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

***Date of decision: 07th May, 2025***

\+ **W.P.(C) 2370/2025**

GOVIND AGGARWALPROP VISHAL CHEM INDIA

.....Petitioner

Through: Mr. Ruchir Bhatia and Mr. Abhishek Anand, Advs.

versus

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

Through: Mr. Atul Krishna, SPC, UOI.
Ms. Vaishali Gupta, Adv. for GNCTD.

**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 –Mr. Govind Aggarwal, Proprietor- Vishal Chem (India) under Article 226 of the Constitution of India *inter alia* seeking to declare ***Notification No. 56/2023-Central Tax*** dated 28th December, 2023 *ultra vires* to the Central Goods and Service Tax Act, 2017 (hereinafter *'impugned notification'*) and consequently seeking setting aside of Show Cause Notice dated 17th May, 2024 (hereinafter *'impugned SCN'*) and demand order dated 24th August, 2024 (hereinafter *'impugned order'*).

3. At the outset the ld. Counsel for the Petitioner submits on instructions, that he does not wish to press prayer (b) and (d) which read as under:

> *"(b) Issue a writ of declaration or any other writ, order or direction in the nature thereof declaring Section 16(2)(c) of the CGST Act, 2017/DGST Act, 2017 as ultra vires to the Constitution of India, 1950;*
>
> ******
>
> *(d) Issue an appropriate writ, order or direction to declare the orders dated 09.08.2024, 16.11.2023, 07.11.2023, 16.10.2023 and 29.09.2023 issued by the Department of Trade and Taxes, Government of National Capital Territory of Delhi, as ultra vires being beyond the provisions of the parent Act. i.e., Delhi Goods and Service Tax Act, 2017."*

4. The impugned notification was 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.'***. On 22rd 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 ld. 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.”***

5. 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.

6. On facts, the submission of the Petitioner is that the impugned order is a cryptic and completely non-speaking order. However, upon a perusal, it can be seen that the impugned order is a detailed order, duly considering the Petitioner's reply dated 13th June, 2024. It is also noticed that the Respondent-GST Department has, in fact, dropped certain demands, upon considering the Petitioner's submissions. The relevant portion of the impugned order is set out below:

74

## 1. Excess claim of ITC

**• Under declaration of Ineligible ITC:**

Under Sec 17(5) of the SGST Act. 2017 input tax credit shall not be available in respect of the list of commodities & services mentioned therein subject to certain conditions.

It is seen from GSTR-09 and other information that they have claimed ITC on these commodities and therefore the ITC claimed on these commodities or services is proposed to be recovered.

| S.No | Commodity/Service | HSN code | SGST | CGST | IGST | CESS | Total |
|---|---|---|---|---|---|---|---|
| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 |
| 1 | Motor Vehicles | 8702; 8703; 8711 | 207875 | 207875 | 0 | 293540 | 709290 |

| S.No | Issue | Table no. in GSTR-09 | SGST | CGST | IGST | CESS | Total |
|---|---|---|---|---|---|---|---|
| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 |
| A | Total ineligible ITC u/s 17(5) | | 207875 | 207875 | 0 | 293540 | 709290 |
| B | Ineligible ITC declared | 7E or (Sum of 4D(1) of GSTR 3B of all months in FY) which ever is higher | 0 | 0 | 0 | 0 | 0 |
| C | Difference/excess ITC claimed | "If (SL.No A – SI.NO B >0) then Lower of {SL.No A – SI.NO B} or ((Sum of 4C of GSTR 3B of all months in current FY) – (13-12 of Previous FY GSTR-09) + (13-12 of current FY GSTR-09))" | 207875 | 207875 | 0 | 0 | 415750 |

<u>Response of the tax payer :</u>

The tax payer has 'Not agreed' for the following amount in the SCN.

**SGST :** 207875 **CGST :** 207875 **IGST :** 0 **CESS :** 0

The reasons cited by the tax payer for disagreeing/partially disagreeing are:

1. Other Reasons Mentioned by Tax Payer:
SGST :0 CGST :0 IGST :0 CESS :0

Reason:

Motor Vehicles HSN 8702; 8703; 8711 CGST Rs. 2,07,875.00 SGST Rs 2,07,875.00 Cess 293540.00 Total ITC Rs 7,09,290.00.00 but no claim taken by the taxpayer during the financial year GST2A enclosed

<u>Observations and conclusion of the assessing authority :</u>

Agreed with Tax Payer

Specific reasons entered

The reply of the firm/dealer and record available on the portal such as GSTR-09 for the F.Y 2019-20 and other documents has been examined and seems to be found satisfactory. The contention appears to be in line with the factual position as per data available on the portal.

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75

<u>Collections :</u>

Total :
SGST Rs: 0 CGST Rs: 0 IGST Rs: 0 CESS Rs: 0 Interest Rs: 0 Penalty Rs: 0

<u>Final Amounts determined by the Assessing Authority in this Order :</u>

7. Considering the above position, this Court is of the view that the impugned order does not deserve to be interfered with under writ jurisdiction.

8. However, considering the fact that the impugned order is an appealable order under Section 107 of Central/Delhi Goods and Service Tax Act, 2017, the Petitioner is permitted to avail its appellate remedy. In view of the present petition being pending before this Court, the appeal, if filed by 10th July, 2025 along with the prescribed pre-deposit, shall not be dismissed by the Appellate Authority on the grounds of limitation and shall be heard on merits.

9. 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 filing of appeal, as also access to the notices and related documents.

10. However, it is again made clear that the issue in respect of the validity of the impugned notification 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'***.

11. The petition is disposed of in these terms. Pending applications, if any, are also disposed of.

**PRATHIBA M. SINGH**
**JUDGE**

**RAJNEESH KUMAR GUPTA**
**JUDGE**

**MAY 7, 2025**
*dj/Ar.*
*(corrected and released on 15th May, 2025)*