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

\+ W.P.(C) 9738/2024, CM APPL. 39950/2024 (STAY) & CM APPL. 52568/2024 (DELAY 22 DAYS IN FILING C.A.)

HAIER APPLIANCES INDIA PVT LTD .....Petitioner

Through: Mr. Bharat Raichandani, Ms. Annewsha Laskar, Ms. Prachi Sharma, Mr. Chaitanya Tripathi and Mr. Deepak Khokhar, Advs.

versus

UNION OF INDIA & ORS. .....Respondents

Through: Mr. Vivek Sharma, SPC with Ms. Prernaa Singh, Adv. for R-1.

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA
HON'BLE MR. JUSTICE HARISH VAIDYANATHAN SHANKAR

<u>O R D E R</u>

% **15.01.2025**

1. This writ petition has been preferred seeking the following reliefs:-

> "a) that this Hon'ble Court be pleased to issue a Writ of Certiorari/Mandamus or a writ in the nature of Certiorari/Madamus or any other writ, order or direction under Article 226 of the Constitution of India calling for the records pertaining to the Petitioner's case and after going into the validity and legality of the provisions quash and set aside the impugned order dated 08.03.2024;
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> b) that this Hon'ble Court be pleased to issue a Writ of Certiorari/Mandamus or a writ in the nature of Certiorari/Mandamus or any other writ, order or direction under Article 226 of the Constitution of India calling for the records pertaining to the Petitioner's case and after going into the validity and legality of the provisions quash and set aside the impugned

show cause notice dated 25.08.2023;

c) that this Hon'ble Court be pleased to issue a Writ of Certiorari or a writ in the nature of Certiorari or any other writ, order or direction under Article 226 of the Constitution of India calling for the records pertaining to the Petitioner's case and after going into the validity and legality of the provisions direct the respondent no. 2 to drop the proceedings in terms of the impugned order dated 08.03.2024;

d) that this Hon'ble Court be pleased to issue a Writ of Certiorari or a writ in the nature of Certiorari or any other writ, order or direction under Article 226 of the Constitution of India allowing the transition of ISD credit amounting to Rs. 17,46,98,546/-;

e) that this Hon'ble Court be pleased to issue a Writ of Certiorari or a writ in the nature of Certiorari or any other writ, order or direction ordering and directing the Respondent No. 2 by himself, his subordinates, servants and agents, pending disposal of the present petition not to enforce any action and/ or recovery under the impugned order passed by the Respondent No.2;

f) for ad-interim reliefs in terms of prayers above;

g) for costs of this Petition;

h) for such further and other reliefs as the nature and circumstances of the case may require."

2. Before us, learned counsels for parties are *ad idem* that consequent to the amendment of Section 140 of the **Central Goods and Services Tax Act, 2017**[1] which has come to be introduced by virtue of Finance Act No.(2) of 2024, the impugned order would be liable to be set aside with liberty being accorded to the respondents to examine the controversy afresh and bearing in mind the statutory amendments which we have alluded to hereinabove.

3. The amendments which are spoken of are those introduced by Finance Act, 2024 and Clause 147 of which reads thus:-

"147. In section 140 of the Central Goods and Services Tax Act,

[1] CGST Act

with effect from the 1st day of July, 2017, in sub-section (7), for the words "even if the invoices relating to such services are received on or after the appointed day", the words "whether the invoices relating to such services are received prior to, on or after, the appointed day" shall be substituted."

4. We also take note of the similar course which was adopted by the High Court of Bombay which had disposed of the writ petition titled **Mr. Chethan Manjunatha vs. Union of India and Ors.**[2] by the order of 11 October 2024 in the following terms:-

"1. Heard learned counsel for the parties.

2. The learned counsel for the parties agree that the main issue raised in this Petition stands address by the Finance Act (2) of 2024 by which Section 140(7) of Central Goods & Services Tax Act (CGST Act) has been amended with retrospective effect.

3. The learned counsel for the parties further state that the orders dated 17 February 2023 and 28 September 2023 could now be set aside and the matter remanded to the 6th Respondent for a fresh adjudication in accordance with law after taking cognizance of the Finance Act (2) of 2024.

4. Accordingly, we set aside the orders dated 17 February 2023 and 28 September 2023 and remand the matter to the 6th Respondent for fresh consideration in accordance with law after taking cognizance of the Finance Act (2) of 2024 by which Section 140(7) of the CGST Act has been amended.

5. However, we clarify that the show cause notice dated 03 February 2023 is not quashed since we are remanding the matter to the 6th Respondent to adjudicate upon the said show cause notice.

6. All contentions of all parties are left open

7. This Petition is disposed of in above terms."

5. In view of the aforesaid conceded stand as struck, we allow the instant writ petition and quash the impugned order dated 25 August 2023. The matter shall stand remitted to the competent authority for examining the case of the writ petitioner afresh bearing in mind the statutory amendments which are noted hereinabove.

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[2] Writ Petition (L) No..30955 of 2024 decided on 11 October 2024

6. All other contentions are kept open to be addressed in case need so arise.

YASHWANT VARMA, J.

HARISH VAIDYANATHAN SHANKAR, J.

JANUARY 15, 2025/DR