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

Date of Decision: 06th May, 2025

\+ **W.P.(C) 13671/2024 & CM APPL. 57296/2024**

M/S. JINENDER PAPER MART THROUGH ITS PROPRIETOR .....Petitioner

Through: Mr. Vivek Sarin, Advocate.

versus

SALES TAX OFFICER CLASSII/AVATO WARD 12, ZONE-2, DELHI AND ORS .....Respondents

Through: Mr. Anurag Ojha, SSC with Mr. Subham Kumar and Mr. Dipak Raj, Advs for R/CBIC.
Mr. Gibran Naushad, SSC with Mr. Harsh Singhal and Mr. Suraj Shekhar Singh, Advocates for R-2.

CORAM:
JUSTICE PRATHIBA M. SINGH
JUSTICE RAJNEESH KUMAR GUPTA

<u>Prathiba M. Singh, J.</u> (Oral)

1. This hearing has been done through hybrid mode.

2. The present petition has been filed by the Petitioner– M/s. Jinender Paper Mart through Its Proprietor under Articles 226 & 227 of the Constitution of India challenging order dated 27th August, 2024 passed by the Sales Tax Officer Class II/AVATO Jurisdiction, Ward 12, Zone 2, Delhi (hereinafter, '*the impugned order*') which arises from Show Cause Notice dated 29th May, 2024

3. The petition also challenges the *vires* of ***Notification No. 9/2023-***

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Central Tax dated 31st March, 2023 and ***Notification No. 56/2023- Central Tax dated 28th December, 2023*** (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.'***. 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*

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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

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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 ld. 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

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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. On facts, the submission of Mr. Vivek Sarin, ld. Counsel for the Petitioner is that the Show Cause Notice dated 29th May, 2024, was not served, and no hearing notice was also issued, as the Petitioner's GST registration was suspended *vide* Show Cause Notice dated 24th July, 2023. It is his case that the Petitioner lacked any knowledge about the Show Cause Notice dated 29th May, 2024 as he did not have access to the portal at the relevant point of time. This position is disputed by the Counsel for the Respondents.

8. The Court has perused the records. The Show Cause Notice dated 24th

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July, 2023 reads as under:

> *"Whereas on the basis of information which has come to my notice, it appears that your registration is liable to be cancelled for the following reasons:*
> *Rule 21(b)- person issues invoice or bill without supply of goods or services or both in violation of the provisions of the Act, or the rules made thereunder*
> *You are hereby directed to furnish a reply to the notice within seven working days from the date of service of this notice.*
> *If you fail to furnish a reply within the stipulated date or fail to appear for personal hearing on the appointed date and time, the case will be decided ex parte on the basis of available records and on merits .*
> ***Please note that your registration stands suspended with effect from 24/07/2023"***

9. A perusal of the above Show Cause Notice makes it clear that the Petitioner's GST Portal remained suspended from 24th July, 2023. It is further noticed that the Petitioner has not filed a reply to the Show Cause Notice dated 29th May, 2024 from which the impugned order arises. The personal hearing, even though granted on 23rd August, 2024, has not been availed by the Petitioner. Considering the above position and the fact that the opportunity to file the reply or attend personal hearings has not been availed of, this Court is of the opinion that the Petitioner ought to be provided another opportunity to be heard on merits.

10. Accordingly, the impugned order is set aside and the matter is relegated to the Adjudicating Authority to be heard on merits. The Petitioner is permitted to file a reply by 10th July, 2025. Upon such reply being filed, the Adjudicating Authority shall provide a personal hearing to the Petitioner, and the notice for the same shall be sent to the following email address and Phone

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number:

Email: kaushik.satish77@gmail.com

Phone number: 9013407227

11. 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 access to the notices and related documents.

12. It is again made clear that the issue in respect of the validity of the 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 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***.

13. The petition is disposed of in the above terms. Pending applications, if any, are also disposed of.

PRATHIBA M. SINGH
(JUDGE)

RAJNEESH KUMAR GUPTA
(JUDGE)

MAY 6, 2025/*v/Ar.*

(corrected and released on 13th May, 2025)

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