX AND ANR. Respondents

Advocates who appeared in this case:

For the Petitioner: Mr. Rakesh Kumar, Advocate.
For the Respondents: Mr. Akshay Amritanshu, Senior Standing Counsel with
Ms. Anjali Kumari, Advocate.

”**CORAM:-**

HON'BLE MR. JUSTICE SANJEEV SACHDEVA
HON'BLE MR. JUSTICE RAVINDER DUDEJA

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

1. Petitioner impugns order dated 29.08.2021, whereby the appeal filed by the petitioner against order-in-original dated 10.10.2022 has been dismissed. The order-in-original rejected the application of the petitioner seeking refund on the Input Tax Credit for the period April, 2021 to March, 2022.

2. Issue Notice. Notice is accepted by learned counsel appearing for the respondents.



3. With the consent of parties, the petition is taken up for hearing and disposal.
4. The order-in-original rejected the application seeking refund primarily on the ground that there was a mismatch of turnover, excess availment and misdeclaration of invoice value and no supporting documents to disprove the said contention were supplied in response to the show cause notice.
5. As per the petitioner, the order-in-original erroneously records that a personal hearing was granted to the petitioner, however, no personal hearing was granted. It is further contended in the appeal that the petitioner had uploaded the relevant documents in response to the show cause notice, however, the order records that documents had not been submitted. Petitioners have in the grounds of appeal specifically taken a plea that there appears to be a technical glitch in the system of the respondents and petitioner had uploaded the documents.
6. The order-in-original records that the documents submitted by the petitioner have been considered, however, proceeds on the premise that the petitioner has not submitted any documentary evidence to substantiate the submission about technical error and has not submitted any documents before the appellate authority, which



were submitted alongwith the reply to the show cause notice.

7. In our view, the appellate authority appears to have misconstrued the submission of the petitioner. Case of the petitioner is that petitioner had uploaded documents, however, the system did not register the documents which were uploaded from the end of the petitioner. The appellate authority records that petitioner had not submitted any documents which were submitted alongwith the reply.

8. From the record of the respondents, it appears that documents were not uploaded. Since documents were not uploaded, there could be no document which the petitioner could file in the appeal which had been submitted alongwith the show cause notice.

9. The order-in-original also records that petitioner had placed before the appellate authority an Annexure B, which contained all the requisite information, however, Annexure B has been disregarded on the ground that the same has not been signed or authenticated. Annexure B is an annexure to the appeal and in case the appellate authority was of the view that an unauthenticated document had been filed, the same was a curable defect and petitioner could have been called upon by the appellate authority to certify the said document or produce further material in the form of vouchers, bill etc. to substantiate the said document.



10. A refund cannot be rejected merely on the ground of non-supply of authenticated document. In case party is entitled to refund, it is open to the Department to call for further clarification or documents as may be required to satisfy itself that refund is due and payable.

11. In the instant case, we notice that petitioner seeks a refund of Input Tax Credit and contends that relevant documents are available with the petitioner.

12. Reference may also be had to Section 54 (1) of the Central Goods and Service Tax Act, 2017, which provides for a period of two years from the relevant date to make an application seeking refund. The relevant period in issue is April, 2021 to March, 2022 and as such, the application of the petitioner even today is within the limitation prescribed under Section 54 (1) of the said Act.

13. In view of the above, we are of the view that the matter needs to be relegated to the concerned authority to re-adjudicate the application of the petitioner by taking into account the documents filed by the petitioner in support of his application for refund. Accordingly, the order-in-original dated 10.10.2022 and order in appeal dated 29.08.2023 are set aside. The matter is remitted to the adjudicating authority to re-adjudicate the application by taking into account the relevant documents available with the petitioner in support of the



application for refund, preferably within a period of eight weeks from today. In case the authority requires any further document, it would be open to the authority to call upon the petitioner to furnish additional documents.

14. The writ petition is disposed of in the above terms.
15. *Dasti* under signature of the Court Master.

SANJEEV SACHDEVA, J



JANUARY 04, 2024/NA

RAVINDER DUDEJA, J