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* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ W.P.(C) 7080/2025 & CM APPL. 32028/2025

S S ENGINEERS AND CONSULTANTSPetitioners

Through: Mr. Pulkit Verma, Adv.

versus

SALES TAX OFFICER CLASS II AVATO WARD 114

& ORS.Respondents

Through: Mr. Vivek Sharma, SPC with Perna Singh, Adv.

Mr. Aakarsh Srivastava, SSC with Mr. Anand Pandey, Adv.

Ms. Urvi Mohan, Adv. for GNCTD

CORAM:

JUSTICE PRATHIBA M. SINGH

JUSTICE SHAIL JAIN

ORDER

% **28.08.2025**

1. This hearing has been done through hybrid mode.
2. The present petition has been filed, *inter alia*, assailing the Show Cause Notice dated 25th September, 2023 (hereinafter, '*the SCN*') for the tax period July 2017 to March 2018, as also the consequent order dated 28th December, 2023 passed by the office of Sales Tax Officer Class II/ AVATO, Delhi (hereinafter, '*the impugned order*'). *Vide* the impugned order a demand of Rs. 20,97,264/- has been raised against the Petitioner.
3. The petition also challenges the *vires* of **Notification No. 9/2023-Central Tax** dated 31st March, 2023 as also the **Notification No. 9/2023-State Tax** dated 22nd June, 2023 (hereinafter '*impugned notifications*').
4. 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.”

5. 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.

6. 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**'.

7. Ld. Counsel for the Petitioner submits that reply had been filed by the Petitioner to the SCN on 5th December, 2023 and 14th December, 2023.



The Petitioner is stated to have not been afforded a personal hearing prior to the passing of the impugned order.

8. Contrary to what has been submitted by the Petitioner, the annexure to the impugned order records as under:

“DEPARTMENT OF TRADE AND TAXES
GOVT. OF NCT OF DELHI
OFFICE OF GOODS AND SERVICE TAX
OFFICER (SPECIAL ZONE)
13TH FLOOR. VYAPAR SHAWAN. I.P.ESTATE.
NEW DELHI
110002

Annexure to Order
(u/s 73(9) of CGST/DGST Act, 2017)
TAX PERIOD JULY 2017 – MARCH 2018

GSTIN 07BKMPS968F1Z9

Legal Name :- POONAM SAINI

*Trade Name :- S.S. ENGINEERS &
CONSULTANTS*

Whereas, a Show Cause Notice DRC-1 [see rule 100(2) & 142(1)(a)] was issued to the taxpayer under Section 73 of CGST I DGST Act & Rules, 2017 for the Tax Period July 2017- March 2018.

And whereas, The taxpayer submitted their reply in response to the above said notice.

*The reply is considered and it is found that the taxpayer has not submitted all requisite reconciliation and documents in support of their reply. **The reply is not found satisfactory with regard to the observation made in the above said notice. During personal hearing AR COULD NOT present the case along with documentary proof hence***



And whereas, further as per section 73(7) notice of tax and interest is to be given while section 73(9) prescribed for imposition of penalty equivalent to 10% of tax or Rs. 10000/ whichever is higher. The penalty is consequently and mandatory as per Act. As such the registered person is liable to pay penalty equivalent to 10 % of tax along with tax amount in each head already conveyed through SCN/ DRC-01.

In view of aforesaid circumstances, the undersigned is left with no other option left but to create demand as ex-parte, in accordance with the provisions of CGST /DGST Act & Rules, 2017. The said tax, interest and penalty required to be deposited within 90 days of issuance of this notice.

Sd/-

GST OFFICER, WARD-114”

9. On the last date, i.e., on 23rd May, 2025, the question as to whether the Petitioner had actually attended the hearing or not was to be confirmed by the Id. Counsel for the Department.
10. Ms. Mohan, Id. SSC has taken instructions. She submits that apart from what is written in the impugned order, there is no other record available with the Department in this regard.
11. Considering that the Petitioner did not get a proper opportunity of being heard and responding to the SCN on merits in person, the matter deserves to be remanded back to the concerned Adjudicating Authority.
12. Accordingly, the impugned order is set aside. The replies which have been filed to the SCN shall be considered by the Department.
13. Personal hearing notice shall be given on the following e-mail address and mobile number:



- **Email: pulkit@enurelegal.com**
- **Mobile No: 9716694879**

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 orders with respect to both the SCNs shall be passed accordingly.

15. However, it is made clear that the issue in respect of the validity of the impugned notifications is left open. Any order passed by 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 of this Court in *W.P.(C) 9214/2024 titled Engineers India Limited v. Union of India &Ors.*

16. All rights and remedies of the parties are left open. Access to the GST Portal, shall be provided within one week, to the Petitioner to enable 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, J.

SHAIL JAIN, J.

AUGUST 28, 2025/pd/msh