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

Date of decision: 02nd February, 2026

+ W.P.(C) 1426/2026

LOVELESH SINGHAL,

PROPRIETOR, M/S SHIVANI OVERSEAS NO.66
3RD FLOOR, POCKET-13,
SECTOR-24, ROHINI,
DELHI-110085.

CORRESPONDENCE ADDRESS:

HOUSE NO. 88, UGF, RAJDHANI ENCLAVE
PITAM PURA, DELHI-110034. **.....PETITIONER**

Through: Mr. A.K. Babbar, Mr. Surendra
Kumar, Mr. Atul Babbar, Mr.
Bharat Kumar Tripathi & Mr.
Rahul Chauhan, Advs.

Versus

1. CENTRAL BORAD OF INDIRECT TAXES & CUSTOMS

SUBSTITUTED FOR CENTRAL BOARD OF EXCISE
& CUSTOMS,
GST POLICY WINGS, NORTH BLOCK,
NEW DELHI.

..... RESPONDENT NO.1

2. COMMISSIONER OF THE CENTRAL TAXES,

DELHI WEST, 6TH FLOOR,
GST BHAWAN, NANGAL RAY A, JANAKPURI
NEW DELHI.

..... RESPONDENT NO.2



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3. SUPERINTENDENT/ APPRAISER/ SENIOR INTELLIGENCE OFFICER

GROUP-01, 6TH FLOOR, GST BHAWAN,
NANGAL RAY A, JANAK PURI,
NEW DELHI-110046.

..... RESPONDENT NO.3

Through: Ms. Anushree Narain, Senior Standing Counsel with Mr. Naman Choula and Mr. Yamit Jetley, Advs.

CORAM:

**HON'BLE MR. JUSTICE NITIN WASUDEO SAMBRE
HON'BLE MR. JUSTICE AJAY DIGPAUL**

JUDGMENT (ORAL)

NITIN WASUDEO SAMBRE, J.

CM APPL. 6972/2026

1. Exemption allowed, subject to all just exceptions.
2. The application stands disposed of.

W.P.(C) 1426/2026 & CM APPL. 6973/2026

3. The petitioner has approached this Court with following prayers:

“i) Your lordship may be pleased to issue a Writ/ Direction quashing of the impugned Circular No. 3/3/2017 dated 05.07.2017 and the impugned summon dated 03.11.2025 issued U/s 70 of the CGST Act.

ii) Your lordship may please to stay the operation



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of summon dated 03.11.2025 issued by Respondent."

4. The facts necessary for deciding the present petition are as under:

- a. In an inquiry in connection with M/s Midas Marketing Inc., the petitioner was served with a summon dated 03rd November, 2025, issued under Section 70 of the Central Goods and Services Tax Act, 2017 (in short, "CGST Act"), by Respondent No.3/Superintendent/Appraiser/Senior Intelligence Officer, Office of the Commissioner of Central Taxes. The said summon was issued by the said officer based on the circular dated 5th July, 2017, issued by the Central Board of Excise and Customs in exercise of the powers vested, as mentioned therein.
- b. *Vide* said summon, petitioner was called upon to remain present for tendering voluntary statement, production of Bank Statement and Sales invoice and ledger in relation to M/s Midas Marketing Inc.
- c. *Vide* the said circular, issued by the Government of India in exercise of the powers conferred under sub-section (91) of Section 2 of the CGST Act; Section 20 of the Integrated Goods and Services Tax Act, 2017; and subject to the provisions of sub-section (2) of Section 5 of the CGST Act, duties were assigned to the officers mentioned in column 2 of the said circular, as regards their functions as proper officers



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in relation to various sections of the CGST Act and the rules made thereunder.

5. The learned counsel for the petitioner, while assailing the very circular, submits that the circular has been issued by the respondent-Board, thereby assigning such powers, which authority is not vested in the Board. So as to substantiate his contention, he has invited our attention to sub-section (16) of Section 2 of the CGST Act, which defines "*Board*"; sub-section (91) of Section 2 of the CGST Act, which defines "*proper officer*"; and sub-section (25) of Section 2 of the CGST Act, which defines "*Commissioner in the Board*".

6. Drawing support from the provisions of Section 168, he urges that even if the sub-section (2) of Section 168 of the CGST Act contemplates that the powers specified in the said sub-section are to be exercised with the approval of the Board, the Board, in principle, is not empowered to assign duties to the proper officer. According to him, such powers exclusively vest in the "*Commissioner in the Board*", as defined under sub-section (25) of Section 2 of the CGST Act. That being so, he would urge that the circular itself is without the authority of law. That being so, the officer concerned in law is not empowered to issue the show-cause notice/impugned summons under the provisions of Section 70 of the CGST Act.

7. The learned counsel has also relied upon the interim orders passed by the Rajasthan High Court in Civil Writ Petition No. 11503/2025 at



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Jaipur in the matter of *M/s. ACME Cleantech Solution Pvt. Ltd. v. Union of India & Ors.* According to him, since the issue is already under active consideration before the Rajasthan High Court, this Court must pass a similar order in the matter, thereby staying the consequential proceedings initiated by the respondent pursuant to the impugned summon.

8. The learned counsel would further urge that the summon issued to the petitioner, based on the aforesaid circular, directed him to appear on 10th November, 2025. He would claim that the said notice was served upon the petitioner on 11th November, 2025 and as such, on the date on which the petitioner's appearance was scheduled, the summon was served on a subsequent date. As such, according to him, the respondent needs to be directed to reconsider the date of appearance of the petitioner and the respondent be restrained from passing any adverse order without hearing the petitioner.

9. As against the above, the learned counsel appearing for the respondent submits that there is no quarrel with the rescheduling of the date of appearance, provided in the summons. According to her, this Court, as per the convenience of the petitioner, can direct the appearance of the petitioner on any date and it is only subsequent thereto that the appropriate proceedings will be taken to their logical end.

10. According to her, if we see the provisions of Section 168, a plain reading of the said section contemplates that sub-section (1) empowers the Board, for achieving the purpose and uniformity in the implementation of



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the Act, to issue such orders, instructions, or directions to the Central Tax Officers as it may deem fit. Thereupon, such officers and all other persons employed in the implementation of the Act are required to observe and follow such orders, instructions, or directions.

11. Further, she submitted that even if the impugned circular is perused, the same is issued under the signature of the Commissioner, GST, which presupposes that it is the Commissioner, GST, who, pursuant to the mandate provided under sub-section (2) of Section 168, has taken the approval of the Board and issued the circular. She would further urge that upon perusal of the circular, even if it speaks of there being instructions to the Principal Chief Commissioners, Chief Commissioners, Principal Commissioners, Commissioners of Central Tax (All), and the Director General of Systems about the powers being assigned pursuant to the provisions referred to hereinabove, the fact remains that the Board *prima facie* appears to have approved the decision of the other Commissioners.

12. That being so, she would urge that the petition is liable to be dismissed.

13. In the aforesaid factual background, the relevant statutory provisions which requires reproduction are as under:

"SECTION 2(91) OF THE CGST ACT

"proper officer" in relation to any function to be performed under this Act, means the Commissioner or the officer of the central tax who is assigned that function by the Commissioner in the Board;



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SECTION 2(16) OF THE CGST ACT

"Board" means the Central Board of Indirect Taxes and Customs constituted under the Central Boards of Revenue Act, 1963 (54 of 1963);

SECTION 2(25) OF THE CGST ACT

"Commissioner in the Board" means the Commissioner referred to in section 168;

SECTION 168 OF THE CGST ACT

Power to issue instructions or directions.-

(1) The Board may, if it considers it necessary or expedient so to do for the purpose of uniformity in the implementation of this Act, issue such orders, instructions or directions to the central tax officers as it may deem fit, and thereupon all such officers and all other persons employed in the implementation of this Act shall observe and follow such orders, instructions or directions.

(2) The Commissioner specified in clause (91) of section 2, sub-section (3) of section 5, clause (b) of sub-section (9) of section 25, subsections (3) and (4) of section 35, sub-section (1) of section 37, sub-section (2) of section 38, subsection (6) of section 39, [sub-section (1) of section 44, sub-sections (4) and (5) of section 52] 103, [sub-section (1) of section 143, except the second proviso thereof], sub-section (1) of section 151, clause (1) of sub-section (3) of section 158 and section 167 shall mean a Commissioner or Joint Secretary posted in the Board and such Commissioner or Joint Secretary shall exercise the powers specified in the



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said sections with the approval of the Board."

14. No doubt, the learned counsel for the petitioner has relied upon sub-section (2) of Section 168 of the CGST Act so as to substantiate his contention that it is the Commissioner in the Board, who is required to route the proposal and the same is required to be approved by the Board, as provided under sub-section (2) of Section 168 of the CGST Act, in the matter of assigning functions by the Commissioner in the Board.

15. As far as the circular under challenge is concerned, the *prima facie* reading of the same indicates that the words employed therein are that the Board is assigning the officers mentioned in column 2 of the table to exercise the functions as proper officers in relation to the various sections of the CGST Act and the rules framed thereunder.

16. The fact remains that it is not in dispute that the Commissioner is also a part of the Board. Once it is not in dispute that the Commissioner is part of the Board, and sub-section (2) of Section 168 contemplates that the assignment of functions to the Central Tax Officers is upon a proposal of the Commissioner in the Board, we see no reason to disbelieve that the same was not under the authority of the Commissioner, which was approved by the Board as required under sub-section (2) of Section 168 referred above.

17. In that view of the matter, we see no reason to infer that while issuing the circular dated 5th July, 2017, the proposal was not mooted



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through the Commissioner in the Board, or that the same was not approved by the Board as defined under sub-section (16) of Section 2 and sub-section (25) of Section 2 of the CGST Act.

18. In law, we have to presume that the circular is valid and the onus is on the petitioner to discharge the burden of establishing that the circular was issued without authority or legal approval. We are fortified in our view by the judgment of the Apex Court in *State of Tamil Nadu v. P. Krishnamurthy*, (2006) 4 SCC 517, the relevant portion of which reads as under:

“15. There is a presumption in favour of constitutionality or validity of a subordinate legislation and the burden is upon him who attacks it to show that it is invalid. It is also well recognised that a subordinate legislation can be challenged under any of the following grounds:

- (a) Lack of legislative competence to make the subordinate legislation.*
- (b) Violation of fundamental rights guaranteed under the Constitution of India.*
- (c) Violation of any provision of the Constitution of India.*
- (d) Failure to conform to the statute under which it is made or exceeding the limits of authority conferred by the enabling Act.*
- (e) Repugnancy to the laws of the land, that is, any enactment.*
- (f) Manifest arbitrariness/unreasonableness (to an extent where the court might well say that the legislature never intended to give authority to make such rules).”*



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19. Though not specifically in context of a validity of a circular or a notification, the Apex Court reiterated the principle of presumption in administrative law in the matter of **G.M.(Operations) S.B.I. & Anr vs R.Periyasamy, Civil Appeal No. 10942/2014**, which reads thus:-

*“In administrative law, it is a settled principle that the onus of proof rests upon the party alleging the invalidity of an order. In other words, there is a presumption that the decision or executive order is properly and validly made, a presumption expressed in the maxim *omnia praesumuntur rite esse acta* which means 'all things are presumed to be done in due form.'”*

20. Furthermore, a reference can be made to the decision of the Supreme Court in **Ram Krishna Dalmia v. S.R. Tendolkar, 1958 SCC OnLine SC 6**, wherein it was held as under:

“18.We are not of opinion that they do not. It is not for us to say on this application and we do not in fact say or even suggest that the allegations about the petitioners and their concerns are at all well founded. It is sufficient for our present purpose to say that the facts disclosed on the face of the notification itself and the facts which have been brought to our notice by the affidavits afford sufficient support to the presumption of constitutionality of the notification. There being thus a presumption of validity in favour of the Act and the notification, it is for the petitioners to allege and prove beyond doubt that other persons or companies similarly situate have been left out and the petitioners and their companies have been singled out for discriminatory and hostile



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treatment. The petitioners have, in our opinion, failed to discharge that onus.....”

21. But for relying on the language used in the Preamble of the circular dated 5th July, 2017, wherein the word “*Board*” is used in reference to assigning the officers mentioned in column 2 as regards the functions to be exercised as proper officers, the petitioner has neither, in clear terms, pleaded that the proposal was to be mooted at the level of the Commissioner in the Board, nor it is established through documents to infer that he has discharged the burden that the circular impugned herein was issued without authority.

22. Rather, the learned counsel for the respondent, in our opinion, is justified in claiming that the entire exercise in the matter of issuance of the circular was at the behest of the Commissioner in the Board and the Board has granted approval to it.

23. That being so, we see no reason to cause interference in the matter of testing the validity of the impugned circular dated 5th July, 2017 issued by Government of India.

24. As regards the issue dealing with the returnable date of the summons is concerned, in view of the statement made by the learned counsel for the respondent, we deem it appropriate to permit the petitioner to appear in compliance with the summons dated 3rd November, 2025 before the competent officer mentioned therein on 23rd March, 2026. The competent



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officer shall thereafter deal with the issue in accordance with law.

25. With above observations, we deem it appropriate to partly allow the present writ petition to the extent of rescheduling the date, however, the challenge to the circular fails and to that extent, the petition stands dismissed.

26. Judgment be uploaded on the website of this Court.

NITIN WASUDEO SAMBRE
(JUDGE)

AJAY DIGPAUL
(JUDGE)

FEBRUARY 02, 2026
ab/sk