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

Date of Decision: 7th May, 2025

\+ **W.P.(C) 3275/2025 & CM APPL. 15502/2025**

MONIKA NARANG (PROPRIETOR, JAI STEEL FURNITURES) .....Petitioner

Through: Mr. Nitin Gulati and Ms. Reena Gandhi, Advocates (Mob. 9313133000), (e-mail- nit.gulati@yahoo.com).

versus

UNION OF INDIA & ANR. .....Respondents

Through: Mr. K. G. Gopalakrishnan, 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 – Monika Narang through its proprietor Jai Steel Furnitures under Article 226 of the Constitution of India challenging *inter alia* ***Notification No. 56/2023- Central Tax*** dated 28th December, 2023 (hereinafter '*impugned* notification') and consequently seeking to set aside demand order dated 21st April, 2024 (hereinafter '*impugned order*').

3. 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."

4. 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.

5. On facts, the submission of the Petitioner is that the reply to the impugned SCN was filed on 16th February, 2024, however, the same was not duly considered by the Adjudicating Authority. However, a perusal of the impugned order reveals that the Adjudicating Authority has passed a detailed order upon considering the submissions of the Petitioner. The relevant extracts of the impugned order is as follows:

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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)	728883	728883	12690	0	1470456
2	Less tax on Outward supplies arrived in GSTR-3B (Including reverse charge) at box 3.1A+3.1B+3.1D	1031196	1031196	5490	0	2067882
3	Difference (S.No.1- S.No.2)	0	0	7200	0	7200

Response of the tax payer :

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

SGST : 0 **CGST :** 0 **IGST :** 7200 **CESS :** 0

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

null

null

null

null

5. Other Reasons Mentioned by Tax Payer:
SGST :0 CGST :0 IGST :0 CESS :0
Reason:
The taxpayer has not submitted reply about the same.

Observations and conclusion of the assessing authority :

Not Agreed with Tax Payer

Specific reasons entered
The taxpayer has not submitted reply regarding short payment of Output tax amounting to Rs. 7200 hence the demand is upheld.

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: 7200 CESS Rs: 0

2. Excess claim of ITC

• **ITC claimed from cancelled dealers, return defaulters & tax non payers:**

Under Sec 16(2)(c) every registered person shall be entitled to take credit of ITC on supply of goods or services to him subject to the condition that the tax charged in respect of such supply has been actually paid to the Government either in cash or through utilization of ITC admissible in respect of such supply.

However as seen from the office records, it is observed that you have taken ITC from the tax payers who have not paid tax on their outward supplies to you.

S.No	Issue	SGST	CGST	IGST	CESS	Total
1	2	3	4	5	6	7
1	Supplier registration cancelled before date of invoice	53405	53405	0	0	106810
2	Supplier failed to file GSTR-3B and did not pay tax on the invoices declared in GSTR-01	0	0	0	0	0
3	Supplier filed GSTR-3B with Nil turnover and did not declare or pay tax corresponding to the invoices declared in GSTR-01	0	0	0	0	0
4	Total (S.No.1 + S.No.2 + S.No.3)	53405	53405	0	0	106810

The above amount of ITC was intimated at the time of SCN.

Response of the tax payer :

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

SGST : 53405 **CGST :** 53405 **IGST :** 0 **CESS :** 0

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

1. Other Reasons Mentioned by Tax Payer:
SGST :399403 CGST :399403 IGST :0 CESS :0
Reason:
The taxpayer has submitted that he has availed ITC in the basis of conditions specified under Section 16 of DGST Act

Observations and conclusion of the assessing authority :

Not Agreed with Tax Payer

Specific reasons entered
The Hon'ble Supreme court in State of Karnataka V/s ECOMM GILL COFFEE trading Pvt Ltd, has held that the burden to prove the admissibility of any ITC lies on the taxpayer and cannot be shifted to the tax authorities. Merely producing Tax invoices and payment proofs is not sufficient to discharge his burden, satisfying such burden would require the production of additional records like (i) Names and address of the sellers (ii) details of the vehicles which were used to deliver the goods to the taxpayers (iii) proof of payment of freight charges and (iv) acknowledgement of taking delivery of goods. In view of the above it is noted that the taxpayer has not submitted any of the above mentioned documents regarding the claim of his ITC hence the demand is upheld.

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: 53405 CGST Rs: 53405 IGST Rs: 0 CESS Rs: 0

6. In view thereof, and considering the fact that the impugned order is an

appealable order under Section 107 of the Central Goods and Services Tax Act, 2017, the Court is of the opinion that the impugned order does not warrant interference under writ jurisdiction. However, considering the fact that the present petition has been pending before this Court during the period of limitation, the Petitioner herein is allowed to prefer an appeal along with the prescribed pre-deposit before the concerned Appellate Authority by 10th July, 2025. If the appeal is filed within the stipulated time along with the prescribed pre-deposit, the Appellate Authority shall not dismiss the same on the grounds of limitation and shall hear the appeal on merits.

7. 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.

8. 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'***.

9. The petition is disposed of in the above terms. Pending applications, if any, are also disposed of.

PRATHIBA M. SINGH
JUDGE

RAJNEESH KUMAR GUPTA
JUDGE

MAY 7, 2025/*MR/Ar.*

(corrected & released on 16th May, 2025)