



2024:DHC:4287-DB



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

% Date of decision: 21.05.2024

+ W.P.(C) 7351/2024

**SAMSUNG INDIA ELECTRONICS PRIVATE
LIMITED**

..... Petitioner

versus

UNION OF INDIA & ORS.

..... Respondents

Advocates who appeared in this case:

For the Petitioner : Mr. Puneet Agarwal, Mr. Prem Kandpal, Ms. Mansi Khurana, Ms. Hemlata Rawat & Mr. Chetan Kumar Shukla, Advocates

For the Respondent: Mr. Tanveer Ahmed Ansari, Senior Panel Counsel for R-1 Mr. Harpreet Singh, Senior Standing Counsel with Mr. Suhani Mathur, Mr. Ashok Kumar Dagar, Ms. Pallavi Gupta, Mr. Vinod Kumar Sharma & Mr. Y.K. Parashar, Advocates

CORAM:-

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

HON'BLE MR. JUSTICE RAVINDER DUDEJA

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

1. Petitioner impugns order dated 27.04.2024, whereby Show Cause Notice dated 30.01.2024 has been disposed of. Petitioner also impugns the subject Show Cause Notice dated 30.01.2024.

2. Learned counsel for Petitioner submits that the Show Cause Notice refers to a special audit which was conducted. Petitioner is



aggrieved by the manner in which the said audit has been conducted and the alleged satisfaction recorded by the Proper Officer to proceed further on the Audit Report. Petitioner also contends that the subject documents are unsigned by the Proper Officer and as such are also invalid and could not have been proceeded further.

3. Learned counsel further submits that the Proper Officer while adjudicating the Show Cause Notice has not even cared to look at the documents furnished by the Petitioner. He submits that the major ground against the Petitioner is that the Petitioner has availed excess Input Tax Credit. He submits that the comparison of GSTR-2A with GSTR-3B filed by the Petitioner clearly shows that there is no excess claim of Input Tax Credit. On the other hand, it reveals that Petitioner has claimed less credit than what was available to the Petitioner in the relevant financial years.

4. Issue notice. Notice is accepted by the learned counsel appearing for the respondents. With the consent of parties, the petition is taken up for final disposal.

5. Perusal of the impugned order shows that the impugned order categorically records that the reply of the tax payer was not found to be substantial to counter the observation of the auditor. It states “*And whereas, Sh. Aditya Goel, CA appeared on the behalf of the firm on 24/04/2024 and submitted their explanation that is already mentioned in the reply filled by the taxpayer. The undersigned has gone through*



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the reply of the taxpayer and found there is no substantial fact to counter the observation of the auditor who has conducted Special Audit under section 66 of GST Act. Further, in the observation the special auditor mentioned that “We have not provided the detailed documents and we have limited data for review. We have not reviewed any invoices or sale register, we have reviewed the following details for April 2018 to March 2019 as provided by the department:-

- a) Consol GSTR 1*
- b) Consol GSTR 3B*
- c) Monthly GSTR 2A*
- d) Form 9*
- e) Form 9C*

*From the above observation of the auditor who has conducted the special audit it is clear that the taxpayer has not rendered his cooperation in this regard. Further, during the course of physical hearing the company has mentioned that the ITC data of the firm is now reflected in 2A after the completion of the special audit. The same has been checked through online portal of GSTIN and found that there is still mismatch in the CGST & SGST for the year 2018-19
**** And whereas, the undersigned with the consider opinion that the observations/facts derived during the course of audit must be confirmed. And whereas, further as per Section 73(7) Notice of tax and interest is to be given while Section 73(9) prescribes for imposition of penalty equivalent to 10% of tax or Rs.10000/- whichever is higher*



in case reply is not found to be satisfactory. Accordingly, a demand is being created towards Tax /Interest amount already confirmed through SCN/ DRC-01 (Copy attached) in accordance with the provisions of CGST / DGST Act & Rules, 2017.” The Proper Officer has opined that the reply was not substantial to counter the observation of the auditor.

6. The observation in the impugned order dated 27.04.2024 is not sustainable for the reasons that the reply filed by the Petitioner is a detailed reply with supporting documents. Proper Officer had to at least consider the reply on merits and then form an opinion. He merely held that the reply is not substantial to counter the observation of the auditor which ex-facie shows that Proper Officer has not applied his mind to the reply submitted by the petitioner.

7. 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.

8. In view of the above, impugned order dated 27.04.2024 cannot be sustained and is accordingly set aside. The Show Cause Notice is remitted to the Proper Officer for re-adjudication.

9. Petitioner may file a further reply to the Show Cause Notice



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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.

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

MAY 21, 2024/*RM*