

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

(109)

CWP-28333-2023

Decided on : 09.01.2024

Durga International

.....Petitioner(s)

Versus

Commissioner of CGST & another

.....Respondent(s)

**CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA
HON'BLE MS.JUSTICE LAPITA BANERJI**

Present: Mr.Deepak Gupta, Advocate for the petitioner (s).

Mr.Sourabh Goel, Sr.Standing Counsel

Ms.Geetika Sharma, Advocate, for the respondents.

G.S. Sandhawalia, J. (Oral)

1. Counsel for the petitioner inter alia contends that show cause notice dated 12.01.2021 (Annexure P-1) issued to the petitioner was set aside by the Co-ordinate Bench in CWP-3546-2021 on 17.04.2023 (Annexure P-3) and directions were issued to release refund of Rs.68,756/- and the consequential benefit in accordance with law within a period of six weeks. It is submitted that inspite of the said order, the Assistant Commissioner, vide the impugned order dated 12.10.2023 (Annexure P-8) has continued with the proceedings in the show cause notice and confirmed a demand of Service Tax along with interest and penalty. It is submitted that the Commissioner had been requested vide earlier communication dated 21.09.2023 (Annexure P-7) to comply with the order of refund.

2. Notice of motion.

3. Mr.Goel, on having advance copy, accepts notice on behalf of the respondents and has placed on record the review order dated 04.01.2024 passed by the Principal Commissioner, CGST Commissionerate, Ludhiana

wherein the said facts have already been noticed. However, it has been mentioned that the review application bearing RA-CW-313-2023 in CWP-3546-2021 has been filed which has now been adjourned-sine-die to await the decision of the Apex Court in SLP(C) Diary No.27016 of 2020 titled *Union of India & others Vs. M/s Asahi Songwon Colors Ltd. & another*. The Principal Commissioner has further directed the Assistant Commissioner to file an appeal against the impugned order dated 12.10.2023 (Annexure P-8) and that the matter may be remanded to the original adjudicating authority or the Commissioner (Appeals) may pass any order as may deem fit.

4. Accordingly, we are of the considered opinion that since show cause notice itself stood quashed by this Court in the presence of counsel for the respondents, the order dated 12.10.2023 (Annexure P-8) was an order passed without jurisdiction and we have no hesitation in quashing the same. However, we clarify that in case the review application is allowed at a subsequent point of time, it will be open to the adjudicating authority to act upon the said show cause notice thereafter. The said factum can also be brought to the notice of the Division Bench which will be seized of the matter as and when the review application is taken up after the decision by the Apex Court.

5. With the above-said observations, the present writ petition stands disposed of.

(G.S. SANDHAWALIA)
JUDGE

(LAPITA BANERJI)
JUDGE

January 9th, 2024
sailesh

Whether speaking/reasoned :	Yes	
Whether Reportable :		No