



\$~104

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

Date of Decision: 8th October 2025

+ **W.P.(C) 15327/2025 & CM APPL. 62787/2025**

AMIT KUMAR BASAU & ANR.Petitioners

Through: Mr. Abhishek Garg & Mr. Naman
Mehta, Advs

versus

SALES TAX OFFICER CLASS II AVATO WARD 13 (SPECIAL
ZONE) ZONE 12 DELHI & ORS.Respondents

Through: Mr. Sumit K. Batra, Adv. (9911211000)
Mr. Arun Khatri, SSC with Ms.
Anoushka Bhalla, Adv

CORAM:
JUSTICE PRATHIBA M. SINGH
JUSTICE SHAIL JAIN

JUDGMENT

Prathiba M. Singh, J.

1. This hearing has been done through hybrid mode.

CM APPL. 62788/2025

2. Allowed, subject to all just exceptions. The application is disposed of.

W.P.(C) 15327/2025 & CM APPL. 62787/2025

3. The present petition has been filed under Articles 226 & 227 of the Constitution of India, *inter alia*, challenging the impugned order dated 20th February, 2025 passed by the Sales Tax Officer Class II/Avato Ward 113(Special Zone), Zone 12, Delhi (*hereinafter 'impugned order'*). The present petition also challenges the impugned Show Cause Notice dated 27th



November, 2024 (*hereinafter 'impugned SCN'*) issued for the financial year 2020-21. Vide the impugned order the tax demand raised against the Petitioner is Rs.59,05,232/- and the total demand including interest and penalty is Rs.1,09,02,348/-.

4. Additionally, the present petition also challenges the following Notifications:

- ***Notification No. 40/2021- Central Tax dated 29th December 2021;***
- ***Notification No. 40/2021- State Tax dated 9th June 2022 (hereinafter, 'the impugned notifications').***

5. The challenge to the impugned notifications is pending before this Court in a batch of cases wherein the lead matter is **W.P.(C) 9060/2025** titled ***Sarens Heavy Lift India Private Limited v. Sales Tax Officer Class II AVATO DGST Ward 201, Zone 11 & Anr.***

6. Ld. Counsel for the Petitioner submits that the Petitioner – Mr. Amit Kumar Basau, is the partner in the Petitioner No.2 - M/s Basau Construction (India), which is a partnership firm. However, the same is unregistered. The petition has therefore impleaded the Partner as Petitioner No.1 – Mr. Amit Kumar Basau.

7. Ld. Counsel for the Respondents has taken an objection that since the partnership firm is an un-registered firm, the writ petition is not maintainable.

8. Per Contra, Ld. Counsel for the Petitioner relies on the decision of the Supreme Court in ***Haldiram Bhujawala v. Anand Kumar Deepak Kumar, (2000) 3 SCC 250*** to argue that an unregistered partnership firms can file a writ petition through a partner.

9. Further, Ld. Counsel for the Petitioner submits that impugned SCN was issued on 27th November, 2024. Thereafter, a reminder was issued on 13th



January, 2025. The submission of the Petitioner is that no reply has been filed to the impugned SCN. The reason given by the Petitioner is that its Chartered Accountant's oversight led to non-filing of the reply. Thus, the impugned order has been passed without hearing the Petitioner.

10. Ld. Counsel for the Petitioner submits that the Petitioner is willing to go in appeal, subject to the outcome in *Sarens (supra)*, by which the impugned notifications have been challenged.

11. Heard. The Court has considered the matter. Section 69 of the Indian Partnership Act, 1932 has an embargo on an un-registered firm from filing a suit or any proceeding for enforcement of a right. The same reads as under:

“69. Effect of non-registration.—(1) No suit to enforce a right arising from a contract or conferred by this Act shall be instituted in any Court by or on behalf of any person suing as a partner in a firm against the firm or any person alleged to be or to have been a partner in the firm unless the firm is registered and the person suing is or has been shown in the Register of Firms as a partner in the firm.

(2) No suit to enforce a right arising from a contract shall be instituted in any Court by or on behalf of a firm against any third party unless the firm is registered and the persons suing are or have been shown in the Register of Firms as partners in the firm.”

12. However, the exceptions to the said provision are carved out in the following decisions:

- *Haldiram Bhujawala & Anr. v. Anand Kumar Deepak Kumar & Anr. [(2000)3 SCC 250]:*

“9. The question whether Section 69(2) is a bar to a suit filed by an unregistered firm even if a statutory right is being enforced or even if



only a common law right is being enforced came up directly for consideration in this Court in Raptakas Brett Co. Ltd. v. Ganesh Property. In that case, Majmudar, J. speaking for the Bench clearly expressed the view that Section 69(2) cannot bar the enforcement by way of a suit by an unregistered firm in respect of a statutory right or a common law right....”

● ***Shiv Developers v. Aksharay Developers & Ors. [2022 SCC OnLine 114]***

*“35. In our view, the questions arising in this matter could be directly answered with reference to the principles enunciated by this Court in the case of Raptakos Brett & Co. Ltd. v. Ganesh Property: (1998) 7 SCC 184, which have further been explained and applied by this Court in the cases of Haldiram Bhujawala and Purushottam (supra). We may take note of the principles vividly expounded in the case of Haldiram Bhujawala (supra) that to attract the bar of Section 69(2) of the Act of 1932, the contract in question must be the one entered into by firm with the third-party defendant and must also be the one entered into by the plaintiff firm in the course of its business dealings; **and that Section 69(2) of the Act of 1932 is not a bar to a suit filed by an unregistered firm, if the same is for enforcement of a statutory right or a common law right.**”*

13. Therefore, Section 69(2) of the Partnership Act, 1932 cannot place a bar to a suit filed by an unregistered firm, if a statutory or common law right is being sought to be enforced. In the present case, the writ petition seeks reliefs under the CGST Act, under which the Petitioner no.2 has a registration - despite being an unregistered Partnership firm. Such a firm, which is paying taxes and has any grievances against the Department cannot be non-suited from enforcing statutory rights. Moreover, since the Partner has also been impleaded, it cannot be held that the writ petition is maintainable. In view of the above, since the partner has been made a party to the writ petition and has



filed the present writ petition as Petitioner No.1, the writ petition is held to be maintainable.

14. Accordingly, in the above background, it is directed that the Petitioner may file an appeal by 30th November 2025 along with the requisite pre-deposit on the tax amount. If the same is filed by 30th November 2025, the same shall not be dismissed on the ground of limitation and shall be adjudicated on merits. The proceedings before the Appellate Authority and thereafter, shall be subject to outcome of the decision of this Court in *Sarens (supra)* by which the impugned notifications have been challenged.

15. The present petition is disposed of in the above terms. Pending applications, if any, are disposed of in the aforesaid terms.

**PRATHIBA M. SINGH
JUDGE**

**SHAIL JAIN
JUDGE**

OCTOBER 8, 2025
kk/sm