



2024:DHC:4425-DB



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

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Date of decision: 27.05.2024

W.P.(C) 7747/2024 & CM APPLs. 32139-40/2024

FUTURE GENERALI INDIA INSURANCE
COMPANY 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. Uma Prasuna Bachu, SPC for UOI.**CORAM:-****HON'BLE MR. JUSTICE SANJEEV SACHDEVA****HON'BLE MR. JUSTICE RAVINDER DUDEJA****JUDGMENT****SANJEEV SACHDEVA, J. (ORAL)**

1. Petitioner impugns Order-in-Original dated 29.04.2024 whereby the impugned Show Cause Notice dated 24.12.2023 proposing a demand of Rs. 7,02,71,577.00/- against the petitioner has been disposed of and a demand including penalty has been created

WP (C) 7747/2024

Page 1 of 5



2024:DHC:4425-DB



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).

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 17.01.2024 and an additional reply dated 27.02.2024, however, the impugned order dated 29.04.2024 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 24.12.2023 shows that the Department has simply enclosed the findings of the Special Audit in Form GST ADT-04 and no further reasons were given in the said Show Cause Notice. The Special Audit Report gave findings under separate headings i.e., Re-availment of ITC as per Rule 42; Difference



2024:DHC:4425-DB



in ITC availed in GSTR-3B and GSTR-2A; Input tax claimed from cancelled dealers; Non-availability of invoices and supporting documents for verification of ITC availed by the Petitioner; and Non-availability of records of brokerage to agents and intermediaries for verification of ITC. To the said Show Cause Notice, detailed replies were furnished by the petitioner giving response under each of the heads with supporting documents.

6. The impugned order, however, after recording the narration records that the reply uploaded by the taxpayer is not properly replied/filed. It states that “*Whereas, SCN/DRC-01 [See Rule 100(2) & 142(1)(a)] was issued along with complete calculation of Tax// interest liabilities of the Taxpayer under Section 73 of CGST / DGST Act & Rules, 2017, on account of the Special Audit conducted by M/s PVAR & Associates Chartered Accountants authorized Chartered accountant/Cost accountant under Section 66 of CGST/DGST Act, 2017 on the basis of documents/information available on GSTN portal and provided by FUTURE GENERAL INDIA INSURANCE COMPANY LTD. On the basis of the observation of the Special Audit the above said SCN has been issued to the taxpayer.*** The taxpayer has submitted his reply on the GSTIN portal. The undersigned examined the reply and the documents submitted by found the taxpayer has not properly replied/filed explanation despite of sufficient opportunities provided.*” The Proper Officer has opined that



2024:DHC:4425-DB



the reply is not properly replied/filed.

7. The observation in the impugned order dated 29.04.2024 is not sustainable for the reasons that the replies dated 17.01.2024 and 27.02.2024 filed by the Petitioner are detailed replies 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 replied/filed without any justification 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 29.04.2024 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)

WP (C) 7747/2024

Page 4 of 5



2024:DHC:4425-DB



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. 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 27, 2024/vp