$~86

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

Date of Decision: 06th May, 2025

\+ **W.P.(C) 14642/2024 & CM APPL. 61453/2024**

SANGEETA GOEL WIDOW OF LATE ASHOK KUMAR GOYAL (TRADE NAME) M/S SHRI BALAJI ENTERPRISES .....Petitioner

Through: Mr. Wahaj Ahmad Khan and Mr.Monis Khan, Advocates.

versus

SALES TAX OFFICER, CLASS II, AVATO, WARD 23- ZONE 2, TRADE AND TAX DEPARTMENT, N.C.T. OF DELHI, NEW DELHI AND ANR. .....Respondents

Through: Mr. Abhinav Sharma, Ms. Avsi Malik and Ms. Aakriti Jain, Advocates.

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– Sangeeta Goel widow of Late Ashok Kumar Goyal (Trade Name) M/s Shri Balaji Enterprises, under Article 226 of the Constitution of India *inter alia*, challenging

(i) The Show Cause Notice dated 30th November, 2023 (hereinafter '*impugned SCN'*'); and

(ii) The Order dated 26th April, 2024 bearing reference number ZD070424061360Q (hereinafter '*impugned order*');

(iii) The rectification order dated 18th July, 2024 (hereinafter '*impugned rectification order*').

3. Additionally, the present petition also challenges the ***Notification No. 9/2023- Central Tax*** dated 31st March, 2023 issued by the Central Board of Indirect Taxes and Customs (hereinafter, *'the impugned notification'*).

4. The impugned notification was 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 22rd 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 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 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 notification therein shall be subject to the outcome of the proceedings before the Supreme Court.

6. On facts, the submission of the Petitioner is that the issue raised in the impugned SCN is in respect of a clerical error in GSTR-09. In fact, a reply detailing the same is stated to have been filed by the Petitioner on 13^{th} March,

2024. It is her grievance that, despite the reply being filed, the summary of the order records that the reply is not furnished. It is further submitted that the Petitioner had then applied for rectification through an application raising various grounds. However, the said rectification applications were rejected on 18th July, 2024 without considering any of the raised grounds.

7. The Court has perused the records. It is noticed that the rectification application records as under:

> "*Whereas an application for rectification of order against the order passed ufs 73 of CGST/DGST Act, 2017 vide Reference No.ZD070424061360Q dated 26.04.2024 was filed by the M/s Shri Balaji Enterprises, GSTN: 07AAIPG2609M1ZN vide ARNAD0706240028719 dated 08.06.2024.* ***The taxpayer had not filed any reply to the SCN issued to the taxpayer and after considering the records available on GSTN portal the orders of demand was issued****…*"

8. However, on the contrary, the Petitioner has annexed a reply in form GST DRC-06 which is extracted below:

ANNEXURE - P-3

Form GST DRC-06

[See rule 142(4)]

33

Reply to the Show Cause Notice

ARN: ZD0703240260601 Date: 13/03/2024

1. GSTIN	07AAIPG2609M1ZN			
2. Name	ASHOK KUMAR GOYAL			
3. Details of Show Cause Notice	Reference No. ZD0711230569591		Date of issue 30/11/2023	
4. Financial Year	2018-2019			
5. Reply				
That the Proprietor of the Firm Sh Ashok Kumar Goyal has expired on 03.04.2022.Death Certificate Attached. Dear Sir there is no excess claim ITC. There are some clerical error while filing Form GSTR-9. In GSTR- 9 in table 6, the details of bifurcation of ITC between Input goods, C apital goods and Input services is not provided. Due to this there is a difference in table 8 of GSTR-9. So please consider our response and do the needful.				
6. Documents uploaded				
Death Certificate.jpg				
7. Option for personal hearing	☐	Yes	☑	No

8.Verification-

I hereby solemnly affirm and declare that the information given herein above is true and correct to the best of my/our knowledge and belief and nothing has been concealed therefrom.

Signature of Authorized Signatory
Name : ASHOKGOYAL
Designation / Status: PROPRIETOR
Date: 13/03/2024

TRUE COPY

9. Considering the fact that Petitioner's replies has not been duly considered and no personal hearing is seen to have been provided, the Court is of the opinion that the impugned order deserves to be set aside.

10. Ordered accordingly. The matter is remanded to the concerned Adjudicating Authority for the Petitioner to be heard on merits. The Petitioner is permitted to file any additional reply or documents, if required, by 10th July, 2025. Personal hearing shall be provided to the Petitioner, and the notice to the same shall be sent to following email address:

Email – wakhan.bol@gmail.com

Phone Number- 9818509340

11. All rights and remedies of the parties are left open. Access to the GST Portal, if not already available, shall be provided to the Petitioner to enable filing of the reply as also access to the notices and related documents.

12. However, 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'***.

13. Petition is disposed on the above terms. Pending applications, if any is also disposed of.

PRATHIBA M. SINGH
(JUDGE)

RAJNEESH KUMAR GUPTA
(JUDGE)

MAY 6, 2025
v/Ar.

(corrected and released on 13th May, 2025)