2024:DHC:3163-DB

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* IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: 16.04.2024

\+ **W.P.(C) 5373/2024 & CM. APPL. 22121/2024**

M/S RAHUL PACKAGING ..... Petitioner

Versus

UNION OF INDIA & ORS. .... Respondents

Advocates who appeared in this case:

For the Petitioner:	Ms. Aakriti Dhawan, Mr. Mayank Jain, Mr. Parmatma Singh and Mr. Madhur Jain, Advocates.
For the Respondents:	Ms. Neha Malik, Standing Counsel with Mr. Sahil Malik, Advocates.

CORAM:-
HON’BLE MR. JUSTICE SANJEEV SACHDEVA
HON'BLE MR. JUSTICE RAVINDER DUDEJA

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

1. Appellant impugns order dated 17.04.2023, passed by the Appellate Authority under the Central Goods and Service Tax Act, 2017 (hereinafter referred to as the ‘Act’), whereby the appeal of the appellant impugning the order-in-original has been dismissed.

2. By the adjudication order dated 14.12.2021, refund application of the petitioner was rejected.

3. Adjudication order was preceded by Show Cause Notice proposing to reject the application seeking refund dated 23.11.2021 (noticed as 25.11.2021 in the impugned order). The Show Cause Notice was issued by

a Superintendent.

4. As per the petitioner, Superintendent was not competent to issue Show Cause Notice and it is only the officers of the rank of the Assistant Commissioner and above, who could have issued the Show Cause Notice.

5. Learned counsel for the Petitioner submits that though the Show Cause Notice was issued by an incompetent officer, the adjudication order has been passed by an Assistant Commissioner, whose authority is not under challenge. She, however, submits that since the very basis of the adjudication order was the Show Cause Notice, the entire proceedings stand vitiated.

6. Issue notice. Notice is accepted by learned counsel appearing for respondents. With the consent of parties, the petition is taken up for final disposal.

7. Perusal of the Order-In-Original shows that the Appellate Authority in paragraph 10.1 of the impugned order has adverted to the aspect of the validity of the Show Cause Notice and has held as under:-

> *"10.1 Even before the merits are traversed, I find that the impugned order is not sustainable as the show cause notice was issued by Range Superintendent proposing rejection of refund and he was not a competent authority to do so. Further even the reply to the show cause notice has been considered and examined by the Range Superintendent who was not a competent authority under the Act to do s. Only the authority competent to adjudicate the show cause notice can examine the reply to show cause notice and given findings thereon. However, in this case, the Adjudicating Authority without applying his independent mind rejected the refund on the basis of report of Range*

Superintendent which is bad in law."

8. The Appellate Authority has clearly held that the impugned order i.e. the adjudication order dated 14.12.2021 was not sustainable as the Show Cause Notice was issued by a Range Superintendent and he was not the competent authority to do so.

9. The reply to the Show Cause Notice had been considered and examined by the Range Superintendent, who was not the Competent Authority under the Act and only the Competent Authority under the Act could have examined the reply to the Show Cause Notice and give a finding thereon.

10. The Appellate Authority has held that the Adjudicating Authority has not applied its independent mind and rejected the refund merely on the basis of the report of Range Superintendent, which was bad in law.

11. After holding that the Show Cause Notice had been issued by an incompetent authority and reply to the Show Cause Notice had also been considered by the authority not competent in law and the authority competent had not applied its independent mind while rejecting the application, the Appellate Authority proceeded to consider the case of the petitioner on merits and thereafter, upheld the rejection of the refund application.

12. We are of the view that the course adopted by the Appellate Authority is not sustainable for the reason that once the Appellate Authority comes to the conclusion that the Show Cause Notice was issued by an officer who was not competent; reply was also considered by an

incompetent authority and the Competent Authority had not applied its independent mind, the Appellate Authority could not have assumed original jurisdiction and proceeded further with the matter. The Appellate Authority could have only quashed the Show Cause Notice and the proceedings emanating therefrom while reserving the right of the Proper Officer to initiate appropriate proceedings in accordance with law.

13. In view of the above and particularly in view of the fact that the course adopted by the Appellate Authority is not acceptable in law, the impugned order dated 17.04.2023 is set aside to the extent that it decides the claim of the petitioner on merits. The finding returned by the Appellate Authority that the Show Cause Notice has been issued by an incompetent authority and the adjudication order has been passed without any application of mind are not interfered with. The sequitur to that is that the Show Cause Notice dated 25.11.2021 adjudication order dated 14.12.2021 are not sustainable in law and are consequently set aside.

14. Petition is allowed in the above terms. The appropriate authority shall consider the application of the petitioner seeking refund for the period April, 2022 to June, 2022 expeditiously in accordance with law.

SANJEEV SACHDEVA, J

APRIL 16, 2024/NA

RAVINDER DUDEJA, J