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

+ W.P.(C) 16547/2023

M/S. MALIK ENTERPRISES

.....Petitioner

Through: Mr. Sumit K. Batra, Mr. Manish
Khurana, Ms. Priyanka Jindal and Mr.
Nikhin Alex, Advs.

versus

UNION OF INDIA & ORS.

.....Respondents

Through: Mr. Ajay Jain, SPC along with Mr.
Bijay Lakshmi, Mr. M.N. Mishra, Mr.
Krishna Sharma and Ms. Shreya Jain,
Advs. for R-1.
Mr. Aditya Singla, SSC, CBIC along
with Mr. Ritwik Saha, Mr. Sarthak
Mittal and Mr. Vaibhav Chechi,
Advs.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

HON'BLE MR. JUSTICE SACHIN DATTA

ORDER

23.08.2024

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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.

2. The petitioner also impugns a Show Cause Notice dated 22.11.2023 (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 16.04.2024 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 16.04.2024 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 16.04.2024, passed pursuant to the impugned SCN.



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/cl