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

Date of decision: 7th May, 2025

\+ **W.P.(C) 4414/2025 & CM APPL. 20320/2025**

SAAD MINHAJ PROP OF M/S ELEVARA ENGINEERS .....Petitioner

Through: Mr. Wahaj Ahmad Khan, Advocate.

versus

SALES TAX OFFICER CLASS II/AVATO .....Respondent

Through: Ms. Urvi Mohan, Advocate 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 – M/s Elevara Engineers through its proprietor Saad Minhaj under Article 226 of the Constitution of India challenging *inter alia* ***Notification No. 9/2023- Central Tax*** dated 31st March, 2023 and ***Notification No. 56/2023- Central Tax*** dated 28th December, 2023 (hereinafter collectively '*impugned notifications*') and consequently seeking to set aside Show Cause Notice dated 20th May, 2024 (hereinafter '*impugned SCN*') and impugned order dated 24th August, 2024 (hereinafter '*impugned order*').

3. 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).*
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> *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).*
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> *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 Respondent No.1-Sales Tax Officer Class II/AVATO, Ward 2, Zone 2, Delhi has not provided sufficient time to file his response and no opportunity for personal hearing was granted to the Petitioner. In view thereof, according to the Petitioner, the impugned order is in violation of the Principles of Natural Justice and is liable to be set aside.

6. The Court has perused the records. It is noticed that the impugned order records that the Petitioner has filed a reply, which was found to be non-satisfactory and another opportunity to file the reply was granted. However, the order further records that the said opportunity for personal hearing was not availed of by the Petitioner. The relevant portion of the order is extracted below:

Office of GST Officer, Ward-02
Department of Trade and Taxes, GNCTD
4th Floor, Vyapar Bhawan, I.P. Estate, New Delhi – 110002

[FORM GST DRC-07]
[Refer Rule 100(1), 100(2), 100(3) & 142(5)]

Summary of the Order

Whereas, a notice DRC-01 under section 73 of DGST/CGST Act, 2017 was issued to the taxpayer with details of demand as an attachment with the advise to pay the demand in DRC-03 within stipulated time given in the notice.

And whereas, the taxpayer through the notice DRC-01 under section 73 was also advised to file their objections/reply/supporting documents in DRC-06 within stipulated time i.e. 30 days from the date of issuance of the notice, if the taxpayer is not agreeing with the proposed demand in the notice DRC-01.

And whereas, documents submitted by the taxpayer and data available on the portal has been thoroughly examined and is found to be devoid of merits/not supported with the relevant documents therefore further clarification was required to decide the case. Accordingly, as per the provision of Sec 75 (4) of the CGST/DGST Act 2017 an opportunity of personal hearing was afforded to the taxpayer to appear before the undersigned either in person or through Authorized Representative along with all the supporting documents on the date and time mentioned in the enclosed notice.

And whereas, neither the taxpayer nor their representative appeared for personal hearing despite giving sufficient opportunities, therefore, the undersigned is left with no other option but to re-examine the reply and documents available on the portal.

And whereas, on examination of the reply/documents furnished by the taxpayer, it has been observed that since the reply is devoid of merits /not supported with relevant documents and without any justification or proper reconciliation, hence, the demand upheld deducting the amount of Rs. 1,252/- through DRC - 03 dated 25.07.2024. DRC-07 is issued accordingly.

(LALIT KUMAR)
GST Officer/Proper Officer
(Ward-02)

7. However, at this point, Ld. Counsel for the Petitioner submits that the Petitioner had never filed a reply in this matter, and it is wrongly recorded by the officer concerned.

8. In view of the above submissions, and considering that the impugned order is silent as to the reasons for finding the reply to be unsatisfactory, this Court is of the opinion that the impugned order is cryptic and non-speaking.

9. In view thereof, the impugned order is set aside, and the matter is relegated back to the concerned Adjudicating Authority. Petitioner is permitted to file a reply to the impugned SCN by 10th July, 2025. Thereafter, 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:

E-Mail: wakhan.gol@gmail.com

Mobile. No. 9818509340

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

11. All the rights and remedies of the parties are left open. Access to the GST Portal, if not already available, shall be provided to the Petitioner to enable filing of any reply as also access to the notices and related documents.

12. 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***

13. 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)