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* IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: 22.05.2024

+ W.P.(C)-7443/2024 & CM APPL. 30989/2024

MITSUBISHI ELECTRIC INDIA PRIVATE LIMITED..... Petitioner

versus

UNION OF INDIA & ORS.

..... Respondents

Advocates who appeared in this case:

For the Petitioner: Mr. Rajat Bose and Mr. Ankit Sachdeva, Advocates

For the Respondents: Mr. Himanshu Pathak and Mr. Samman Kumar, Advocates
for R-1 & R-2

Mr. Harpreet Singh, SSC with Mr. Chander Kiran, Mr.
Sameer Gosain, Mr. Rabindra Prasad Sinha, Mr. Pawan
Kumar and Mr. Abhinav Gupta, Advocates

CORAM:-

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

HON'BLE MR. JUSTICE RAVINDER DUDEJA

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

1. Petitioner impugns order dated 26.04.2024 whereby the impugned Show Cause Notice dated 02.12.2023 proposing a demand of Rs 6,27,53,208.00/- against the petitioner had been disposed of and demand including penalty has been created 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 a detailed reply dated 02.01.2024. He submits that a reminder notice was issued to the Petitioner on 21.02.2024 which was also duly replied to by the Petitioner on 23.04.2024. However, the impugned order dated 26.04.2023 does not take into consideration the reply submitted by the Petitioner and is a cryptic order.

4. Perusal of the Show Cause Notice dated 02.12.2023 shows that the Department has raised grounds under separate headings i.e., under declaration of output tax; reconciliation of GSTR-01 with GSTR-09; Reconciliation of E-way bill turnover with GSRT-01; excess claim of Input Tax Credit [“ITC”]; under declaration of ineligible ITC and ITC claimed from cancelled dealers, return defaulters and tax non payers. To the said Show Cause Notice, a detailed reply was furnished by the petitioner giving response under each of the heads with supporting documents.

5. The impugned order, however, after recording the narration merely records that the reply uploaded by the taxpayer is not properly filed/explained. It states that *“The taxpayer has submitted his reply on the GSTIN portal and also Sh. Nikhil Gupta, CA appeared on the behalf of the*



*company during the personal hearing on 23.04.2024. The undersigned heard him and also examined the reply and the documents submitted by him on the GSTIN portal and found the taxpayer has not properly replied/filed explanation despite of sufficient and repeated opportunities provided to him. He further added in reply that an special audit has been conducted of the firm and auditor did not observe these matter of SCN in findings, which indicates the taxpayer has nothing to say any more in this matter. Further, the submission of taxpayer that M/s MITSUBISHI ELECTRIC INDIA PRIVATE LIMITED is not deals in the item where the cess is applicable. It deals only in the item of electrical goods. This submission of the taxpayer is acceptable.***** Now, therefore, the undersigned is left without any option and 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 is not properly filed/explained.*

6. The observation in the impugned order dated 26.04.2024 is not sustainable for the reasons that the reply dated 02.01.2024 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 properly filed/explained without any justification which ex-facie shows that the 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, the impugned order dated 26.04.2024 cannot be sustained and is 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 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. 56 of 2023 with regard to the extension of time is left open.

12. Petition is disposed of in the above terms.

SANJEEV SACHDEVA, J

MAY 22, 2024/MR

RAVINDER DUDEJA, J