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

Date of Decision: 23rd April, 2025

+ **W.P.(C) 6917/2024 and CM APPL. No. 28773/2024**

ASHISH SINGHAL PROPRIETOR APN TRADING CO.

.....Petitioner

Through: Mr.Rajesh Jain, Mr.Virag Tiwari,
Mr.Ramashish & Ms.Tanya Saraswat,
Advocates

versus

**PR. COMMISSIONER OF DELHI GOODS AND SERVICES TAX
& ORS.**

.....Respondents

Through: Mr.Vivek Sharma, SPC with
Ms.Perna Singh, Advocate for UOI.
Mr.Anurag Ojha, SSC with
Mr.Subham Kumar and Mr.Dipak
Raj, Advocates for R-3
Mr.K.G.Gopalakrishnan, Ms.Nisha
Mohandas and Mr.Kunwar Raj Singh,
Advocates 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– Ashish Singhal proprietor APN Trading Co. under Article 226 of the Constitution of India *inter alia* challenging the following:

- (i) *the show cause notice (hereinafter, ‘impugned SCN’) along with DRC-01 dated 4th December, 2023 issued for the financial year 2018-19*



- (ii) *the adjudication order dated 13th April, 2024 (hereinafter, ‘the impugned order’) passed by the Assistant Commissioner, Ward 16, Zone 2, Delhi under Section 73 of the Delhi/Central Goods and Services Tax Act, 2017 (hereinafter, ‘DGST/CGST Act, 2017’):*

3. Additionally, the present petition also challenges the Notification Nos. 9/2023- Central Tax dated 31st March, 2023 and 56/2023- Central Tax dated 28th December, 2023 issued by the Central Board of Indirect Taxes and Customs (hereinafter, ‘*the impugned notifications*’).

4. The present petition is a part of a batch of petitions wherein *inter alia*, the impugned notifications have been challenged. **W.P.(C) No. 16499/2023** titled ***DJST Traders Private Limited v. Union of India & Ors.*** is the lead matter in the said batch of petitions. On the last date of hearing i.e., 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 Id. 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. As observed by this Court in the order dated 22nd April, 2025, since the challenge to the above mentioned notifications is presently under consideration 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., the challenge made by the Petitioner to the notifications in the present proceedings shall also be subject to the outcome of the decision of the Supreme Court.

6. On facts, however, the submission of the Petitioner is that the impugned order deserves to be set aside in view of the order dated 16th October, 2024 being passed by the coordinate bench of this Court in **W.P.(C) No. 4826/2024**.

7. To elaborate, the impugned order raises a demand of Rs. 4,34,04,126/- on account of the Input Tax Credit (hereinafter 'ITC') availed by the Petitioner from one of its suppliers namely M/s Essar Foods & Commodities. The demand was raised by the Respondent-CGST Department on the ground that the said supplier's GST registration was cancelled retrospectively (i.e., with effect from 30th November, 2017). Consequently, the Respondent-CGST Department, through the impugned Show Cause Notice, proposed reversal of the ITC claimed by the Petitioner in respect of transactions with the said supplier during the relevant period. The said demand has since been confirmed by way of the impugned order, giving rise to the filing of the present writ petition.

8. The primary submission of the Petitioner is that the said cancellation was challenged by M/s Essar Foods & Commodities in a writ petition being **W.P.(C) No. 4826/2024**, wherein the Co-ordinate Bench *vide* order dated 16th October, 2024, has set aside the retrospective cancellation.

9. In view thereof, the matter deserves to be heard afresh by the adjudicating authority.

10. Considering the above position, the impugned order dated 13th April,



2024 is set aside and the matter is relegated to the concerned adjudicating authority for a fresh hearing.

11. The Petitioner is permitted to file a fresh reply to the show cause notice dated 4th December, 2023 within 30 days.

12. Upon filing thereto, let a personal hearing notice be given to the Petitioner on the following email ID and phone number:

Email: rajeshroshanjain@gmail.com

Phone: 9810042928

13. The access to the portal shall be made available to the Petitioner in order to enable him filing the reply as also for accessing personal hearing notice, if so required.

14. However, it is made clear that the issue in respect of the validity of the impugned notification is left open. Any order passed by the Adjudicating authority shall be subject to the outcome of the decision of the Supreme Court.

15. The petition is disposed of. Pending applications, if any, is also disposed of.

PRATHIBA M. SINGH
JUDGE

RAJNEESH KUMAR GUPTA
JUDGE

APRIL 23, 2025/ Sv/Ar.

(corrected and released on 28th April, 2025)