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By Nidhi, Advocate



Judgment No.: 049
Dt.: 15-01-2024



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Judgment Deals With

Section/Rule	Section 73
Authority	Calcutta High Court
Case Name	Diamond Beverages Private Limited & Anr. VS The Assistant Commissioner of CGST & CX
Dated	15 th December, 2023

Brief Facts:

The appellants were issued a show cause notice (SCN) intimating certain discrepancies on 30.12.2022. The allegation was that the appellants had utilised input tax credit during the financial year 2018-19 on supplies whose registration was cancelled retrospectively. The other allegation was that the appellants had claimed input tax credit arising out of debit notes by suppliers, who have not filed GSTR-3B Returns during the financial year 2018-19.

The appellants submitted their reply on 10.02.2023 placing necessary information.

After receipt of the reply, in which the assessee had pointed out that relevant details have not been furnished, the assessing authority issued another notice dated 01.03.2023 and purported to have enclosed the relevant details.

Thereafter, the appellants had submitted their reply to the notice of intimation of discrepancies on 13.03.2023.

Subsequently, the authority had issued a pre-show cause notice dated 31.03.2023 in Part A of Form GST DRC-01A. In the said pre-show cause notice, the allegations as mentioned in the notices intimating discrepancies were reiterated. The appellants were advised to pay the tax, as ascertained, failing which; SCN will be issued under section 73(1) of the Act.

The appellants had submitted their reply to the pre-show cause notice on 11.04.2023 on perusal of which it appears that it is a very detailed reply giving all the factual details and also placing reliance on certain decisions of this Court as well as the Hon'ble Supreme Court.

Contention of the Petitioner:

The appellants specifically sought for an opportunity of personal hearing. Essentially, in the reply the appellants requested the authority to investigate at the supplier's end, where there was an allegation of retrospective cancellation of the supplier's registration and allegations, where the suppliers filed the returns for the concerned financial year.

Thus, what was required by the authority to do, was to examine the reply given in the pre-show cause notice. If that is not done, the true facts will not emerge and consequently, issuance of any SCN will be a fait accompli.

However, in the instant case, the authority has not conducted any such investigation and proceeded to issue the impugned SCN dated 16.08.2023 under section 73(1) of the Act.

Contention of the Department:

In the SCN, the reply given by the appellants to the pre-show cause notice was considered and thereafter a notice has been issued under section 73(1) of the Act and it is a detailed SCN.

Findings & Decision of the Court:

On perusal of the show cause dated 16.08.2023, it appears that the submissions made by the appellants in their reply to the pre-show cause notice appears to have been considered.

However, on a closer scrutiny of the SCN dated 16.08.2023, it is seen that except extracting the reply, the authority has not dealt with the contentions, which were placed by the appellants in the reply to the pre-show cause notice. Thus, this would be sufficient to hold that the SCN dated 16.08.2023 has been issued without due application of mind.

This Court is satisfied that since the SCN dated 16.08.2023 has been issued without due application of mind, without conducting any inquiry or investigation at the supplier's end, the show cause notice would call for interference. Thus, the Court is satisfied that the case on hand falls within one of the exceptional circumstances, where the Court will exercise its jurisdiction to interdict a SCN.

Thus, the SCN dated 16.08.2023 was set aside and the matter was remanded back to the adjudicating authority to the stage of pre-show cause notice dated 31.03.2023. The adjudicating authority shall, first inquire/investigate into the matter from the supplier's end, collect the necessary information, afford an opportunity to the appellants to put forth further submission on such information and thereafter afford an opportunity of personal hearing and then proceed to take a decision as to whether a SCN u/s 73(1) of the Act has to be issued or otherwise.