



2024:DHC:3197-DB



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

Date of decision: 16.04.2024

+ W.P.(C) 5475/2024, CM APPL. 22567/2024 & CM APPL. 22568/2024

DISH TV INDIA LTD. THROUGH ITS AUTHORIZED REPRESENTATIVE Petitioner

versus

GST OFFICER, WARD-209, NEW DELHI AND ORS. Respondents

Advocates who appeared in this case:

For the Petitioner: Mr. Vivek Sarin, Mr. Dibya Prashant Singh & Mr. Satish C. Kaushik, Advocates.

For the Respondents: Mr. Rajeev Aggarwal, ASC with Ms. Shaguftha H. Badhwar, Mr. Prateek Badhwar & Ms. Samridhi Vats, Advocates for R-1 & 2
Mr. Anurag Ojha, SSC with Mr. Subham Kumar & Mr. Vipul Teotia, Advocates for R-3 & 5.

CORAM:-

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

HON'BLE MR. JUSTICE RAVINDER DUDEJA

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

1. Petitioner impugns order dated 30.12.2023, whereby the impugned Show Cause Notice dated 30.09.2023, proposing a demand



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of Rs.77,80,646.00 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. Issue notice. Notice is accepted by learned counsel appearing for respondent. With the consent of the parties, petition is taken up for final disposal today.

3. Learned counsel for Petitioner submits that Petitioner had filed detailed replies dated 26.10.2023 and 06.11.2023, however, the impugned order dated 30.12.2023 does not take into consideration the replies submitted by the Petitioner and is a cryptic order.

4. Perusal of the Show Cause Notice dated 30.09.2023 shows that the Department has given reasons under separate headings i.e., taxpayer has availed the more ITC as mentioned above in GSTR-3B in compression to the ITC available in GSTR-2A; short payment of tax in compression GSTR-1; and input tax credit has been wrongly availed and utilized by the taxpayer. To the said Show Cause Notice, detailed replies were furnished by the petitioner giving disclosures under each of the heads.

5. Impugned order dated 30.12.2023 issued on Show Cause Notice dated 30.09.2023, after recording the narration records that no proper reply/explanation has been uploaded by the taxpayer. It states



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“And whereas, it is noticed that the Taxpayer has failed to deposit Tax/Interest amount through DRC-03 or provide any plausible explanation regarding non-deposit of the Tax/Interest amount within stipulated time. And whereas, the Taxpayer was allowed opportunity to explain Tax deficiencies during Personal Hearing before Proper Officer on the given date and time, Further, another opportunity to submit reply and observing Principles of natural justice, opportunity for Personal Hearing, as per provision of Section 75(4) CGST/DGST Act, was also provided to the taxpayer by issuing “REMINDER” through the GST portal. Now, since no proper reply / explanation have been received from the Taxpayer despite sufficient and repeated opportunities, which indicate that the Taxpayer has nothing to say in the matter.”

6. The Proper Officer has opined that that no proper reply/explanation has been received from the taxpayer.

7. The observation in the impugned order dated 30.12.2023 is not sustainable for the reasons that the replies dated 26.10.2023 and 06.11.2023 filed by the Petitioner are detailed replies along with supporting documents. Proper Officer had to at least consider the replies on merit and then form an opinion. He merely held that that no proper reply/explanation has been received from the taxpayer, without dealing with the same, which ex-facie shows that Proper Officer has not applied his mind to the replies submitted by the petitioner.



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8. 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.

9. In view of the above, the impugned order dated 30.12.2023 cannot be sustained, and the matter is liable to be remitted to the Proper Officer for re-adjudication. Accordingly, the impugned order dated 30.12.2023 is set aside and the matter is remitted to the Proper Officer for re-adjudication.

10. 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.

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. The challenge to Notification No. 9 of 2023 with regard to the initial extension of time is left open.



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13. Petition is disposed of in the above terms.

SANJEEV SACHDEVA, J

RAVINDER DUDEJA, J

APRIL 16, 2024

RM