$~31

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

\+ W.P.(C) 7100/2018

MOUNTAIN VALLEY SPRINGS INDIA PVT LTD..... Petitioner
Through : Sh. Mohit Bhardwaj, Advocate.

versus

THE ASSISTANT/DEPUTY COMMISSIONER OF GOODS & SERVICES TAX & ORS. ..... Respondents
Through : Sh. Sanjeev Narula, Sr. Standing Counsel and Sh. Abhishek Ghai, Advocate.
Sh.Dev. P. Bhardwaj, CGSC with Ms. Anubha Bhardwaj, for UOI.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE A. K. CHAWLA

O R D E R
% 14.08.2018

W.P.(C) 7100/2018, C.M. APPL.32668/2018

Learned counsel for the applicant seeks to amend the claim in these petitions by challenging the *vires* of Section 140(3) of the CGST Act and Rule 117 of the CGST Rules framed thereunder. It was brought to the notice of the Court that on 01.08.2018 in a case involving identical questions, a Division Bench had granted relief to similarly situated petitioners in *Sare Realty Projects Private Limited v. Union of India and Ors. and connected matters* [W.P.(C) 1300/2018 & connected matters, decided on 01.08.2018]. The order of the Court on 01.08.2018 was as follows:

> *"Counsel for the Union of India on instructions states that a grievance mechanism has been put in place to deal*

with cases where assessees were not able to upload data to avail of CENVAT and VAT credit or credit on stock-in-trade. Our attention is drawn to Circular No. 39/13/2018-GST dated 3rd April, 2018. It is stated that out of 17,000 such cases, issue has been resolved and settled in approximately 13,000 cases. It is submitted that in each case where it is found that the assessee could not upload data due to any technical glitch or problem, benefit is given. It is submitted that the case of the present petitioners is also being considered as per the grievance redressal mechanism. Lastly, it is submitted that wherever any claim or representation is rejected, a speaking order giving the reasons would be passed and communicated to the concerned petitioner. Learned counsel for the petitioners state that they have already made a representation to the respondent authorities under the grievance mechanism and would pursue the said remedy. However, in case they are aggrieved by the final determination, they should be given liberty to challenge the order. The petitioners also reserve their right to challenge the constitutional vires if required and necessary.

Recording the aforesaid, the writ petitions are disposed of in terms of the statement made, and with liberty as prayed.

We clarify that we have not commented on merits.

No costs.”

This Court is of the opinion that same approach needs to be adopted in the present writ petition. Accordingly, the petitioner’s representations, if any, made to the respondents shall be considered by the concerned Nodal officer in terms of the Grievance Redressal Mechanism. The empowered officer would pass a speaking order. In the event of grievance, the petitioner's remedies to challenge the order are reserved; it is also open to it to question the *vires* of the provisions that it challenges in the present writ petition. The writ petition and the application are disposed of in the above terms.

S. RAVINDRA BHAT, J

A. K. CHAWLA, J

AUGUST 14, 2018/ajk