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WPA 16789 of 2023

SR Trading
Vs
Superintendent of CGST & CX, Group-29, Circle-6, Kolkata Audit-1, Commissionerate, Kolkata & Ors.

Mr. Debasish Ghosh,
Mr. Binayak Gupta
... For the Petitioner.
Mr. K.K. Maiti,
Mr. Tapan Bhanja
... For the CGST Authority.

Heard learned Advocates appearing for the parties.

By this writ petition, petitioner has challenged the impugned audit observation dated 4th July, 2023 by the CGST authority concerned as appears at page 350 of the writ petition on the following several grounds:

i) That there is a procedural infraction of not granting clear 15 days to respond to the show-cause-notice;

ii) That the impugned audit observation is final which cannot be issued without issuing draft audit observation and furnishing the same to the petitioner to challenge or take exception to the same which has been not done in this case; and

iii) That by the aforesaid audit observation no demand can be raised.

Mr. Maiti, learned Advocate appearing for the respondent/CGST authority submits and admits that there is a procedural infraction of not providing clear 15 days time to the petitioner to respond to the show-cause-notice. He further submits that the allegation of the petitioner that before issuing final observation no draft observation was issued and served on the petitioner is not correct since the aforesaid impugned audit observation raising of demand is a draft observation and not a final observation and petitioner is entitled to file exception or objection to the same and so far as raising of demand in the audit observation is concerned, he submits that on the basis of impugned audit observation raising of demand is concerned, the same is not tenable since the aforesaid impugned audit observation is a draft observation and not the final and as such question of raising of demand on the basis of the impugned draft audit observation does not arise at this stage.

Considering the facts and circumstances of the case and submission of the parties particularly taking into consideration the submission of Mr. Maiti, learned Advocate appearing for the respondent/CGST authority that the impugned audit observation is not a final observation and is a draft observation and petitioner is entitled to file objection or exception to the same, without going into the merits of any other issues or the legality of the draft assessment itself I am inclined to dispose of this writ petition at the motion stage by granting liberty to the petitioner to file exception/objection to the impugned aforesaid audit draft observation dated 4th July, 2023, within a period of four weeks from date and if such exception/objection is filed by the petitioner within the time stipulated herein, the same shall be considered and dispose of in accordance with law by passing a reasoned and speaking order within 30 days from the date of receipt of such exception/objection.

It is clarified that this court has not gone into the merits of the case and exception/objection to be filed by the petitioner shall be considered strictly in accordance with law.

Till the final decision is taken on the exception/objection to the impugned draft audit observation no coercive action shall be taken against the petitioner.

With this observation and direction this writ petition being WPA 16789 of 2023 is disposed of.

(Md. Nizamuddin, J.)