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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P. (C) 7037/2020 & CM APPL. 23996/2020

GULSHAN KAPOOR

..... Petitioner

Through: Mr. Shivashish Karnani, Advocate
with Mr. Arbind Aggarwal,
Mr. Prashant and Mr. Akshay Kumar,
Advocates.

versus

**COMMISSIONER OF DELHI GOODS
AND SERVICES TAX & ORS.**

..... Respondents

Through: Mr. Prateek K. Chadha, Advocate for
respondent Nos.1, 3 & 4.
Mr. Amit Bansal, Senior Standing
Counsel with Mr. Aman Rewaria and
Ms. Vipasha Mishra, Advocates for
respondent No.2.

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Date of Decision: 30th September, 2020

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MR. JUSTICE SANJEEV NARULA

J U D G M E N T

MANMOHAN, J: (Oral)

1. The petition has been heard by way of video conferencing.
2. Present writ petition has been filed challenging impugned Deficiency Memo dated 15th July, 2020 issued by respondent no. 4 for the period July 2018 to September 2018 as well as impugned Show Cause Notice dated 15th July, 2020 issued by respondent no. 3 qua refund application for the period October 2018 to December 2018 and impugned Refund Sanction Order

dated 3rd September, 2020 issued by respondent no. 3 for the period January 2019 to March 2019 by crediting the refund claimed to the consumer welfare fund instead of the petitioner. Petitioner also prays for directions to the respondents to grant the refund of Input Tax Credit to the petitioner for all the three refund periods along with interest.

3. Learned counsel for the petitioner states that despite all documents being available in the records of the respondents, they are asking for them to be furnished once again. He contends that a notice can be issued where the proper officer is satisfied for the reasons to be recorded in writing that the whole or any part of refund is not admissible. However, he states that in the present case no precise reason of satisfaction for inadmissibility of refund is recorded and it is unclear why there is a requirement for the petitioner to appear in person when additional clarifications can be furnished electronically.

4. He submits that the impugned Deficiency Memo and Show Cause Notice are ex-facie nullity since reliance for their issuance is placed on the Circular no. 125/44/2019-GST dated 18th November, 2019 issued in exercise of the powers conferred by Section 168 of the Act, as per which a Circular can be issued to clarify provisions of the Act and Rules but the same cannot place additional requirements for compliance.

5. He further submits that in the present case the impugned Deficiency Memo was issued after a period of around 90 days, whereas under Sub-rule 2 and 3 of Rule 90 the deficiency memo needs to be issued within a mandatory period of 15 days. In support of his submission, he relies upon the judgment of this Court in ***Jian International Vs. Commissioner of Delhi Goods and Services Tax, W.P. (C) 4205/2020***.

6. He contends that as per clause (b) of Section 54(8) of CGST Act, 2017 where a refund is claimed on account of inverted duty structure, the refundable amount instead of being credited to the consumer welfare fund has to be paid to the applicant.

7. Issue notice.

8. Mr. Prateek K. Chadha, Advocate accepts notice on behalf of respondent Nos.1, 3 & 4 and Mr. Amit Bansal, Senior Standing Counsel accepts notice on behalf of respondent no.2.

9. Since in the present case quashing of the Circular dated 18th November, 2019 is not sought but only an interpretation has been placed upon it and reliance on *Jian International* (supra) can be placed before the respondents, this Court directs the petitioner to take all its pleas in the replies to the show cause notice, deficiency memo and representation seeking credit of refund in his account.

10. At this stage, learned counsel for respondent nos. 1, 3 and 4 states that reply to show cause notice, deficiency memo and representation shall be decided expeditiously after giving an opportunity of hearing to the authorized representative of the petitioner by way of a reasoned order in accordance with law. He further states that the petitioner need not appear personally before the respondent.

11. The statement made by learned counsel for respondent nos. 1, 3 and 4 is accepted by this Court and the said respondents are held bound the same.

12. Recording the aforesaid statement, present writ petition and pending application stand disposed of with the aforesaid directions. Though it is clarified that all the rights and contentions of parties are left open, yet it is directed that the replies and representations filed by the petitioner shall not

be rejected/dismissed on the ground of limitation.

13. The order be uploaded on the website forthwith. Copy of the order be also forwarded to the learned counsel through e-mail.

MANMOHAN, J

SANJEEV NARULA, J

SEPTEMBER 30, 2020
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