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* IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision: 19th May, 2025

+ W.P.(C) 5937/2025 & CM APPLs. 27079/2025, 27080/2025

JCO GAS PIPE LIMITED

.....Petitioner

Through: Mr. Rajeev Aggarwal, Advocate.

versus

SALES TAX OFFICER CLASS II AVATO WARD 91 ZONE 8
DELHIRespondent

Through: Mr. Sumit L. Batra, Advocate for

GNCTD (Mob. 9911211000).

CORAM: JUSTICE PRATHIBA M. SINGH JUSTICE RAJNEESH KUMAR GUPTA

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through hybrid mode.

CM APPL. /2025 (to be numbered)

- 2. An amendment application has been moved in this matter seeking to add a challenge to *Notification No. 09/2023-Central Tax* dated 31st March, 2023 and *Notification No. 9/2023-State Tax* dated 22nd June, 2023.
- 3. Considering the nature of the application, the same is allowed, leaving all the objections open. The amendment is taken on record.

W.P.(C) 5937/2025 & CM APPLs. 27079/2025, 27080/2025

4. The present writ petition has been filed by the Petitioner under Article 226 and 227 of the Constitution of India *inter alia* challenging the order dated

W.P.(C) 5937/2025 Page 1 of 9





- 28th December, 2023 (hereinafter '*impugned order*') and Show Cause Notice dated 25th September, 2023 (hereinafter '*impugned SCN*').
- 5. Additionally, the petition also challenges the *vires* of *Notification No. 09/2023-Central Tax* dated 31st March, 2023 and *Notification No. 9/2023-State Tax* dated 22nd June, 2023 (hereinafter '*impugned notifications*').
- 6. The impugned notifications were under consideration before this Court in a batch of matters with the lead matter being *W.P.(C)* 16499/2023 titled 'DJST Traders Pvt. Ltd. vs. Union of India and Ors.' In the said batch of petitions, on 22nd April, 2025, the parties were heard at length qua the validity of the impugned notifications and accordingly, the following order was passed:
 - "4. Submissions have been heard in part. The broad challenge to both sets of Notifications is on the ground that the proper procedure was not followed prior to the issuance of the same. In terms of Section 168A, prior recommendation of the GST Council is essential for extending deadlines. In respect of Notification no.9, the recommendation was made prior to the issuance of the same. However, insofar as Notification No. 56/2023 (Central Tax) the challenge is that the extension was granted contrary to the mandate under Section 168A of the Central Goods and Services Tax Act, 2017 and ratification was given subsequent to the issuance of the notification. The notification incorrectly that states it recommendation of the GST Council. Insofar as the Notification No. 56 of 2023 (State Tax) is concerned, the challenge is to the effect that the same was issued on 11th July, 2024 after the expiry of the limitation in terms of the Notification No.13 of 2022 (State Tax).
 - 5. In fact, Notification Nos. 09 and 56 of 2023 (Central Tax) were challenged before various other High Courts. The Allahabad Court has upheld the validity of Notification no.9. The Patna High Court has upheld the validity of Notification no.56. Whereas, the Guwahati High Court has quashed

W.P.(C) 5937/2025 Page 2 of 9





Notification No. 56 of 2023 (Central Tax).

- 6. The Telangana High Court while not delving into the vires of the assailed notifications, made certain observations in respect of invalidity of Notification No. 56 of 2023 (Central Tax). This judgment of the Telangana High Court is now presently under consideration by the Supreme Court in S.L.P No 4240/2025 titled M/s HCC-SEW-MEIL-AAG JV v. Assistant Commissioner of State Tax & Ors. The Supreme Court vide order dated 21st February, 2025, passed the following order in the said case:
 - "1. The subject matter of challenge before the High Court was to the legality, validity and propriety of the Notification No.13/2022 dated 5-7-2022 & Notification Nos.9 and 56 of 2023 dated 31-3-2023 & 8-12-2023 respectively.
 - 2. However, in the present petition, we are concerned with Notification Nos.9 & 56/2023 dated 31-3-2023 respectively.
 - 3. These Notifications have been issued in the purported exercise of power under Section 168 (A) of the Central Goods and Services Tax Act. 2017 (for short, the "GST Act").
 - 4. We have heard Dr. S. Muralidhar, the learned Senior counsel appearing for the petitioner.
 - 5. The issue that falls for the consideration of this Court is whether the time limit for adjudication of show cause notice and passing order under Section 73 of the GST Act and SGST Act (Telangana GST Act) for financial year 2019-2020 could have been extended by issuing the Notifications in question under Section 168-A of the GST Act.
 - 6. There are many other issues also arising for consideration in this matter.
 - 7. Dr. Muralidhar pointed out that there is a cleavage of opinion amongst different High Courts of the country. 8. Issue notice on the SLP as also on the prayer for interim relief, returnable on 7-3-2025."
- 7. In the meantime, the challenges were also pending before

W.P.(C) 5937/2025 Page 3 of 9





the Bombay High Court and the Punjab and Haryana High Court. In the Punjab and Haryana High Court vide order dated 12th March, 2025, all the writ petitions have been disposed of in terms of the interim orders passed therein. The operative portion of the said order reads as under:

- "65. Almost all the issues, which have been raised before us in these present connected cases and have been noticed hereinabove, are the subject matter of the Hon'ble Supreme Court in the aforesaid SLP.
- 66. Keeping in view the judicial discipline, we refrain from giving our opinion with respect to the vires of Section 168-A of the Act as well as the notifications issued in purported exercise of power under Section 168-A of the Act which have been challenged, and we direct that all these present connected cases shall be governed by the judgment passed by the Hon'ble Supreme Court and the decision thereto shall be binding on these cases too.
- 67. Since the matter is pending before the Hon'ble Supreme Court, the interim order passed in the present cases, would continue to operate and would be governed by the final adjudication by the Supreme Court on the issues in the aforesaid SLP-4240-2025.
- 68. In view of the aforesaid, all these connected cases are disposed of accordingly along with pending applications, if any."
- 8. The Court has heard ld. Counsels for the parties for a substantial period today. A perusal of the above would show that various High Courts have taken a view and the matter is squarely now pending before the Supreme Court.
- 9. Apart from the challenge to the notifications itself, various counsels submit that even if the same are upheld, they would still pray for relief for the parties as the Petitioners have been unable to file replies due to several reasons and were unable to avail of personal hearings in most cases. In effect therefore in most cases the adjudication orders are passed exparte. Huge demands have been raised and even penalties have been imposed.
- 10. Broadly, there are six categories of cases which are

W.P.(C) 5937/2025 Page 4 of 9





pending before this Court. While the issue concerning the validity of the impugned notifications is presently under consideration before the Supreme Court, this Court is of the prima facie view that, depending upon the categories of petitions, orders can be passed affording an opportunity to the Petitioners to place their stand before the adjudicating authority. In some cases, proceedings including appellate remedies may be permitted to be pursued by the Petitioners, without delving into the question of the validity of the said notifications at this stage.

- 11. The said categories and proposed reliefs have been broadly put to the parties today. They may seek instructions and revert by tomorrow i.e., 23rd April, 2025."
- 7. Thereafter, on 23rd April, 2025, this Court, having noted that the validity of the impugned notifications is under consideration before the Supreme Court, had disposed of several matters in the said batch of petitions after addressing other factual issues raised in the respective petitions. Additionally, while disposing of the said petitions, this Court clearly observed that the validity of the impugned notifications therein shall be subject to the outcome of the proceedings before the Supreme Court.
- 8. However, in cases where the challenge is to the parallel State Notifications, the same have been retained for consideration by this Court. The lead matter in the said batch is W.P.(C) 9214/2024 titled 'Engineers India Limited v. Union of India & Ors'.
- 9. On facts, however, the submission of the Petitioner is that though a detailed reply was filed by the Petitioner, the same was not duly considered by Respondent No.1-Sales Tax Officer Class II/AVATO, Ward 91, Zone 8, Delhi. It is further contended that the impugned order is cryptic and non-speaking, and that it was uploaded only in the 'Additional Notices tab'.

W.P.(C) 5937/2025 Page 5 of 9





According to the Petitioner, these aspects cumulatively amount to a violation of the Principles of Natural Justice, rendering the impugned order liable to be set aside.

10. Heard. The Court has also perused the records. It is noticed that the reply has been filed on 21st October, 2023 and the personal hearing is also duly provided. It is further noticed that upon consideration of the reply filed, one of the demands has also been dropped by the Respondent-GST Department. The relevant portion of the impugned order is extracted below:

W.P.(C) 5937/2025 Page 6 of 9







GOVERNMENT OF NCT OF DELHI
DEPARTMENT OF TRADE AND TAXES
OFFICE OF THE GST OFFICER (WARD-91)
VYAPAR BHAWAN, I. P. ESTATE, NEW DELHI

Annexure to Order (DRC-07) (u/s 73(9) of CGST/DGST Act, 2017) TAX PERIOD: JULY 2017- MARCH 2018

The taxpayer was served a DRC-01 u/s 73 of M/s JCO GAS PIPE LIMITED having GSTIN: 07AABCJ6977D1ZE vide Ref. No. ZD070923044331K dated 25.09.2023 under section 61 of CGST Act, 2017 seeking clarification in the matter of a demand of Rs 28,11,906/- (Tax + Interest) for the period July, 2017 to March, 2018. The detail of the demand raised mentioned in the attachment of Show Cause Notice (DRC-01).

The registered person furnishes his reply DRC-06 vide Ref. No. ZD071023019579E dated 21.10.2023, before due date and furnished online reply along with relevant documents. However, one more opportunity for personal hearing was given on 26-12-2023 but no one appeared for personal hearing. Furnished reply along with relevant documents online, the explanation submitted by the taxpayer examined and the facts of the case are as under:-

Point 1:- Scrutiny of ITC reversals:

The reply of the taxpayer has been examined and the figure submitted cross verified from the GST Portal, reply found satisfactory and considered accordingly.

Point 2:- ITC to be reversed on non-business transactions & exempt supplies: The reply of the taxpayer has been examined and it is noticed that the taxpayer could not clarify the discrepancies mentioned in the Show Cause Notice and no supporting document has been filled in support of his claim, reply found not satisfactory.

And whereas, proceeding U/s 73 of GST Act 2017 was initiated through DRC-01 issued on 25-09-2023, for the Amount of Tax, Interest and Penalty are calculated as under:

Sr. No.	Tax period		Act	Tax	Interest	Penalty	Total
	From	To		-			
1	4	5	6	8	9	10	11
1	Jul 2017	Mar 2018	SGST	174068	174068	17406	365542
	Jul 2017	Mar 2018	CGST	1104435	1104435	110443	2319313
GRAND TOTAL						Rs. 2684855/-	

And whereas, further as per section 73(7) notice of tax and interest is to be given while section 73(9) prescribed for imposition of penalty equivalent to 10% of tax or Rs. 10,000/-whichever is higher. The penalty is consequently and mandatory as per CGST/DGST Act & Rules, 2017.

GSTO (Ward-91)
SANJIV KUMAR
GST Officer
Deptt. of Trade & Taxes
GNCT of Delhi

11. Perusal of the above extract reveals that the order is sufficiently reasoned and has duly considered the reply filed by the Petitioner. Considering the fact that the reply filed has been duly considered and the fact

W.P.(C) 5937/2025 Page 7 of 9





that the impugned order is appealable under Section 107 of the Central Goods and Services Act, 2017, this Court is of the opinion that the impugned order does not warrant interference under writ jurisdiction.

- 12. However, considering the fact that the impugned order has been uploaded on the 'Additional Notices Tab' and that challenge to the validity of the impugned notifications is pending before the Supreme Court, as also this Court, the Petitioner is allowed to file an appeal by 15th July, 2025. If the same is filed within the stipulated time, the concerned Appellate Authority shall not dismiss the appeal on the grounds of limitation and shall hear it on merits.
- 13. All the rights and remedies of the parties are left open. Access to the GST Portal, if not already available, shall be ensured to be provided to the Petitioner to enable access to the notices and related documents.
- 14. However, it is made clear that the issue in respect of the validity of the impugned notifications is left open and the order of the Appellate Authority shall be subject to the outcome of the decision of
 - (i) the Supreme Court in S.L.P No 4240/2025 titled 'M/s HCC-SEW-MEIL-AAG JV v. Assistant Commissioner of State Tax & Ors' and
 - (ii) this Court in W.P.(C) 9214/2024 titled 'Engineers India Limited v. Union of India & Ors'

W.P.(C) 5937/2025 Page 8 of 9





15. Accordingly, the present writ petition is disposed of. All the pending applications, if any, are also disposed of.

PRATHIBA M. SINGH JUDGE

RAJNEESH KUMAR GUPTA JUDGE

MAY 19, 2025/MR/Ar.

W.P.(C) 5937/2025 Page 9 of 9