$~63

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

\+ W.P.(C) 9027/2024 CM APPL. 36963/2024 (Stay)

ENGINEERS INDIA LIMITED .....Petitioner

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

versus

UNION OF INDIA & ORS. .....Respondents

Through: Mr. Sushil Kumar Pandey, Sr. Panel Counsel, Ms. Neha Yadav, Adv. and Mr. Jatin Singh, Adv. (through v/c) for R-1/UOI.
Mr. Rajeev Aggarwal, ASC and Mr. Shubham Goel, Adv. for R-2 and 3 (through v/c)

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

O R D E R

% **09.07.2024**

CM APPL.36964/2024 (Exemption)

1. Allowed, subject to all just exceptions.

2. Application stands disposed of.

W.P.(C) 9027/2024 CM APPL. 36963/2024 (Stay)

3. The petitioner – a Public Sector Undertaking – has filed the present petition 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] bearing Reference No.: ZD070424069010T dated 30.04.2024 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 Order-in-Original along with summary of the said order [FORM GST DRC-07] bearing Reference No.: ZD070424068976U dated 30.04.2024 passed 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 Show Cause Notice bearing Reference No. ZD070124071048M dated 31.01.2024 issued by the Respondent No. 3;

d) Issue a writ of certiorari or any other appropriate writ, order or direction in the nature thereof, quashing the Impugned Show Cause Notice bearing Reference No. ZD070124071014X dated 31.01.2024 issued by the Respondent No. 3;

e) 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 impugned Notification No. 09/2023-State Tax dated 22.06.2023 issued by the Respondent No. 2, as ultra-vires Section 168A and Section 73 of the Central Goods and Services Tax Act, 2017/Delhi Goods and Services Tax Act, 2017."

4. The petitioner is essentially aggrieved by the order dated 30.04.2024 (hereafter *the impugned order*) whereby the petitioner has been held liable for tax aggregating ₹1,50,81,034/-.

5. The petitioner has challenged the impugned order on several grounds, and also on the premise that the same is barred by limitation. The petitioner also claims that the Show Cause Notice dated 31.01.2024 (hereafter *the impugned SCN*), pursuant to which the impugned order was passed, was issued beyond the period of limitation.

6. It is submitted that although the time limit for assessment under the Central Goods and Services Tax (CGST) 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*').

7. 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) Central Goods and Services Tax Act, 2017 (hereafter '*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.

8. The petitioner also submits that the impugned order is unreasoned and without application of mind. The petitioner had, pursuant to the impugned SCN dated 31.01.2024, 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 "*examined and not found satisfactory*". It is submitted that the impugned order is, thus, liable to be set aside.

9. Mr. Aggarwal, learned counsel appearing for respondent nos.2 and 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.

10. 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.

11. In the given facts, it is considered 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 a firm decision within a period of 08 weeks from today.

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

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

VIBHU BAKHRU, J

SACHIN DATTA, J

JULY 9, 2024/cl