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

Date of Decision: 06th May, 2025

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W.P.(C) 15726/2024 & CM APPL. 66013/2024

D J ASSOCIATES THROUGH ITS PARTNER JAYABRATA

MAULICK

.....Petitioner

Through: Mr. Ujjwal Jain, Advocate (Mob. 9717595497), (e-mail - Ujjwaljainadvocate@gmail.com).

versus

COMMISSIONER OF DGST & ORS.

.....Respondents

Through: Ms. Monica Benjamin, SSC with Ms. Nancy Jain, Advocate for R-4 & 5.

CORAM:

JUSTICE PRATHIBA M. SINGH

JUSTICE RAJNEESH KUMAR GUPTA

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through hybrid mode.
2. The present petition has been filed by the Petitioner– DJ Associates under Articles 226 & 227 of the Constitution of India challenging the show cause notice dated 14th May, 2024 (hereinafter, '*the SCN*') issued by the Department of Trade and Taxes, GNCTD, pertaining to the Financial Year 2019-20, as also the consequent order dated 24th August, 2024 passed by the office of Sales Tax Officer Class II/ AVATO, Delhi (hereinafter, '*the impugned order*').
3. The petition also challenges the *vires* of **Notification No. 9/2023-Central Tax dated 31st March, 2023**, **Notification No. 56/2023- Central Tax dated 28th December, 2023** as also the **Notification No. 09/2023-State**



Tax dated 22nd June, 2023 and Notification No. 56/2023-State Tax dated 11th July, 2024 (hereinafter ‘*impugned notifications*’).

4. The validity of the impugned notifications was under consideration before this Court in a batch of petitions with the lead petition 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 states that it was on the 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 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 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 ex-parte. Huge demands have been raised and even penalties have been imposed.

10. Broadly, there are six categories of cases which are 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.”

5. 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 in ***S.L.P. No. 4240/2025*** titled ***M/s HCC-SEW-MEIL-AAG JV v. Assistant Commissioner of State Tax & Ors.***

6. 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.*** Considering the fact that the present petition challenges both central and state notifications, the challenge to the impugned notifications in the present writ petition shall be subject to the outcome of the decisions of the Supreme Court and this Court in the aforementioned matters.

7. In the present case, the submission of the Petitioner, on facts, is that the Petitioner was not afforded with an opportunity to file a reply to the SCN and the impugned order was passed without affording the Petitioner with an opportunity to be heard. The impugned order is nonspeaking, cryptic and vague in nature and has therefore been issued in complete violation of the principles of natural justice and is thereby liable to be set aside on the said ground.

8. Heard. The Court has considered the submissions made. The Court has perused the records. In this petition, as mentioned above, no reply to the SCN has been filed by the Petitioner. Relevant portion of the impugned order reads as under:

“Whereas, SCN/ DRC-1 [see rule 100(2) & 142(1(a))] was issued to the taxpayer under Section 73 of CGST / DGST Act & Rules, 2017.

And whereas, in response to the DRC-01, the Taxpayer has not submitted his reply nor appeared for personal hearing on the given date and time mentioned in DRC-01 before the undersigned.

Further, another opportunity to submit reply and for the sake of natural justice opportunity for Personal Hearing, as per provision of Section 75(4) DGST Act, was also provided to the taxpayer by issuing "REMINDER" through the GST portal.

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. 10000/- whichever is higher. The penalty is consequently and mandatory as per Act. As such the registered person is liable to pay penalty equivalent to 10% of tax along with tax amount in each head already conveyed through SCN/ DRC-01.

Now, since No further additional reply/explanation has been received from the taxpayer despite sufficient and repeated opportunities, which indicate that the taxpayer has nothing to say in the matter.

In view of aforesaid circumstances, the undersigned is left with no other option to create demand ex-parte, in accordance with the provisions of CGST/DGST act & rules Therefore the drc-07 has been issued along with applicable interest as per discrepancies already conveyed through SCN/DRC-01.”

9. This Court is of the opinion that since the Petitioner has not been afforded an opportunity to be heard and the said SCN and the consequent impugned order have been passed without hearing the Petitioner, an opportunity ought to be afforded to the Petitioner to contest the matter on merits.

10. Accordingly, the impugned order is set aside. The Petitioner is granted time till 10th July 2025, to file a reply to SCN. Upon filing of the reply, the Adjudicating Authority shall issue a notice for personal hearing to the Petitioner. The personal hearing notice shall be communicated to the Petitioner on the following mobile no. and e-mail address:

Email ID: Ujjwaljainadvocate@gmail.com

Mobile No.:9717595497



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11. The reply filed by the Petitioner to the SCN along with the submissions made in the personal hearing proceedings shall be duly considered by the Adjudicating Authority and fresh order with respect to the SCN shall be passed accordingly.

12. However, it is made clear that the issue in respect of the validity of the impugned notifications is left open. Any order passed by the Adjudicating Authority shall be subject to the outcome of the decision of 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 of this Court in *W.P.(C) 9214/2024* titled *Engineers India Limited v. Union of India & Ors.*

13. All rights and remedies of the parties are left open. Access to the GST Portal, shall be provided to the Petitioner to enable uploading of the reply as also access to the notices and related documents.

14. The present writ petition is disposed of in above terms. All the pending applications, if any, are also disposed of.

PRATHIBA M. SINGH
JUDGE

RAJNEESH KUMAR GUPTA
JUDGE

MAY 6, 2025/MR/ss

(corrected and released on 13th May, 2025)