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

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Date of Decision : 19.09.2024+ **W.P.(C) 9760/2024****KUNAL AUTOTECH PRIVATE LIMITED**

.....Petitioner

Through: Ms Gunjan Richharia, Advocate

versus

UNION OF INDIA & ORS.

.....Respondents

Through: Ms Garima Sachdeva, SPC Mr Amit Acharya, GP Ms Divyanshi Maurya, Advocate for UOI/R1.
Mr Gibran Naushad, SSC for R2 - R5.**CORAM:****HON'BLE MR. JUSTICE VIBHU BAKHRU****HON'BLE MR. JUSTICE SACHIN DATTA****VIBHU BAKHRU, J. (ORAL)**

1. The petitioner has filed the present petition, *inter alia*, impugning the order-in-appeal dated 22.01.2024 (hereafter *the impugned order*), whereby the order-in-original dated 30.12.2022 passed by the adjudicating authority has been aside.

2. The petitioner is registered under the Central Goods and Services Tax Act, 2017 (hereafter *the CGST Act*) and has been assigned the Goods and Services Tax Identification Number (GSTIN) – 07AAHCK9263H1Z6.



3. The petitioner filed an application dated 02.11.2022 claiming accumulated input tax credit (hereafter *the ITC*) for a sum of ₹68,34,872/- on account of zero rated supply effected in the month of September 2022. Pursuant to the said application, the adjudicating authority issued the Show Cause Notice dated 23.12.2022 in the form of GST RFD-08 and called upon the petitioner to show cause why its application for refund under Section 54 of the CGST Act should not be rejected, for the reasons mentioned in the said Show Cause Notice.

4. The petitioner replied on 28.12.2022 to the aforesaid Show Cause Notice in GST RFD-09 addressing the allegations / points as raised in the Show Cause Notice. Thereafter, by the order-in-original dated 30.12.2022, the adjudicating authority sanctioned refund of ₹67,92,118/- against the demand, while rejecting the balance.

5. The order-in-original was subject matter of review under Section 107(2) of the CGST Act. The reviewing authority concluded that the refund of ₹12,04,443/- was wrongly sanctioned to the petitioner and directed that appeal be filed against the order-in-original dated 30.12.2022. Accordingly, in terms of the review order, the Revenue preferred an appeal against the order-in-original, under Section 107(3) of the CGST Act, before the appellate authority. According to the Revenue, the refund to the extent of ₹12,04,443/- was liable to be rejected on account of mismatch in ITC as per GSTR-2B and GSTR-3B.

6. The petitioner was issued the Show Cause Notice dated 06.07.2023 by the appellate authority and the petitioner responded to the same by the letter



dated 26.12.2023. In its response, the petitioner submitted a reconciliation statement. The appellate authority found in favour of the Revenue and held that the adjudicating authority had erred in not addressing the question of mismatch between the GSTR-2B, GSTR-3B as well as mismatch of ITC in respect of one issue between GSRT-2B and GSRT-3B in respective of another issue. The appellate authority faulted the adjudicating authority for placing reliance on the reconciliation statement submitted by the petitioner without sufficient discussion. The paragraphs no.8 & 9 of the impugned order passed by the appellate authority are relevant and set out below:-

“8. In view of the above, I find that the order passed by the adjudicating authority without placing on record the reasons for conclusion and the rationale/premise to negate the evidence contained in the show cause notice appears to be in-admissible. The question of mismatch between GSTR-2B and GSTR-3B, GSTR-1 & GSTR-3B, (in respect of issue 8.1) and mismatch of ITC as per GSTR 2B & GSTR 3B (in respect to issue 8.2) have not been addressed properly by the Adjudicating Authority and reliance has been placed on the reconciliation of the respondent without sufficient discussion. The question of verification has not been concluded and the same has been left open without actual quantification which was verification dependent. Thus, I find that the adjudicating authority has to come at a conclusion based upon proper verification and quantification, and only then the refund should have been granted. Leaving the question of verification open and granting refund without the requisite exercise makes the impugned order erroneous and unsustainable.

9. In view of the aforementioned discussion and



findings and after going through the judgement *as discussed supra*, I am of the considered view that the adjudicating authority has erred in allowing refund of ITC amounting to Rs. 12,04,443/- out of the total refund claim of Rs. 68,34, 172/- which is liable to be recovered from the respondent. The impugned order passed by the adjudicating authority is neither legal nor maintainable in law and as such the same are liable to be set aside up to that extent. Accordingly, I pass the following order:"

7. It is apparent from the above, that although the appellate authority has faulted the adjudicating authority for not carefully examining the reconciliation statement and passing a refund order to the extent of ₹12,04,443/- without sufficient discussion, the appellate authority has also not examined the question of reconciliation. There is neither any discussion nor any finding regarding the reconciliation statement furnished by the petitioner.

8. In terms of Section 107(11) of the CGST Act, the appellate authority is required to decide the question in issue and cannot remand the matter to the adjudicating authority. In the present case, although, the appellate authority has faulted the adjudicating authority in not addressing the question of reconciliation statement, the appellate authority has also not addressed the same.

9. In the given circumstances, we consider it apposite to set aside the impugned order and remand the matter to the appellate authority for consideration afresh.



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10. The appellate authority shall decide the appeal afresh after affording the parties an opportunity of being heard.

11. The petition is disposed of in the aforesaid terms.

VIBHU BAKHRU, J

SACHIN DATTA, J

SEPTEMBER 19, 2024

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Click here to check corrigendum, if any