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

Judgment delivered on: 26.02.2024

+ W.P.(C) 12344/2023

M/S OPTIEMUS INFRACOM LIMITED. ..... Petitioner

versus

DEPUTY COMMISSIONER OF CUSTOMS (REFUND) & ANR. ..... Respondents

Advocates who appeared in this case:

For the Petitioner	Mr. Tarun Gulati, Sr. Advocate, Mr. Kishore Kunal, Ms. Runjhun Pare and Mr. Jayesh Sitlani, Advocates.
For the Respondents:	Mr. Aditya Singla, SSC, CBIC with Mr. Harsh Bhatia, Mr. Raghav Bakshi and Mr. Shubham Kumar Singh, Advocates.

CORAM:
HON'BLE MR. JUSTICE SANJEEV SACHDEVA
HON'BLE MR. JUSTICE RAVINDER DUDEJA

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

1. Petitioner impugns Orders in Original all dated 24.07.2023 (5) whereby the Principal Commissioner of Customs has though allowed the applications for refund, however directed that the amounts be credited to the Consumer Welfare Fund applying the principle of unjust enrichment.

2. Learned senior counsel for petitioner submits that the order suffers from *ex-facie* errors apparent on the record. He submits that no opportunity of personal hearing was granted to the petitioner and the documents filed by the petitioner with the Principal Commissioner of Customs were misread and misconstrued. He refers to para 11 of the order where for the financial year 2014-2015, under the heading customs duty refund/receivable amount shown is 'NIL'.

3. Learned counsel submits that the same is contradicted by the balance sheet on record of the said authority which clearly shown that a sum of Rs. 8,934.88 lakhs was shown as custom duty recoverable.

4. Learned senior counsel submits that had the petitioner been given an opportunity of personal hearing, petitioner would have been able point out to the said error. He submits that there are other errors also that the orders suffer from and in case an opportunity is granted to the petitioner, petitioner would be able to point out the discrepancies.

5. He further submits that without prejudice to stand of the department the authority has erred in not noticing the ratio of the judgment of Coordinate Bench of this Court in *Telecare Network India Pvt. Ltd. Vs. Union of India 2019 (368) ELT 36 (Del.)* which squarely applies to the facts of the present case.

6. Learned counsel for respondent under instructions submits that without prejudice to the stand of the department. The department is willing to give a fresh opportunity to the petitioner.

7. In view of the above the impugned orders dated 24.07.2023 are set aside to the limited extent and the matter is remitted to the competent authority for re-adjudication of the issue of alleged unjust enrichment and appropriation of the amount in the Consumer Welfare Fund in terms of Section 27 (2) of the Custom Act 1962.

8. The competent authority shall grant an opportunity of personal hearing to the petitioner prior to passing the order, with regard to credit of the amount in Consumer Welfare Refund.

9. The exercise be completed within a period of six weeks.

SANJEEV SACHDEVA, J

RAVINDER DUDEJA, J

FEBRUARY 26, 2024/ss