



2024:DHC:4533-DB



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

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Date of decision: 29.05.2024

W.P.(C) 8105/2024 & CM APPL. 33337/2024, 33336/2024

TATA MOTORS LIMITED

..... Petitioner

versus

GOODS AND SERVICE TAX OFFICER (GSTO) WARD 203 &
ORS.

.... Respondents

Advocates who appeared in this case:

For the Petitioner: Mr. Yogendra Aldak, Mr. Agrim Arora and Mr. Sumit Khadaria, Advocates.

For the Respondents: Mr. Rajeev Aggarwal, ASC with Mr. Prateek Badhwar, Ms. Shaguftha H. Badhwar, Ms. Samridhi Vats, Advocates. Ms. Leelawati Suman, SPC for R-2/ UOI.

CORAM:-

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

HON'BLE MR. JUSTICE RAVINDER DUDEJA

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

1. Petitioner impugns order dated 30.04.2024 whereby the impugned Show Cause Notice dated 29.01.2024 proposing a demand of Rs. 23,82,40,692.00/- against the petitioner has been disposed of and a demand including penalty has been created against the petitioner for Financial Year 2018-19. 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, petition is taken up for final disposal today.

3. Learned counsel for Petitioner submits that Petitioner had filed a detailed reply dated 21.03.2024, however, the impugned order dated 30.04.2024 does not take into consideration the replies submitted by the Petitioner and is a cryptic order.

4. Learned counsel for petitioner further submits that one of the grounds in the Show Cause Notice was that an audit was conducted in respect of the petitioner, however, there was no application of mind by the proper officer for issuance of Show Cause Notice and Special Audit Report was mechanically applied as one of the grounds in the Show Cause Notice.

5. Perusal of the Show Cause Notice dated 29.01.2024 shows that the Department has simply enclosed the findings of the Special Audit conducted by Auditors as per Section 66 of the Act. and no further reasons were given in the said Show Cause Notice. The Special Audit Report gave findings under separate headings i.e., Late filing of GSTR-1; inaccurate declaration of turnover; difference in GSTR-1 and GSTR-3B; excess availment of ITC in GSTR-3B vis a vis GSTR-2A and GST liability under reverse charge not reported. To the said Show Cause Notice, detailed reply was furnished by the petitioner giving response under each of the heads with supporting documents.



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6. The impugned order, however, after recording the narration records that the reply uploaded by the taxpayer is not satisfactory. It merely states that *“And whereas, it is noticed that the Taxpayer filed reply/explanation within stipulated period is not satisfactory. Further, another opportunity to submit reply and for the sake 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, the reply has been examined and found not satisfactory. Hence demand is being created in accordance with the provisions laid down in Section 73(9) of the CGST / DGST Act, 2017, as per discrepancies already conveyed through SCN/ DRC-01.”* The Proper Officer has opined that the reply is not satisfactory.

7. The observation in the impugned order dated 30.04.2024 is not sustainable for the reasons that the reply dated 21.03.2024 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 satisfactory 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



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further documents/details.

9. In view of the above, the impugned order dated 30.04.2024 cannot be sustained and is set aside. The Show Cause Notice 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. The challenge to Notification No. 9 of 2023 and 56 of 2023 with regard to the extension of time is left open.

13. Petition is disposed of in the above terms.

SANJEEV SACHDEVA, J

RAVINDER DUDEJA, J

MAY 29, 2024/sk