



2024:DHC:4135-DB



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

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Date of decision: 17.05.2024

W.P.(C) 6989/2024 & CM APPLs. 29080/2024, CM APPL.
29079/2024

ETHOS LIMITED

.....Petitioner

versus

SALES TAX OFFICER CLASS II AVATO WARD 206 ZONE 11
DELHI & ANR

..... Respondents

Advocates who appeared in this case:

For the Appellant: Ms. Kavita Jha, Advocate.

For the Respondent: Mr. Rajeev Aggarwal, ASC with Mr. Prateek Badhwar,
Ms. Shaguftha H. Badhwar & Ms. Samridhi 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 24.04.2024 whereby the impugned Show Cause Notice dated 10.12.2023, proposing a demand of Rs.2,92,00,063.00 against the petitioner had been disposed of and a 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).



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

3. Learned counsel for Petitioner submits that Petitioner had filed a detailed reply dated 20.02.2024, however, the impugned order dated 24.04.2024 does not take into consideration the reply submitted by the Petitioner and is a cryptic order.

4. Perusal of the Show Cause Notice dated 10.12.2023 shows that the Department has raised grounds under separate headings i.e., under declaration of output tax; the tax on outward supplies under declared on reconciliation of data in GSTR-09; reconciliation of E-way bill turnover with GSTR-09; excess claim of Input Tax Credit [“ITC”]; Scrutiny of ITC availed on reverse charge and under declaration of ineligible ITC. 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 records that the reply uploaded by the taxpayer is devoid of merits without any justification or proper reconciliation. It states that *“And whereas, on examination of the reply/documents furnished by the taxpayer, it has been observed that the taxpayer has paid the demand towards the tax on outward supplies under declared on reconciliation of data in GSTR-09 through DRC- 03 dated 25.12.2020, hence, this demand is dropped. Further, the reply on other issues is found devoid of merits without any justification or proper reconciliation, therefore, the demand raised with detailed*



reasons/explanations in SCN/DRC-01 is upheld. DRC-07 is issued accordingly.” The Proper Officer has opined that the reply is devoid of merits without any justification or proper reconciliation.

6. The reply filed by the petitioner gave full particulars with regard to the tax paid on outward supplies under declared on reconciliation of data in GSTR-09 through DRC-03 as pointed out by the department by the impugned order. The demand towards the taxes on the output supplies which were alleged to be under declared have been dropped.

7. With regard to the other issues, the observation in the impugned order dated 24.04.2024 is not sustainable for the reasons that the reply dated 20.02.2024 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 found devoid of merits without any justification or proper reconciliation which ex-facie shows that Proper Officer has not applied his mind to the reply submitted by the petitioner.

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 24.04.2024 cannot be sustained and is set aside in respect of the issues that have been held against the Petitioner. The order in so far as it relates to the demand



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towards the taxes on output supply, which has already been dropped by the proper officer is not interfered with. The Show Cause Notice to the said limited extent 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. Petition is disposed of in the above terms.

SANJEEV SACHDEVA, J

RAVINDER DUDEJA, J

MAY 17, 2024/sk