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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**  
*Date of decision: 15<sup>th</sup> May, 2025*

+ **W.P.(C) 6494/2025 & CM APPL. 29589/2025**

**KRISHNA TRADERS** .....Petitioner

Through: Mr.M.A. Ansari and Ms.Tabbassum  
Firdause, Advocates.

versus

**GOVT OF NCT OF DELHI THROUGH CHIEF SECRETARY &  
ORS.** .....Respondents

Through: Mr. Harpreet Singh, Senior Standing  
Counsel with Ms. Suhani Mathur and  
Mr. Jai Ahuja, Advocates  
Mr. Awadhesh Kumar Singh,  
Advocate for R-4/UOI

**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 under Article 226 of the Constitution of India, *inter alia*, challenging the following -
  - (i) summary of Show Cause Notice in form DRC-01 dated 15th December 2023, (hereinafter, '*the impugned SCN*'); and
  - (ii) the summary order dated 29th April, 2024 (hereinafter, '*the impugned order*') passed by the Sales Tax Officer Class II/AVATO, Ward 32, Zone 1, Delhi (hereinafter '*Respondent-Department*') under Section 73 of the Delhi/Central Goods and Services Tax Act, 2017 vide which a demand to the tune of Rs. 1,53,66,782/- has been confirmed.
3. This petition also challenges *Notification Nos.56/2023-State Tax* dated 11th July, 2024 and *Notification Nos.56/2023-Central Tax* dated 28th



December, 2023 (hereinafter ‘*impugned notifications*’);

4. 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.**’. On the last date of hearing *i.e.*, 22rd 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.

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. On facts, the submission of the Petitioner is that the impugned Show Cause Notice (SCN) dated 15th December, 2023 has been issued on the grounds that Input Tax Credit (ITC) was claimed on the basis of transactions with (i) dealers whose GST registrations have been cancelled, and (ii) dealers who are alleged defaulters in filing returns and non-payment of tax. It is submitted that the Petitioner filed a detailed reply to the SCN on 15th January, 2024. However, the impugned order has been passed without due consideration of the said reply.

8. Heard the parties. The Court has also perused the records. It is noticed that the reply has been filed and even the Personal hearing has also been granted in this matter and the proprietor of the Petitioner has appeared before the Adjudicating Authority. The impugned order has also given clear reasons



as to why the order is being passed and in the opinion of the Court, has duly considered the reply. The relevant portion of the impugned order is extracted below:

**1. Excess claim of ITC** US

**• ITC claimed from cancelled dealers, return defaulters & tax non payers:**

Under Sec 16(2)(c) every registered person shall be entitled to take credit of ITC on supply of goods or services to him subject to the condition that the tax charged in respect of such supply has been actually paid to the Government either in cash or through utilization of ITC admissible in respect of such supply.

However as seen from the office records, it is observed that you have taken ITC from the tax payers who have not paid tax on their outward supplies to you.

S.No	Issue	SGST	CGST	IGST	CESS	Total
1	2	3	4	5	6	7
1	Supplier registration cancelled before date of invoice	3780177	3780177	0	0	7560354
2	Supplier failed to file GSTR-3B and did not pay tax on the invoices declared in GSTR-01	0	0	0	0	0
3	Supplier filed GSTR-3B with Nil turnover and did not declare or pay tax corresponding to the invoices declared in GSTR-01	0	0	0	0	0
4	Total(S.NO. 1+2+3)	3780177	3780177	0	0	7560354

The above amount of ITC was intimated at the time of SCN.

**Response of the tax payer :**

The tax payer has 'Not agreed' for the following amount in the SCN.

**SGST : 3780177 CGST : 3780177 IGST : 0 CESS : 0**

The reasons cited by the tax payer for disagreeing/partially disagreeing are:

- The Supplier filed return after issuance of notice:

Reasons

- Supplier registration cancelled before date of invoice.

**Observations and conclusion of the assessing authority :**

Not Agreed with Tax Payer

Specific reasons entered

i. M/s Divine Enterprises, M/s Radiant Overseas & M/s Bhawani International are noticed in flaws on account of ground of cancellation. As per cancellation details, all 03 firms suo-moto cancelled with retrospective effect, firms had obtained registration by means of fraud, wilful mis-statement or suppression of facts in violations of the provisions of the GST Act leading to wrongful availment or utilization of ITC. ii. Again, one M/s Mahima Sales Corp is also noticed as indulged in suspicious financial transactions on cancellation grounds. As per cancellation remarks, M/s Mahima Sales Corp. had issues invoices or bills without supply of goods and/or services in violation of the provisions of this Act, or the rules made there under leading to wrongful availment or utilization of input tax credit or refund of tax. Therefore, a demand against the base demand of Rs 75,60,354/- (Tax)+ applicable interest+ penalty is being created through DRC 07

**Collections :**

Total :  
SGST Rs: 0 CGST Rs: 0 IGST Rs: 0 CESS Rs: 0 Interest Rs: 0 Penalty Rs: 0

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9. In view of the above circumstances, and considering the fact the impugned order is appealable under Section 107 of the Central Goods and



Services Tax Act, 2017, this Court is of the opinion that the impugned order does not warrant interference under the writ jurisdiction.

10. However, considering the fact that the challenge to the validity of the impugned notifications are still pending before the Supreme Court, the Petitioner is permitted to file an appeal before the concerned Appellate Authority by 15<sup>th</sup> July, 2025. If the appeal is filed by 15th July, 2025 along with the prescribed pre-deposit the appeal shall not be disposed on the grounds of limitation, and shall be heard on merits.

11. All 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 notices and related documents.

12. However, it is made clear that the issue in respect of the validity of impugned notifications is left open and the order of 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*' as also of this Court in *W.P.(C) 9214/2024* titled '*Engineers India Limited v. Union of India & Ors*'.

13. The petition is disposed of in these terms. All pending applications, if any, are also disposed of.

**PRATHIBA M. SINGH  
JUDGE**

**RAJNEESH KUMAR GUPTA  
JUDGE**

**MAY 15, 2025/SV**