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

\+ **W.P.(C) 5258/2025 & CM APPLs. 23921-22/2025**

ASHWATH INFRAPROJECTS PRIVATE LIMITED .....Petitioner
Through: Mr. Karan Sachdev, Mr. Somesh Jain, Ms. Shruti Mandora, Advs.

versus

SALES TAX OFFICER CLASS II/AVATO, WARD 101, ZONE 9, DELHI, STATE/UT, DELHI & ORS. .....Respondents
Through: Ms. Babita Saini, SPC for R-2/UOI.
Ms. Urvi Mohan, Advocate for R-3.

CORAM:
JUSTICE PRATHIBA M. SINGH
JUSTICE RAJNEESH KUMAR GUPTA

O R D E R

% 24.04.2025

1. This hearing has been done through hybrid mode.

2. The present petition has been filed by the Petitioner-Ashwath Infraprojects Private Limited, under Article 226 and 227 of the Constitution of India, *inter alia*, challenging ***Notification No.09/2023-Central Tax*** dated 31st March, 2023, ***Notification No.09/2023-State Tax*** dated 22nd June, 2023, ***Notification No.56/2023-Central Tax*** dated 28th December, 2023 and ***Notification No.56/2023- State Tax*** dated 11th July, 2024.

3. The challenge to the said notifications, as held by this Court in ***W.P.(C) 16499/2023*** titled ***'DJST Traders Private Limited vs. Union of India & Ors.',*** is now pending 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'***.

4. On facts, the grievance of the Petitioner is that apart from the Show

Cause Notice (hereinafter, '*SCN*'), which was issued on 23rd May 2024, no hearing notice was ever communicated to the Petitioner and hence, the opportunity of hearing be given before the Adjudicating Authority.

5. Ld. Counsel for the Respondent vehemently objects and submits that the Petitioner was well aware of the SCN. In fact, the Petitioner sought time to file a reply as is clear from the reply dated 25th June, 2024 where the Petitioner stated that it is taking time to gather documents.

6. Thereafter, the Petitioner chose not to file a reply to the SCN. A reminder notice was also sent to the Petitioner on 18th July, 2024, which was not responded to by the Petitioner. Under such circumstances, the hearing notice was not given and the Order-in-Original dated 31st August 2024 (hereinafter, '*OIO*') was passed confirming the entire demand of Rs.65,88,724/- as proposed in the SCN.

7. Ms. Mohan, ld. Counsel for the Respondent further submits that in fact in the reminder notice dated 18th July, 2024, the date of personal hearing was also fixed for 25th July, 2024 at 11.30 AM. However, the Petitioner did not attend the hearing.

8. Further ground raised by the Petitioner is that the OIO itself has not given any justification for raising of the demand and hence, the matter may be remanded back to the Adjudicating Authority.

9. The Court has considered the matter and heard the ld. Counsel for the parties. Clearly, there has been a lapse on part of the Petitioner. The Petitioner knew very well that the SCN had been issued. In fact, the Petitioner has filed a response seeking an adjournment in the following terms:-

> *"Dear Sir, This is in reference to the show Cause notice issued by your good self where in amount was*

determined and the assesse was directed to submit its reply along with supporting documents. It is taking time to gather documents and information, therefore for the sake of Justice kindly adjourn the same. ***Therefore, you are requested to kindly adjourn the matter till 28th July, 2024."***

10. Subsequent to this adjournment sought on 25th June, 2024, the Petitioner neither replied to the reminder notice nor filed the reply to the SCN or submitted any document. The Petitioner also did not choose to attend the personal hearing.

11. In fact, the perusal of the OIO would show that the detailed examination has been done of the returns filed by the Petitioner and on the basis of the same, the demand has been raised. This could have been easily rebutted by the Petitioner by filing a reply, which the Petitioner did not choose to do. The OIO has been passed on 31st August, 2024 and it is only after the period of limitation has expired that the Petitioner has approached this Court.

12. Under these circumstances, this Court is not inclined to remand the matter back to the Adjudication Authority. However, considering the fact that the Petitioner has not had an opportunity to deal with the matter on merits and a substantial demand has been raised against the Petitioner, in the interest of justice, 30 days' time is granted to the Petitioner to approach the Appellate Authority under Section 107 of the Central Goods and Service Tax Act, 2017 along with the pre-deposit under the said provision.

13. If the appeal is filed with the pre-deposit within a period of 30 days, the same shall not be dismissed on the ground of limitation but shall be adjudicated on merits.

14. Any order that is passed shall be subject to the outcome of the decision

on the constitutional validity of the notifications under challenge to be rendered by the Supreme Court in ***M/s HCC-SEW-MEIL-AAG JV (Supra).***

15. The present petition stands disposed of in the above terms. All pending applications, if any, are also disposed of.

PRATHIBA M. SINGH, J.

RAJNEESH KUMAR GUPTA, J.

APRIL 24, 2025

N/ck