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* IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: 04.04.2024

+ **W.P.(C) 3373/2024 & CM. APPLS. 13870/2024**

M/S JAIN CEMENT UDYOG (THROUGH PROPRIETOR SH. SANJAY JAIN) Petitioner

Versus

CENTRAL BOARD OF INDIRECT TAXES AND CUSTOMS & ANR..... Respondents

Advocates who appeared in this case:

For the Petitioner:

Mr. R.P. Singh, Advocate.

For the Respondents:

Mr. Anurag Ojha, Senior Standing Counsel with Mr. Subham Kumar, Advocate for R-1.

Mr. Rajeev Aggarwal, Additional Standing Counsel with Mr. Prateek Badhwar, Ms. Shaguftha H. Badhwar and Ms. Samridh Vats, Advocates.

CORAM:-

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

HON'BLE MR. JUSTICE RAVINDER DUDEJA

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

1. Petitioner impugns order dated 04.12.2023, whereby the impugned Show Cause Notice dated 25.09.2023, proposing a demand of Rs.7,56,66,476.00 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 for the respondents. With the consent of parties, petition is taken up for final disposal.

3. Perusal of the Show Cause Notice shows that the Department has given separate headings i.e., under declaration of output tax; excess claim of Input Tax Credit ["ITC"]; and ITC claimed from cancelled dealers, return defaulters and tax non payers.

4. The impugned order, however, after recording the narration, records that a demand as *ex-parte* is created. It merely states that *"And whereas, it is noticed that the Taxpayer neither filed reply/explanation within stipulated period nor appeared for 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) DGST Act, was also provided to the taxpayer by issuing "REMINDER" through the GST portal. Now, since no reply I explanation has been received from the taxpayer despite sufficient and repeated opportunities, which indicate that the taxpayer has nothing to say in the matter. ***** In view of the aforesaid circumstances, the undersigned is left with no other option left but to create demand as ex-parte, in accordance with the provisions of CGST/DGST Act &*

Rules, 2017.” 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.

5. Learned counsel for petitioner submits that the GST registration of the petitioner had been cancelled retrospectively with effect from 26.07.2017.

6. It is an admitted case of the Department that in case registration is cancelled retrospectively, the taxpayer cannot access the portal. Accordingly, there is merit in the contention of the petitioner that he was not served with the impugned Show Cause Notice and the impugned order which was issued after the registration was cancelled.

7. In view of the above, we are of the view that the impugned order which had been passed solely on account that petitioner had not filed a reply cannot be sustained. The matter is liable to be remitted to the Proper Officer for re-adjudication. Accordingly, the impugned order dated 04.12.2023 is set aside. The matter is remitted to the Proper Officer for re-adjudication.

8. Petitioner shall file reply to the Show Cause Notice within 30 days. 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. Learned counsel further submits that another Show Cause Notice for the same tax period dated 05.04.2023 has been issued by the Directorate General of Goods and Services Intelligence, Ghaziabad Regional Unit. This order would be without prejudice to the proceedings already initiated by the Directorate General of Goods and Services Intelligence, Ghaziabad, Regional Unit and defence of the petitioner thereto.

10. 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.

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

12. Petition is disposed of in the above terms.

SANJEEV SACHDEVA, J

RAVINDER DUDEJA, J

APRIL 04, 2024/ NA