



2024:DHC:5319-DB



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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision : 16.07.2024

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W.P.(C) 8143/2024 and CM APPL.33440/2024**NIVA BUPA HEALTH INSURANCE
COMPANY LIMITED**

.....Petitioner

Through: Mr. Yogendra Aldak and Mr. Kunal
Kapoor, Advs.

versus

UNION OF INDIA & ORS.

.....Respondents

Through: Mr. Shubham Tyagi, SSC, CBIC and
Mr. Saumya Singh, Adv. for R-1.
Mr. Vinay Yadav, SPC for UOI.**CORAM:****HON'BLE MR. JUSTICE VIBHU BAKHRU****HON'BLE MR. JUSTICE SACHIN DATTA****VIBHU BAKHRU, J. (ORAL)**

1. The petitioner – an Indian health insurance company – has filed the present petition, *inter alia*, praying as under:

“a). Issue a writ of certiorari or any other appropriate writ, order, or direction in the nature thereof, quashing the impugned Order-in-Original along with summary of the said order [FORM GST DRC-07] both bearing Ref. No. ZD070424065771B dated 29.04.2024 passed by the Respondent No.3;

b). Issue a writ of certiorari or any other appropriate writ, order or direction in the nature thereof, quashing the impugned Show Cause Notice bearing Ref. No. ZD071223155212V dated 27.12.2023 issued by the Respondent No.3;



c). Issue a writ of certiorari or any other appropriate writ, order, or direction in the nature thereof, quashing the impugned Notification No.56/2023-Central Tax dated 28.12.2023 issued by the Respondent No. 1 and the *pari-materia* Notification No.09/2023-State Tax dated 22.06.2023 issued by the Respondent No. 2 as *ultra-vires* to Section 168A and Section 73 of the Central Goods and Services Tax Act, 2017/Delhi Goods and Services Tax Act, 2017;”

2. The petitioner is essentially aggrieved by the Order-in-Original dated 29.04.2024 (hereafter *the impugned order*) passed by respondent no.3 whereby the petitioner has been held liable for tax aggregating ₹17,09,10,077/-.

3. The petitioner has challenged the impugned order on several grounds, including on the premise that the same is without any jurisdiction and without any findings or reasons for imposing the said demand. The petitioner also claims that the impugned order is barred by limitation. It further claims that the Show Cause Notice dated 27.12.2023 (hereafter *the impugned SCN*), pursuant to which the impugned order was passed, was also issued beyond the period of limitation.

4. It is submitted that although the time limit for assessment under the Central Goods and Services Tax Act, 2017 (hereafter *the CGST Act*) has been extended, no corresponding notification has been issued extending the period of limitation under the Delhi Goods and Services Tax Act, 2017 (hereafter *the DGST Act*).

5. Additionally, the petitioner also impugns the notification (Notification



No.56/2023-Central Tax) dated 28.12.2023 (hereafter *the impugned notification*), whereby the time limit stipulated under Section 73(10) of the CGST Act, for issuance of order under Section 73(9) of the CGST Act for the financial year 2018-19 was extended upto 30.04.2024, and upto 31.08.2024 for the financial year 2019-2020. The petitioner claims that the issuance of the impugned notification is not within the scope of powers under Section 168A of the CGST Act since the same was issued after the COVID-19 disruption period had passed, and there were no extenuating circumstances which would warrant issuance of such a notification. It is claimed that the power under Section 168A of the CGST Act can be exercised on the recommendations of the GST Council and only in cases where the action(s) required under the CGST Act could not be complied with, on account of *force majeure*. Since no *force majeure* event was subsisting at that time, a notification under Section 168A of the CGST Act could not be issued.

6. The petitioner also submits that the impugned order is unreasoned and was issued without application of mind. The petitioner had, pursuant to the impugned SCN, submitted a detailed reply contesting the proposed assessment. The impugned order rejects the contentions advanced by the petitioner in its reply by merely mentioning that the same were “*the reply partially not satisfied*”. It is submitted that the impugned order is, thus, liable to be set aside.

7. Learned counsel appearing for respondent nos. 2&3 seeks to controvert the submissions made by the petitioner. However, he fairly submits that the impugned order is not supported by any reasons and the



same is liable to be set aside for that reason alone. He submits that the matter may be remanded to the concerned officer for deciding afresh.

8. Learned counsel appearing for the petitioner submits that he has no objection if the impugned order is set aside and the matter is remanded to the concerned officer without prejudice to all the rights and contentions of the petitioner, including his contention with regard to the validity of the impugned notification.

9. In the given facts, we consider it apposite to set aside the impugned order and remand the matter before the Adjudicating Authority for a decision afresh. The Adjudicating Authority shall examine the reply filed by the petitioner to the impugned SCN and take an informed decision within a period of eight weeks from today.

10. The concerned officer shall also examine the question whether the order under Section 73 of the DGST Act is barred by limitation.

11. It is clarified that all rights and contentions of the parties are reserved.

12. The petition is disposed of in the aforesaid terms. Pending application also stands disposed of.

VIBHU BAKHRU, J

SACHIN DATTA, J

JULY 16, 2024

‘gsr’