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\* IN THE HIGH COURT OF DELHI AT NEW DELHI

*Date of decision: 13<sup>th</sup> May, 2025*

+ W.P.(C) 6326/2025, CM APPL. 28757/2025 & CM APPL. 28758/2025

KK TRADING CO THROUGH ITS PROPRIETOR SATYA VATI

.....Petitioner

Through: Mr. Anurag Rajput, adv. Mr. Sahib Rajput, Mr. Sahil Puri, adv. Mr. Dhruv Bhardwaj

versus

AVATO WARD 77 STATE GOODS AND SERVICE TAX & ORS.

.....Respondents

Through: Mr. Vinish Phoghat, CGSPC for UOI

**CORAM:**

**JUSTICE PRATHIBA M. SINGH**

**JUSTICE RAJNEESH KUMAR GUPTA**

**Prathiba M. Singh, J. (Oral)**

1. This hearing has been done through hybrid mode.

**CM APPL. No. 28757/2025**

2. Allowed, subject to all just exceptions. Application is disposed of.

**W.P.(C) 6326/2025 and CM APPL. 28758/2025 (Stay)**

3. The present petition has been filed by the Petitioner– K.K. Trading Co. under Article 226 of the Constitution of India *inter alia* challenging the order dated 11<sup>th</sup> August, 2024 issued by the office of the Sales Tax Officer Class II/AVATO Jurisdiction, Delhi (*hereinafter, the ‘Sales Tax Officer’*) under Section 73 of the Central Goods and Services Tax Act, 2017 (*hereinafter, ‘CGST Act. 2017’*).

4. The petition also challenges the *vires* of **Notification No. 56/2023-**



***Central Tax dated 28th December, 2023*** as also the ***Notification No. 56/2023-State Tax dated 11th July***, (hereinafter, ‘*impugned notifications*’).

5. The validity of the impugned notifications was under consideration before this Court in a batch of petitions with the lead petition 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 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.”**

6. 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 in ***S.L.P. No. 4240/2025*** titled ***M/s HCC-SEW-MEIL-AAG JV v. Assistant Commissioner of State Tax & Ors.***

7. 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.***

8. On facts, however, the submission of the Petitioner in the present petition is that the Petitioner was not afforded with an opportunity to file a reply to the Show Cause Notice dated 29<sup>th</sup> May, 2024 (*hereinafter, 'the SCN'*) issued by the Sales Tax Officer and the impugned order was passed without affording the Petitioner with an opportunity to be heard. Hence, the impugned order is a non-speaking order and is liable to be set aside on the said ground.

9. It is the case of the Respondents that on 3<sup>rd</sup> August, 2024 office of the Sales Tax Officer issued a reminder notice to the Petitioner for reply to the SCN to be furnished. The said notice stated that the reply shall be filed before 8<sup>th</sup> August, 2024 and a personal hearing will be granted on 9<sup>th</sup> August, 2024. The reminder notice is extracted hereunder for ready reference:

*“With reference to the show cause notice referred above, neither you have filed any reply, nor you have appeared on the date mentioned in the notice to explain the reasons for the charges mentioned therein.*

*You are once again requested to furnish the reply by the date mentioned in table below.*

*You may appear before the undersigned for personnel hearing either in person or through authorized representative for representing your case on the date, time and venue, if mentioned in table below.*

*You are also requested to bring documents mentioned in the attached annexure, if any, relating to case on the date of hearing and other information called therein.”*

10. Heard. The Court has considered the submissions made. The Court has perused the records. In this petition, as mentioned above, no reply to the said SCN has been filed by the Petitioner. Relevant portion of the impugned order reads as under:



**“Observations and conclusion of the assessing authority:**

*Adjudicated with SCN amount*

*Specific reasons entered*

**The taxpayer neither replied to the SCN nor he or his attorney/ authorised representative appeared before the assessing authority for personal hearing despite multiple opportunity.”**

11. This Court is of the opinion that since the Petitioner has not been afforded an opportunity to be heard and the said SCN, as also the consequent impugned order has been passed without hearing the Petitioner. Further, the impugned order is a non-speaking order.

12. Since there is a challenge to the impugned notifications which is still to be adjudicated by the Supreme Court as well as this Court, this Court is of the opinion that an opportunity ought to be afforded to the Petitioner to contest the matter on merits.

13. Accordingly, the impugned order is set aside. The Petitioner is granted time till 15<sup>th</sup> July 2025, to file the reply to SCN. Upon filing of the reply, the Adjudicating Authority shall issue to the Petitioner, a notice for personal hearing. The personal hearing notice shall be communicated to the Petitioner on the following mobile no. and e-mail address:

***Mobile No.: 9953029394***

***E-mail Address : [ADVANURAGRAJPUT07@gmail.com](mailto:ADVANURAGRAJPUT07@gmail.com)***

14. The reply filed by the Petitioner to the SCN along with the submissions made in the personal hearing proceedings shall be duly considered by the



Adjudicating Authority and fresh order with respect to the SCN shall be passed accordingly.

15. However, it is again made clear that the issue in respect of the validity of the impugned notification 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. 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 uploading of the reply as also the access to the notices and related documents.

17. The present writ petition is disposed of in above terms. All the pending applications, if any, are also disposed of.

**PRATHIBA M. SINGH**  
**JUDGE**

**RAJNEESH KUMAR GUPTA**  
**JUDGE**

**MAY 13, 2025/SV/rks**