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

+ **W.P.(C) 7659/2023 & CM APPL. 29674/2023**

INSTAKART SERVICES PVT. LTD.

..... Petitioner

Through: Mr. Tarun Gulati, Sr. Adv. with Mr.
Kishore Kunal, Mr. Manish Rastogi
& Mr. Runjhun Pare, Advs.

Versus

SALES TAX OFFICER, CLASS II & ORS.

..... Respondents

Through: Mr. Rajeev Aggarwal, ASC with Mr.
Manbhar Mittal, Adv. for R1.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

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31.05.2023

CM APPL. 29675/2023

1. Exemption is allowed, subject to all just exceptions.
2. The application is disposed of.

W.P.(C) 7659/2023 & CM APPL. 29674/2023

3. The petitioner has filed the present petition, *inter alia*, impugning the show cause notice dated 12.05.2023 and the intimation dated 19.12.2022.
4. The petitioner's tale of woe stem from an error which had crept in its returns (FORM GSTR-3B) filed for the month of September, 2017. The petitioner had erroneously typed its liability for tax under the Central Goods and Services Tax Act, 2017 (hereafter 'the CGST Act') as ₹32,33,36,855/-

instead of ₹3,23,36,855/-. It discharged its liability by using the available balance of Input Tax Credit (ITC) in the electronic credit register; ITC of ₹29,10,00,000/- was used for discharging the said liability, which the petitioner claims as an apparent error.

5. The petitioner states that there was no defined mechanism to rectify the submitted FORM GSTR-3B, which was filed for the month of September, 2017. However, the petitioner immediately reversed the ITC that was used for discharging the overstated liability and reported the same in its returns filed for the month of October, 2017. Thereafter, on 22.12.2017, the petitioner filed its returns (GSTR-1) for the month of September, 2017 and correctly stated the tax liability at ₹3,23,36,855/- instead of ₹32,33,36,855/- as reported earlier.

6. The respondents issued a circular being Circular No.26 dated 29.12.2017, for providing a mechanism for correction of mistakes in (FORM GSTR-3B) returns. In terms of the said circular, the liability for the previous month is required to be corrected in returns filed in (FORM GSTR-3B) for subsequent months. Although, the petitioner had followed this procedure, the benefit of the circular has not been extended to the petitioner on the ground that it was issued subsequently.

7. Notwithstanding the fact that the petitioner had rectified the apparent mistake in his returns filed on 18.10.2017, respondent no.1 issued a letter informing the petitioner as to the mismatch in the FORM GSTR-2A and FORM GSTR-3B for the relevant financial year. The petitioner clarified the same, however, it appears that the said clarification was not considered.

8. To add to the petitioner's woe, on 19.12.2022, respondent no.1 issued a demand for a sum of ₹55,39,99,352/-, which comprised of the tax demand

of ₹30,00,26,728/- and interest on the said amount quantified at ₹25,39,72,624/-.

9. The petitioner once again clarified the reasons for the mismatch by a communication dated 18.01.2023. Thereafter respondents scheduled a personal hearing on 20.04.2023 and the petitioner was afforded a personal hearing on that date. The petitioner also filed an additional submission dated 27.04.2023 explaining the reasons for reversing the excess amount of ITC.

10. Notwithstanding the explanation provided by the petitioner, respondent no.1 issued a show cause notice dated 12.05.2023 raising an aggregate demand of ₹55,39,99,352/- as mentioned in the intimation dated 19.12.2022.

11. This has led the petitioner to file the present petition.

12. Surely, if there is an inadvertent or typographical error that has crept in any returns, the taxpayer cannot be mulcted with the tax liability in excess of what is due and payable. It is apparent that the explanation provided by the petitioner has not been considered.

13. In view of the above, we are inclined to quash the show cause notice dated 12.05.2023. However, Mr. Aggarwal, learned counsel appearing for the respondents, assures this Court that the respondents will duly consider all clarifications and pass an appropriate order.

14. In view of the above, we consider it apposite to direct the concerned authority to pass an appropriate order pursuant to the show cause notice considering the petitioner's responses to the show-cause notice as well as the averments made in this petition.

15. The said order be passed within a period of three weeks from today.

16. It is clarified that no coercive steps would be taken against the

petitioner for enforcing the demand as projected in the show cause notice or any order that may be passed pursuant thereto till the next date of hearing.

17. List on 24.07.2023.

18. Respondent nos. 2 to 4 are not the necessary parties to the present petition and are, accordingly, deleted from the array of parties.

VIBHU BAKHRU, J

AMIT MAHAJAN, J

MAY 31, 2023/Ch