

2024 : DHC : 1125-DB



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

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Date of decision: 12.02.2024

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W.P.(C) 1960/2024 & CM APPL. 8229/2024

FEDERAL BANK LTD

..... Petitioner

versus

THE ASSISTANT COMMISSIONER DGST. Respondent

Advocates who appeared in this case:

For the Petitioner: Mr. Joseph Kodianthara, Senior Advocate with Mr. V. Shyamohan, Ms. Eshita Baruah, Mr. Abraham Joseph Markos and Ms. Tissy Annie Thomas, Advocates.

Respondent: Mr. Rajeev Aggarwal, ASC with Ms. Samridhi Vats, Advocate.

CORAM:-**HON'BLE MR. JUSTICE SANJEEV SACHDEVA****HON'BLE MR. JUSTICE RAVINDER DUDEJA****JUDGMENT****SANJEEV SACHDEVA, J. (ORAL)**

1. Petitioner impugns order dated 27.12.2023, whereby the show cause notice dated 23.09.2023, proposing a demand against the petitioner has been confirmed. The order has been passed under Section 73 of the Central Goods and Services Tax Act, 2017.

2. Learned Senior Counsel for the petitioner submits that notice was issued on 24.12.2023 at 20:39, fixing a date of hearing on 26.12.2023 at 11:30 AM in Delhi. He submits that 25.12.2023



was a holiday on account of Christmas and as such, time was too short for the petitioner to take instructions from its head office and appear for hearing.

3. He further submits that a detailed reply dated 21.10.2023 was submitted in pursuance to the show cause notice. However, the impugned order dated 27.12.2023 was passed in a very cryptic manner without giving any reason and it merely states that “reply is not clear and satisfactory”.

4. Issue notice. Notice is accepted by learned counsel for respondent.

5. With the consent of learned counsel for parties, petition is taken up for final disposal.

6. A perusal of the show cause notice shows that the Department has given specific details of alleged under declaration of output tax, excess claim Input Tax Credit [“ITC”], under declaration of ineligible ITC and ITC claim from cancelled dealers, return defaulters and tax non-payers. To the said show cause notice, a detailed reply was furnished by the petitioner giving full disclosures under each of the heads.

7. The impugned order, however, after recording the narration, records that the reply uploaded by the tax payer is incomplete, not duly supported by adequate documents unable to clarify the issues and the Proper Officer has opined that reply is not clear and unsatisfactory.



8. In case the Proper Officer was of the view that reply is incomplete and further details were required, the same could have been 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. Further, we note that hearing was fixed on 26.12.2023, notice was issued only on 24.12.2023 at 08:39 PM after the close of office hours and the next day was a gazetted holiday.

10. We are of the view that adequate opportunity had not been granted to the petitioner to defend the show cause notice by way of a hearing.

11. In view of the above, the order cannot be sustained and the matter is liable to be remitted to the Proper Officer for re-adjudication. Accordingly, the impugned order and show cause notice is set aside. The matter is remitted to the Proper Officer for re-adjudication.

12. As noticed hereinabove, the impugned order records that petitioner has not furnished the requisite details. Proper Officer is directed to intimate to the petitioner details/documents, as maybe required to be furnished by the petitioner within a period of one week from today. On such intimation being given, petitioner shall furnish the requisite explanation and documents within one week thereof. Thereafter, the Proper Officer shall re-adjudicate the show



cause notice within a period of two weeks after giving an opportunity of hearing.

13. 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.

14. A copy of this order be given *dasti* under Signatures of Court Master.

SANJEEV SACHDEVA, J

RAVINDER DUDEJA, J

FEBRUARY 12, 2024/vp

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