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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of decision: 7th May, 2025

+ **W.P.(C) 10590/2024 & CM APPL. 43568/2024**
TOSHNIWAL ELECTRICALS PVT LTD THROUGH ITS
DIRECTOR MUKUND MAHESHWARIPetitioner
Through: Mr. A.K. Babbar, Adv.
versus
GOVT OF NCT OF DELHI THROUGH
CHIEF SECRETARY & ORS.Respondents
Through: Ms. Vaishali Gupta, Adv.
Mr. Anurag Ojha, SSC with
Mr.Subham Kr. and Mr. Dipak Raj,
Advocates for R-4.

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– Toshniwal Electricals Pvt. Ltd. under Articles 226 of the Constitution of India challenging the show cause notice dated 9th December, 2023 (hereinafter, '*the SCN*') issued by the Department of Trade and Taxes, GNCTD, pertaining to the tax period: April 2018 to March 2019 as also the consequent order dated 15th April, 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** as also **Notification No. 9/2023-State Tax dated 22nd June, 2023** (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 notification 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 Id. 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.*

7. In the present case, *vide* order dated 2nd September, 2024, this Court had directed as under:

“ xxxxx

2. The petitioner’s challenge is premised on three fronts. First, the petitioner states that the impugned order is premised on the basis that the petitioner had availed excess Input Tax Credit (ITC) as the suppliers had not



deposited the tax paid. The petitioner submits that it had provided the information clearly evidencing that it had received goods from the registered suppliers and had also paid the amounts due. Notwithstanding the same, the adjudicating authority has proceeded on the basis that the goods were not supplied. Second, petitioner submits that the impugned order is unsigned and third, that the impugned order has been passed beyond the period of limitation. The petitioner also challenges the Notification No.9/2023-Central Tax extending the period of limitation under Section 168A of the CGST Act on the ground that it has been issued without the recommendation of the Goods and Services Tax Council.

3. Insofar as the first ground of challenge is concerned, the petitioner has an equally efficacious remedy of an appeal under Section 107 of the CGST Act / the DGST Act and therefore this Court does not consider it apposite to consider the same in this petition.

4. The learned counsel appearing for the respondent nos. 1 and 2 seeks time to obtain instructions in regard to the remaining two issues.

5. At his request, list on 01.10.2024.”

8. As can be seen from the above order, insofar as the adjudication upon the aspect of availment of excess input tax credit (ITC) is concerned, the Petitioner was relegated to the appellate remedy.

9. The attention of this Court is also drawn towards the order dated 3rd October, 2024 passed by the Predecessor Bench wherein the application seeking further time to file an appeal under Section 107 of the Central Goods and Service Tax Act, 2017, was rejected. However, at the said point in time, the order of the Supreme Court in SLP S.L.P No 4240/2025 titled *M/s HCC-SEW-MEIL-AAG JV v. Assistant Commissioner of State Tax & Ors.* had



not been passed.

10. It is submitted on behalf of the Petitioner that an appeal has already been filed before the appellate authority under Section 107 of the Central Goods and Service Tax Act, 2017, on 14th October, 2024, along with the mandatory pre-deposit. A copy of the said appeal has also been placed before the Court today. Let the same be taken on record.

11. Considering the fact that the Petitioner has already been relegated to avail of the appellate remedy during the pendency of the challenge to the impugned notifications, and bearing in mind the recent order of the Supreme Court, this Court is of the opinion that the appeal filed by the Petitioner shall now be adjudicated on merits and shall not be dismissed on the ground of limitation.

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 appellate 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. The present petition is disposed of in said terms. Pending applications, if any, stand disposed of.

**PRATHIBA M. SINGH
JUDGE**

**RAJNEESH KUMAR GUPTA
JUDGE**

MAY 7, 2025/dj/ss
(corrected & released on 13th May, 2025)