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By Nidhi, Advocate



Judgment No.: 128
Dt.: 14-05-2024



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Judgment Deals With

Section/Rule	Section 73
Authority	Delhi High Court
Case Name	Karan Kumar Agarwal VS Govt Of NCT Of Delhi Through Chief Secretary
Dated	01 st May, 2024

Brief Facts of the Case:

Petitioner impugns order dated 05.12.2023 whereby the impugned Show Cause Notice dated 25.09.2023 proposing demand against petitioner has been disposed of and demand including penalty has been raised against petitioner. Petitioner had filed a detailed reply dated 11.10.2023. However, the impugned order dated 05.12.2023 does not take into consideration the reply submitted by the Petitioner and is a cryptic order.

Findings & Decision of the Court:

Show Cause Notice dated 25.09.2023 was issued, to which a detailed reply was furnished by the petitioner giving response under each of the heads with supporting documents.

The impugned order, however, after recording the narration records that the reply is not satisfactory. The observation in the impugned order dated 05.12.2023 is not sustainable for the reasons that the reply dated 11.10.2023 filed by the Petitioner is a detailed reply with supporting documents. Proper Officer had to at least consider the reply on merits and then form an opinion. He merely held that that the reply is not satisfactory and no proper reply justifying the facts of the case along with supporting documents have been submitted nor has the taxpayer appeared for a hearing. Despite the fact that petitioner has filed a reply, the Proper Officer has held that neither he has filed a proper reply nor appeared for a hearing which ex-facie shows that the Proper Officer has not applied his mind to the reply submitted by the petitioner.

Further, if the Proper Officer was of the view that any further details were required, the same could have been specifically 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. Thus, the impugned order dated 05.12.2023 cannot be sustained and was set aside. The Show Cause Notice was remitted to the Proper Officer for re-adjudication. The Proper Officer shall re-adjudicate the Show Cause Notice after giving an opportunity of personal hearing and shall pass a fresh speaking order in accordance with law.

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