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

Date of Decision : 03.12.2020

+ **W.P.(C) 9743/2020**

NATWEST MARKETS PLC FORMERLY THE ROYAL
BANK OF SCOTLAND NV Petitioner

Through: Mr.Suhail Dutt, Sr. Adv. with
Mr.Nishant Varun & Mr.Pawan
Sharma, Advs.

versus

THE SPECIAL DIRECTOR (CENTRAL REGION)
ADJUDICATING AUTHORITY DIRECTORATE OF
ENFORCEMENT & ANR. Respondents

Through: Mr.Chetan Sharma, ASG &
Mr.Anil Soni, CGSC with
Mr.Devesh Dubey, Adv. for
UOI.

Mr.Ravi Prakash, CGSC with
Mr.Farman Ali, Mr.Mohammad
Shahan Ulla & Mr.Kaushal
Kait, Advs.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (Oral)

This petition has been heard through video conferencing.

CM APPL. 31109/2020 (Exemption)

Allowed, subject to all just exceptions.

W.P.(C) 9743/2020 & CM APPL. 31108/2020

1. This petition has been filed by the petitioner challenging the
Show Cause Notice dated 24.08.2020 issued by the respondent no. 1

calling upon the petitioner to show cause as to why an inquiry be not held against the petitioner in the manner provided in Rule 4 of the Foreign Exchange Management (Adjudication Proceedings and Appeal) Rules, 2000 (hereinafter referred to as the 'Rules').

2. The learned senior counsel for the petitioner submits that the Show Cause Notice relates to proceedings of the year 2010 and therefore, is highly belated. He submits that this itself is a ground for setting aside the Show Cause Notice. In support of his submission, he places reliance on the judgment of this Court in ***Standard Chartered Bank vs. Directorate of Enforcement***, MANU/DE/3676/2010.

3. He further submits that even on the face of the Show Cause Notice, no violation of Clause 2.2 of the Circular dated 17.05.2005 is made out against the petitioner. He submits that the petitioner is in full compliance with the provisions of Clause 2.2 of the Circular dated 17.05.2005, violation of which has been alleged against the petitioner. Placing reliance on the judgment of this Court in ***General Electric Company and Ors. Vs. Deputy Director of Income Tax and Ors.*** MANU/DE/3364/2011 and of the Supreme Court in ***The Deputy Commissioner, Central Excise & Anr. vs. Sushil & Company & Anr.*** MANU/SC/0547/2016, the learned senior counsel for the petitioner submits that where no case is made out on the facts alleged in the Show Cause Notice itself, this Court would be within its jurisdiction to entertain the Writ petition and quash such Show Cause Notice.

4. I have considered the submissions made by the learned senior counsel for the petitioner.

5. The Impugned Show Cause Notice has been issued to the petitioner in terms of Rule 4 of the Rules and reads as under:-

“5. NOW THEREFORE, the Noticees are required to Show Cause in writing within 30 days from the date of receipt of this Notice, as to why inquiry proceedings as contemplated under section 13 FEMA should not be held against them in the manner as provided in Rule (4) of the Foreign Exchange Management (Adjudication Proceedings and Appeal) Rules, 2000, for the aforementioned contraventions and amount.

6. NOTICEES are further informed that in case it is decided to hold inquiry proceedings as aforementioned, they would be required to appear either in person or through Legal Practitioner / Chartered Accountant, duly authorized by them to explain and produce such documents or evidence, as may be useful for or relevant to the subject matter of enquiry, and in case the Noticees fail, neglect or refuse to appear before the undersigned on the appointed date and time, the adjudication proceedings shall proceed against them ex-parte.”

6. Rule 4 of the Rules requires a two-stage scrutiny of the complaint by the Adjudicating Authority. Sub-rule 1 to sub-rule 5 of Rule 4 of the Rules are quoted hereinunder:-

“4. Holding of inquiry.—

(1) For the purpose of adjudicating under section 13 of the Act whether any person has committed any

contravention as specified in that section of the Act, the Adjudicating Authority shall, issue a notice to such person requiring him to show cause within such period as may be specified in the notice (being not less than ten days from the date of service thereof) why an inquiry should not be held against him.

(2) Every notice under sub-rule (1) to any such person shall indicate the nature of contravention alleged to have been committed by him.

(3) After considering the cause, if any, shown by such person, the Adjudicating Authority is of the opinion that an inquiry should be held, he shall issue a notice fixing a date for the appearance of that person either personally or through his legal practitioner or a chartered accountant duly authorised by him.

(4) On the date fixed, the Adjudicating Authority shall explain to the person proceeded against or his legal practitioner or the chartered accountant, as the case may be, the contravention, alleged to have been committed by such person indicating the provisions of the Act or of rules, regulations, notifications, direction or orders or any condition subject to which an authorisation is issued by the Reserve Bank of India in respect of which contravention is alleged to have taken place.

(5) The Adjudicating Authority shall, then, given an opportunity to such person to produce such documents or evidence as he may consider relevant to the inquiry and if necessary, the hearing may be

adjourned to future date and in taking such evidence the Adjudicating Authority shall not be bound to observe the provisions of the Indian Evidence Act, 1872 (1 of 1872)."

7. A reading of the above Rules would clearly show that the Impugned Show Cause Notice is at the first stage wherein the Adjudicating Authority on receiving a reply to the Impugned Show Cause Notice is to form an opinion whether an inquiry at all should be held against the petitioner.

8. In view of the above, at this stage I do not deem it appropriate to entertain this present petition. The petitioner shall be at liberty to raise all its contentions before the Adjudicating Authority. Needless to say, if the petitioner is aggrieved of the decision taken by the Adjudicating Authority, it shall always be open to the petitioner to challenge the same in accordance with law.

9. The petition is accordingly dismissed with no order as to costs.

NAVIN CHAWLA, J

DECEMBER 3, 2020/rv