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

+ W.P.(C) 11037/2024, CM APPL. 45607/2024 (Stay) & CM APPL. 52999/2024 (Addl. Document)

DLF HOME DEVELOPERS LIMITEDPetitioner

Through: Ms. Kavita Jha, Sr. Adv. with
Mr. Shammi Kapoor & Ms.
Swati Agarwal, Advs.

versus

SALES TAX OFFICER CLASS II, AVATO,

GOVT. OF NCT OF DELHI & ANR.Respondents

Through: Mr. Rajeev Aggarwal, ASC
with Mr. Shubham Goel & Mr.
Mayank Kamra, Advs. for R-1.
Ms. Suhani Mathur, Mr. Jatin
Kumar Gaur Mr. Pushpendra
Prashad Thapliyal, Advs. for
Mr. Harpreet Singh, SSC.

CORAM:

HON'BLE MR. JUSTICE YASHWANT VARMA

HON'BLE MR. JUSTICE RAVINDER DUDEJA

ORDER

% **26.09.2024**

1. Learned counsels for parties are ad-idem that the challenge which is raised to the Show Cause Notice ['SCN'] in this writ petition would be governed by the decision rendered in **DLF Home Developers Limited vs. Sales Tax Officer Class II Avato Ward 107 Special Zone 12 Delhi & Anr.** [W.P.(C) 11052/2024 dated 04 September 2024].

2. While dealing with an identical controversy and where the authorities in purported exercise of powers of the State Goods and Services Tax provisions had sought to initiate parallel proceedings despite the issuance of a comprehensive notice by the Directorate



General of GST Intelligence [‘DGGI’], we had in *DLF Home Developers Limited* disposed of the writ petition on the following terms:-

“2. The present petition is confined only to the demand in respect of ITC to be reversed on non-business transactions and exempt supplies. The petitioner’s challenge to the said demand is premised on the basis that the Directorate General of GST Intelligence (hereafter the DGGI) has also issued a show cause notice dated 02.02.2024 for the tax period 01.07.2017 to 31.03.2021, which also includes the demand proposed on the aforesaid issue. It is the petitioner’s case that two authorities cannot proceed simultaneously in respect of the same issue.

3. The impugned order indicates that respondent no.1 is also fully conscious of the same and therefore, it has proceeded to confirm the demand without adjudicating the same. The relevant extract of the impugned order is set out below :-

“

On ITC to be reversed on non-business transactions & exempt supplies: The taxpayer has informed that the proceeding under the subject has already been taken up by DGGI (HQ), New Delhi had referred section 6(2)(b) of CGST Act 2017 and stated that parallel proceeding cannot be started. Deputy Director Investigation (INV-DGGI (HQ) New Delhi vide letter no DGGI/INV/GST/2722-2023/INV/o/o/Pr.OGG(HQ)/2028 dated 20.12.2023 DGGI (HQ) has acknowledge the fact. Since the proceeding on the issue at being executed by DGGI (HQ), New Delhi, the demand raised through DRC01 stands as it is.”

4. We find merit in the contention that respondent no.1 cannot adjudicate a demand, which is also the subject matter of other proceedings. Since, the period covered under the impugned order is also subsumed in the show cause notice issued by the DGGI, both the proceedings cannot be carried on simultaneously.

5. Mr. Rajeev Aggarwal, the learned counsel appearing for respondent no.1 states, on instructions, that the demand, in respect of ITC to be reversed on non-business transactions and exempt supplies, be set aside as the same would be adjudicated by the DGGI.

6. In view of the above, the impugned demand is required to be set aside to the extent as noted above. It is so directed.

7. It is clarified that the concerned Authority shall adjudicate the said issue pursuant to a show cause notice dated 02.02.2024 issued by the DGGI.



8. The present petition is allowed in the aforesaid terms. The pending application is also disposed of.”

3. In view of the above, we restrain the respondents from taking further steps pursuant to the impugned SCN dated 24 May 2024 pertaining to the tax period of April 2019 to March 2020.

4. The aforesaid restraint shall abide by the final order that may be passed by the DGGI pursuant to the independent SCN issued by that authority dated 02 February 2024.

5. The writ petition stands disposed of on the aforesaid terms with liberty to the respondent to commence proceedings dependent upon the outcome of the proceedings by the DGGI.

YASHWANT VARMA, J

RAVINDER DUDEJA, J

SEPTEMBER 26, 2024/rw