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

% Date of decision: 24.04.2024

W.P.(C) 5670/2024 & CM APPL. 23433/2024

SUN & SAND INDUSTRIES AFRICA PVT. LTD

.....Petitioner

versus

SALES TAX OFFICER CLASS-II/AVATO DEPARTMENT OF
TRADE AND TAXES

..... Respondent

Advocates who appeared in this case:

For the Petitioner: Ms. Anjali Jha Manish, Mr. Priyadarshi Manish
and Ms. Divya Rastogi, Advocates.

For the Respondent: Mr. Rajeev Aggarwal, ASC.

CORAM:-

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

HON'BLE MR. JUSTICE RAVINDER DUDEJA

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

1. Petitioner impugns order dated 19.12.2023 whereby the impugned Show Cause Notice dated 23.09.2023, proposing a demand of Rs.15,19,68,460.00/- against the petitioner had been disposed of and 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. Perusal of the Show Cause Notice dated 23.09.2023 shows that the Department has given reasons under separate headings i.e., excess claim of Input Tax Credit [“ITC”]; Scrutiny of ITC availed and under declaration of ineligible ITC.

4. Learned counsel for Petitioner submits that Petitioner had replied to the impugned Show Cause Notice on 23.10.2023 seeking additional time for furnishing a detailed reply and an opportunity of personal hearing. She further submits that a reminder dated 12.12.2023 was issued to the Petitioner providing a final opportunity for personal hearing. Pursuant to the said reminder, Petitioner had replied to the reminder on 18.12.2023 seeking time to furnish reply and time to appear for personal hearing. However, the impugned order dated 19.12.2023 does not take into consideration the request submitted by the Petitioner for extension of time and is a cryptic order.

5. The impugned order dated 19.12.2023 after recording the narration, records that a demand as *ex-parte* is created. It states “*And whereas, it is noticed that the Taxpayer filed reply but the reply does not consist any explanation of show cause notice nor supported with any documents in this regards. Further, No one appeared for Personal Hearing before the undersigned on the given date and time, And whereas another opportunity to submit reply and personal Hearing given to the taxpayer firm for the sake of natural justice, as per provision of Section 75(4) DGST Act, by issuing "REMINDER" through the GST portal. The taxpayer sought 4 weeks time whereas no explanation to SCN received from the taxpayer firm despite sufficient and repeated opportunities, being a time-bound matter, I*



am left with no other option to proceed ex-parte.” 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.

6. Further, placing reliance on Section 75(5) of the Act, learned counsel for Petitioner submits that according to the said Section, Petitioner is liable for grant of adjournment of personal hearings up to three times. However, despite the Petitioner seeking time for personal hearings on 23.10.2023 and 18.12.2023, the Petitioner was not provided an opportunity of personal hearing which is against the principles of natural justice.

7. *Per Contra*, learned counsel for Respondent opposing the said submission submits that no detailed reply was filed by the Petitioner and despite two opportunities having been granted to the Petitioner, Petitioner failed to file a detailed reply or appear in person.

8. Reference may be had to Section 75(5) of the Act, which reads as follows:

“Section 75(5): The proper officer shall, if sufficient cause is shown by the person chargeable with tax, grant time to the said person and adjourn the hearing for reasons to be recorded in writing: Provided that no such adjournment shall be granted for more than three times to a person during the proceedings.”

9. Section 75 (5) of the Act stipulates that, if sufficient cause is shown, the proper officer shall adjourn the hearing, however, not more than three adjournments may be granted.

10. Though in terms of Section 75 (5) of the Act three adjournments



maybe granted, it is not mandatory for the proper officer to grant three adjournments. Adjournment is not a right. Said provisions empowers the proper officer to grant upto three adjournments, if sufficient cause is shown. It would be dependent on the facts of each case whether sufficient cause has been shown or not for exercise of the discretion to adjourn.

11. Be that as it may, in the present case, we notice that the order is a cryptic order and a prayer is made on behalf of petitioner for one opportunity to file reply, accordingly we set aside the impugned order dated 19.12.2023 and the show cause notice is remitted to the proper officer for re-adjudication

12. Petitioner shall file a 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

APRIL 24, 2024_{/vp}