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

Date of Decision: 7th May, 2025

+ **W.P.(C) 1613/2025 & CM APPL. 7831/2025**

M/S. MOHAN INTERNATIONAL THROUGH ITS KARTA MOHIT
KAUSHIKPetitioner

Through: Mr. Vineet Bhatia, Ms. Aamnaya
Sagannath Mishra, Mr. Keshav Garg
and Mr. Abhinav Sharde, Advocates.

versus

UNION OF INDIA AND ORS.Respondents

Through: Mr. Anurag Ojha, SSC with Mr.
Subham Kumar and Mr. Dipak Raj,
Adv. (M- 6200388793)
Ms. Vaishali Gupta, Advocate.
Mr. Ravi Kant Srivastava, SPC with
Mr. Robert Laishram, Advocate.

CORAM:
JUSTICE PRATHIBA M. SINGH
JUSTICE RAJNEESH KUMAR GUPTA

Prathiba M Singh, J. (Oral)

1. This hearing has been done through hybrid mode.
2. The present petition has been filed by the Petitioner under Article 226 of the Constitution of India, *inter alia*, challenging ***Notifications Nos. 09/2023-Central Tax*** dated 31st March, 2023, ***56/2023-Central Tax*** dated 28th December, 2023 (hereinafter, '*impugned notification*') on the ground that the same is *ultra vires* to the Central Goods and Service Tax Act, 2017 and Delhi Goods and Service Tax Act, 2017.



3. Further, the present petition assails the Show Cause Notice dated 19th December, 2023 and demand order dated 13th April, 2024 (hereinafter, ‘*impugned order*’) passed by Respondent No.2 - Sales Tax Officer Class II/AVATO, Ward 63, Zone 6, Delhi.

4. Additionally, the petition also challenges the Order-in-Appeal dated 2nd December, 2024 whereby the appeal filed by the Petitioner u/s 107 of the Central Goods and Service Tax Act, 2017, has been dismissed by the appellate authority on the ground of being barred by limitation.

5. The impugned notifications were under consideration before this Court in a batch of matters with the lead matter being ***W.P.(C) 16499/2023*** titled ‘***DJST Traders Pvt. Ltd. vs. Union of India and Ors.***’. In the said batch of petitions, on 22nd April, 2025, the parties were heard at length *qua* the validity of the impugned notifications and accordingly, the following order was passed:

“4. Submissions have been heard in part. The broad challenge to both sets of Notifications is on the ground that the proper procedure was not followed prior to the issuance of the same. In terms of Section 168A, prior recommendation of the GST Council is essential for extending deadlines. In respect of Notification no.9, the recommendation was made prior to the issuance of the same. However, insofar as Notification No. 56/2023 (Central Tax) the challenge is that the extension was granted contrary to the mandate under Section 168A of the Central Goods and Services Tax Act, 2017 and ratification was given subsequent to the issuance of the notification. The notification incorrectly states that it was on the recommendation of the GST Council. Insofar as the Notification No. 56 of 2023 (State Tax) is concerned, the challenge is to the effect that the same was issued on 11th July, 2024 after the expiry of the limitation in terms of the Notification No.13 of 2022 (State Tax).”



5. In fact, Notification Nos. 09 and 56 of 2023 (Central Tax) were challenged before various other High Courts. The Allahabad Court has upheld the validity of Notification no.9. The Patna High Court has upheld the validity of Notification no.56. Whereas, the Guwahati High Court has quashed Notification No. 56 of 2023 (Central Tax).

6. The Telangana High Court while not delving into the vires of the assailed notifications, made certain observations in respect of invalidity of Notification No. 56 of 2023 (Central Tax). This judgment of the Telangana High Court is now presently under consideration by the Supreme Court in S.L.P No 4240/2025 titled *M/s HCC-SEW-MEIL-AAG JV v. Assistant Commissioner of State Tax & Ors.* The Supreme Court vide order dated 21st February, 2025, passed the following order in the said case:

“1. The subject matter of challenge before the High Court was to the legality, validity and propriety of the Notification No.13/2022 dated 5-7-2022 & Notification Nos.9 and 56 of 2023 dated 31-3-2023 & 8-12-2023 respectively.

2. However, in the present petition, we are concerned with Notification Nos.9 & 56/2023 dated 31-3-2023 respectively.

3. These Notifications have been issued in the purported exercise of power under Section 168 (A) of the Central Goods and Services Tax Act, 2017 (for short, the "GST Act").

4. We have heard Dr. S. Muralidhar, the learned Senior counsel appearing for the petitioner.

5. The issue that falls for the consideration of this Court is whether the time limit for adjudication of show cause notice and passing order under Section 73 of the GST Act and SGST Act (Telangana GST Act) for financial year 2019-2020 could have been extended by issuing the Notifications in question under Section 168-A of the GST Act.

6. There are many other issues also arising for consideration in this matter.



7. Dr. Muralidhar pointed out that there is a cleavage of opinion amongst different High Courts of the country. 8. Issue notice on the SLP as also on the prayer for interim relief, returnable on 7-3-2025.”

7. In the meantime, the challenges were also pending before the Bombay High Court and the Punjab and Haryana High Court. In the Punjab and Haryana High Court vide order dated 12th March, 2025, all the writ petitions have been disposed of in terms of the interim orders passed therein. The operative portion of the said order reads as under:

“65. Almost all the issues, which have been raised before us in these present connected cases and have been noticed hereinabove, are the subject matter of the Hon'ble Supreme Court in the aforesaid SLP.

66. Keeping in view the judicial discipline, we refrain from giving our opinion with respect to the vires of Section 168-A of the Act as well as the notifications issued in purported exercise of power under Section 168-A of the Act which have been challenged, and we direct that all these present connected cases shall be governed by the judgment passed by the Hon'ble Supreme Court and the decision thereto shall be binding on these cases too.

67. Since the matter is pending before the Hon'ble Supreme Court, the interim order passed in the present cases, would continue to operate and would be governed by the final adjudication by the Supreme Court on the issues in the aforesaid SLP-4240-2025.

68. In view of the aforesaid, all these connected cases are disposed of accordingly along with pending applications, if any.”

8. The Court has heard Id. Counsels for the parties for a substantial period today. A perusal of the above would show that various High Courts have taken a view and the matter is squarely now pending before the Supreme Court.

9. Apart from the challenge to the notifications itself, various counsels submit that even if the same are upheld, they would still pray for relief for the parties as the Petitioners have been unable to file replies due to several reasons and were



unable to avail of personal hearings in most cases. In effect therefore in most cases the adjudication orders are passed ex-parte. Huge demands have been raised and even penalties have been imposed.

10. Broadly, there are six categories of cases which are pending before this Court. While the issue concerning the validity of the impugned notifications is presently under consideration before the Supreme Court, this Court is of the prima facie view that, depending upon the categories of petitions, orders can be passed affording an opportunity to the Petitioners to place their stand before the adjudicating authority. In some cases, proceedings including appellate remedies may be permitted to be pursued by the Petitioners, without delving into the question of the validity of the said notifications at this stage.

11. The said categories and proposed reliefs have been broadly put to the parties today. They may seek instructions and revert by tomorrow i.e., 23rd April, 2025.”

6. Thereafter, on 23rd April, 2025, this Court, having noted that the validity of the impugned notifications is under consideration before the Supreme Court, had disposed of several matters in the said batch of petitions after addressing other factual issues raised in the respective petitions. Additionally, while disposing of the said petitions, this Court clearly observed that the validity of the impugned notifications therein shall be subject to the outcome of the proceedings before the Supreme Court in ***S.L.P. No. 4240/2025 titled M/s HCC-SEW-MEIL-AAG JV v. Assistant Commissioner of State Tax & Ors.***

7. On facts, however, it is the case of the Petitioner that an appeal has already been filed by u/s 107 of the Central Goods and Service Tax Act, 2017, challenging the impugned order dated 13th April, 2024. However, the same stands dismissed by the appellate authority on the ground of limitation.



Relevant portion of the order dated 2nd December, 2024, passed by the appellate authority is extracted herein below:

“1. This order shall dispose of an appeal in Form GST APL-01 filed on 16.08.2024 by the appellant namely, M/S MOHAN INTERNATIONAL, GSTIN 07AAQHM8355Q1Z3 challenging the impugned order of demand vide ref. no. ZD070424031274P dated 13.04.2024 issued by Proper Officer (Ward-28) of Department of Trade & Taxes, Government of NCT of Delhi.

2. Being aggrieved, the Appellant has filed the present appeal u/s 107 of the Delhi Goods & Services Tax Act, 2017 (hereinafter referred to as "DGST Act" in short) on 16.08.2024. Adv. Shyam Sethi, appeared on behalf of the Appellant on 25.11.2024 & 27.11.2024 and matter was kept for Order.

3. I have carefully perused the aforesaid impugned orders made available by the Appellant and considered the facts and circumstances of the case as well as the relevant legal provisions. As per sub section (1) of section 107 of the DGST/CGST Act, 2017, appeal against any decision or order passed under the Act by an Adjudicating Authority may be filed by a person before the Appellate Authority within three months from the date on which the said decision or order is communicated to such person. Further, subsection (4) of section 107 of the DGST/ CGST Act, 2017 provide the Appellate Authority with the power to condone a delay upto one month, if the appellant was prevented by sufficient cause in filing appeal within three months. In this case, the impugned order is dated 13.04.2024 and the present appeal has been filed on 16.08.2024, which is beyond the prescribed time-limit as per the above mentioned legal provisions of subsections (1) and (4) of section 107 of the CGST/DGST Act, 2017.

4. In view of the above facts and circumstances, present appeal is hit by the limitation period and liable to be dismissed on this ground alone. Thus, appeal is disposed of in following term:-



Appeal preferred by the appellant is hereby dismissed in limine.

5. Ordered accordingly.”

8. In the opinion of this Court, the appeal filed by the Petitioner u/s 107 of the Central Goods and Service Tax Act, 2017 shall be heard on merits by the Appellate Authority and shall not be dismissed on limitation, so long as the appeal complies with the other conditions under Section 107 of the said Act including pre-deposit.

9. In view of the abovementioned circumstances, and the fact that the challenge to the impugned notification is pending before the Supreme Court, this Court is inclined to provide the Petitioner another opportunity to present its case on merits. Accordingly, the order dated 2nd December, 2024 is set aside and the appeal is restored to its original number. The appeal shall now be adjudicated on merits after affording a personal hearing to the Petitioner. A hearing notice of the Appeal shall be provided by the Appellate Authority on the following email address :

Mobile: 9811081159

E-mail: bhatiav68@gmail.com

10. All the rights and remedies of the parties are left open. Access to the GST Portal, if not already available, shall be ensured to be provided to the Petitioner to enable access to the notices and related documents.

11. However, it is made clear that the issue in respect of the validity of the impugned notifications is left open and the order of the Appellate Authority



shall be subject to the outcome of the decision of the Supreme Court in ***S.L.P No 4240/2025*** titled '***M/s HCC-SEW-MEIL-AAG JV v. Assistant Commissioner of State Tax & Ors***'.

12. The present petition is disposed of in said terms. Pending applications, if any, are also disposed of.

**PRATHIBA M. SINGH,
JUDGE**

**RAJNEESH KUMAR GUPTA
JUDGE**

MAY 7, 2025/da/rks

(corrected and released on 15th May, 2025)