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

Date of decision: 06th May, 2025

+ **W.P.(C) 9546/2024 & CM APPL. 39114/2024**

CHARU OVERSEAS PVT. LTD.Petitioner

Through: Mr. Rajesh Jain, Mr. Virag Tiwari, Mr. Ramashish, Mr. Rishabh Jain & Ms. Tanya Saraswat, Advs. (M-9810042928)

versus

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

....Respondents

Through: Mr. K.G. Gopalakrishnan, Mr. Sumit K. Batra and Ms. Nisha Mohandas, Advs.
Mr. Anurag Ojha, SSC with Mr. Subham Kumar & Mr. Dipak Raj, Advs. for R-3.

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 under Article 226 of the Constitution of India, *inter alia*, challenging the following -
 - (i) Show Cause Notices along with the DRC-OI dated 9th December 2023, and 25th January 2024 (hereinafter, '*the impugned Show Cause Notices*'); and
 - (ii) the adjudication orders dated 10th April, 2024 and 30th April, 2024 (hereinafter, '*the impugned orders*') passed by the Sales Tax



Officer Class II/AVATO, Ward 207, Zone 11, Delhi (hereinafter '*Respondent-Department*') under Section 73 of the Delhi/Central Goods and Services Tax Act, 2017.

3. This petition also challenges **Notification Nos.09/2023-Central Tax** dated 31st March, 2023 and **Notification Nos.56/2023-Central Tax** dated 28th December, 2023 issued by the Central Board of Indirect Taxes and Customs (hereinafter '*impugned notifications*');

4. 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.**'. 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, on facts, the submission of the Petitioner is that the first order dated 10th April, 2024 arises out of impugned Show Cause Notice dated 9th December, 2023 wherein certain demands were proposed to be raised in respect of Input Tax Credit (hereinafter 'ITC') which may have allegedly been wrongly claimed. The second order dated 30th April, 2024 arises out of the impugned Show Cause Notice dated 25th January, 2024 wherein the issue raised in respect of reconciliation between GSTR-3B and GSTR-2A by virtue of a special audit.

7. The grievance of the Petitioner, insofar as the first Show Cause Notice dated 9th December, 2023 is that though the reply in regards to the same was filed, it was not duly considered. Whereas, the grievance with respect to the second Show Cause Notice dated 25th January, 2024 is that it relates to the assessment year 2018-19 and at the relevant point in time, there was no provision/utility available for submitting the extent of IGST in respect of imports or SEZ supplies. The same got to be resolved only after the insertion of Rule 60(6) of the Central Goods and Service Tax Rules with effect from 1st January, 2021. The said provision reads as under:

“(6) The details of the integrated tax paid on the import of goods or goods brought in domestic Tariff Area from Special Economic Zone unit or a Special Economic Zone developer on a bill of entry shall be made available in Part D of FORM GSTR-2A electronically through the common portal.”

8. Mr. Rajesh Jain Id. Counsel for the Petitioner submits that this issue has not been considered by the Adjudicating Authority. Mr. Jain, Id. Counsel also raises an issue with respect to two separate orders being passed despite the



adjudication being before the same authority and prays for this issue to be considered by the Respondent-Department in future.

9. Mr. Gopalakrishnan, Id. Standing Counsel for the Department submits that the replies have been considered and a detailed order has been passed by the Adjudicating Authority.

10. Considering the fact that the present petitions involve a challenge to the Notifications, and a legal issue regarding the non-availability of the utility for submission of IGST at the relevant point in time, this Court is of the opinion that the impugned orders are liable to be set aside.

11. Ordered accordingly. The matter is remanded back in respect of both impugned Show Cause Notices to enable the Petitioner to be heard on merits and then for the Adjudicating Authority to pass a detailed adjudication order.

12. Mr. Jain, Id. Counsel submits that he wishes to file an additional reply. Let the same be done by 10th July, 2025. Upon filing such reply, a personal hearing shall be granted to the Petitioner, and the notice for the same shall be sent on the following email address:

Email - rajeshroshanjain@gmail.com

13. The Adjudicating Authority shall take a view on all the issues comprehensively and pass a single adjudication order after hearing the Petitioner regarding both the Show Cause Notices.

14. All 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 access to notices and related documents.

15. However, it is made clear that the issue in respect of the validity of 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**



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No 4240/2025 titled '**M/s HCC-SEW-MEIL-AAG JV v. Assistant Commissioner of State Tax & Ors**'.

16. The petition is disposed of in these terms. All pending applications, if any, are also disposed of.

PRATHIBA M. SINGH
JUDGE

RAJNEESH KUMAR GUPTA
JUDGE

MAY 6, 2025

Rahul/Ar.

(corrected & released on 13th May, 2025)