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

Date of decision: 7th May, 2025

\+ **W.P.(C) 3106/2025 & CM APPL. 14689/2025**

JAI INDUSTRIES THROUGH ITS PROPRIETOR MOHAMMAD SALMAN .....Petitioner

Through: Mr. M.A. Ansari, Ms. Tabbassum Firdause and Md. Imran Ahmad, Advs. (M:9718503000)

versus

GOVT. OF NCT OF DELHI THROUGH CHIEF SECRETARY & ORS. .....Respondents

Through: 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 – Jai Industries through its proprietor, Mohammad Salman, under Article 226 of the Constitution of India *inter alia* seeking to set aside the Show Cause Notice dated 30th May, 2024 (hereinafter *'impugned SCN'*) and the order dated 28th August, 2024 (hereinafter *'impugned order'*) passed by Respondent No.3- Sales Tax Officer Class II/AVATO, Ward-82, Zone-7, Delhi.

3. Additionally, the petition also seeks to declare -

(i) ***Notification No. 56/2023-Central Tax*** dated 28th December, 2023 *ultra vires* the Central Goods and Service Tax Act, 2017; and

(ii) ***Notification No. 56/2023-State Tax*** dated 11th July, 2024 *ultra vires* the Delhi Goods and Service Tax Act, 2017. (hereinafter collectively '*impugned notifications*')

4. 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 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

<u>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.</u>

<u>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.</u>

<u>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."</u>

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. However, in cases where the challenge is to the parallel State Notifications, the same have been retained for consideration by this Court. The lead matter in the said batch is ***W.P.(C) 9214/2024*** titled ***Engineers India Limited v. Union of India & Ors.***

7. On facts, the submission of the Petitioner is that a detailed reply to the impugned SCN disagreeing with the demand raised has been filed by the Petitioner on 25th August, 2024. Yet, the impugned order does not duly consider the same. It is, in fact, submitted that the impugned order, in contradiction to the reply, records that the Petitioner agrees with the demand. Thus, the Petitioner prays for the impugned order to be set aside for violation of the Principles of Natural Justice.

8. Ld. Standing Counsel for the Respondent – GST Department submits that the Petitioner might have appeared for a personal hearing and subsequently agreed with the demand.

9. The Court has perused the records. The relevant portion of the order that records the admission of the Petitioner to the demand is extracted below:

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1. Under declaration of output tax :

• Reconciliation of GSTR-01 with GSTR-3B:

The outward supplies turnover declared in GSTR-01 is greater than net outward supplies information furnished in GSTR-3B. This amount is therefore proposed to be taxed as under declared outward supplies as follows:

S.No	Issue	SGST	CGST	IGST	CESS	Total
1	2	3	4	5	6	7
1	Tax on Outward supplies declared in GSTR-01 for the FY. (Including Reverse charge)	0	0	13368901	0	13368901
2	Less tax on Outward supplies arrived in GSTR-3B (Including reverse charge) at box 3.1A+3.1B+3.1D	15688	15688	11802353	0	11833729
3	Difference (S.No.1- S.No.2)	0	0	1566548	0	1566548

Response of the tax payer :

The tax payer has 'Agreed' for the following amount in the SCN.

SGST : 0 **CGST** : 0 **IGST** : 1566548 **CESS** : 0

Observations and conclusion of the assessing authority :

Agreed with Tax Payer

Collections :

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

Final Amounts determined by the Assessing Authority in this Order :

SGST Rs: 0 CGST Rs: 0 IGST Rs: 1566548 CESS Rs: 0

10. The relevant portion of the reply dated 25th August, 2024 that records Petitioner's disagreement with the demand raised *vide* the impugned SCN is extracted below:

> *"Conclusion:*
> *In light of the above points, we request your good office to withdraw the demand raised for IGST, CGST and SGST amounting to Rs. 1,35,04,718/- (Including Interest and Penalty), We are prepared to provide any additional information or documentation that may assist in resolving this matter favorably."*

11. A perusal of the above extractions reveals that curiously, it is recorded that the taxpayer is stated to have agreed with various demands, however, a perusal of the reply shows the contrary. There appears to have been some miscommunication between the Adjudicating Authority and the Petitioner. Considering the fact that the Petitioner has disagreed with the demand raised in the impugned SCN *vide* the reply dated 25th August, 2024 and the fact that it has filed the present writ petition alleging the same, this Court is inclined set aside the impugned order and relegate the matter to the concerned Adjudicating Authority for duly considering the Petitioner's submissions on merit.

12. Ordered accordingly. The Petitioner is allowed to file a (supplementary) reply, if required, by 10th July, 2025. The Adjudicating Authority shall provide the Petitioner a personal hearing, and the notice for the same shall be sent to the following email ID and phone number:

Email: ***ansariadvocate15@gmail.com***

Phone number: 8865922011

13. Thereafter, let the comprehensive adjudication order be passed by the Adjudicating Authority on merits upon considering the reply and submissions

of the Petitioner.

14. 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.

15. However, it is again made clear that the issue in respect of the validity of the impugned notifications is left open and the order of the Adjudicating 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'***. and this Court in ***W.P.(C) 9214/2024*** titled '***Engineers India Limited v. Union of India & Ors'***.

16. 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 & released on 15th May, 2025)