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

\+ W.P.(C) 8777/2024 CM APPL. 35755/2024

MAHENDER KUMAR BAREJA PROPRIETOR M/S BAREJA SONS .....Petitioner

Through:

versus

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

Through: Mr. Avishkar Singhvi, ASC along with Mr. Vivek Kumar Singh, Mr. Shubham Kumar and Mr. Naved Ahmed, Advs. for GNCTD.
Mr. Asheesh Jain, CGSC ad Mr. Gaurav Kumar, Ms. Vidhika Kapoor and Ms. Pooja Bhardwaj, Advs. for R-4.
Mr. Anurag Ojha, Sr. SC along with Mr. Shubham Kumar, Adv. for R-5.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU
HON'BLE MR. JUSTICE SACHIN DATTA

O R D E R

% **23.08.2024**

1. The petitioner has filed the present petition, *inter alia,* challenging the constitutional validity of Section 16(4) of the Central Goods and Services Tax Act, 2017 (hereafter *the CGST Act*)/ Delhi Goods and Services Tax Act, 2017 (hereafter *the DGST Act*). The petitioner claims that the same is violative of Article 14, Article 19(1) (g) and Article 300A of the Constitution of India.

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2. The petitioner also impugns a Show Cause Notice dated 12.12.2023 (hereafter *the impugned SCN*) calling upon the petitioner to show cause as to why the Input Tax Credit claimed should not be recovered from the petitioner under Section 73(1) of CGST Act/DGST Act.

3. Learned counsel for the petitioner submits that pursuant to the impugned SCN, an order dated 07.03.2024 under Section 73 CGST Act/DGST Act has been passed confirming the demand as set out in the impugned SCN.

4. Learned counsel appearing for the petitioner submits that in view of the introduction of sub-section 5 of Section 16 of the CGST Act/DGST Act by virtue of Finance (No.2) Act, 2024, the petitioner's grievance with regard to the impugned SCN would be addressed if the matter is remanded to the concerned authority to re-adjudicate the impugned SCN once again in the light of introduction of sub-section 5 of Section 16 by Finance (No.2) Act, 2024.

5. The learned counsel for petitioner unequivocally states that the petitioner is not pressing the challenge to the constitutional validity of Section 16(4) of CGST Act/DGST Act.

6. Mr. Singla, learned counsel for the respondent no.2, states that the respondent has no objection if the order dated 07.03.2024 is set aside and the matter is remanded to the Adjudicating Authority to re-adjudicate the impugned SCN in light of the statutory amendments introduced by Finance (No.2) Act, 2024.

7. In view of the above, the present petition is disposed of by setting aside the order dated 07.03.2024, passed pursuant to the impugned SCN.

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8. The matter is remanded to the Adjudicating Authority to re-adjudicate the impugned SCN in light of the Finance (No.2) Act, 2024.

VIBHU BAKHRU, J

SACHIN DATTA, J

AUGUST 23, 2024
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