



2025:DHC:3072-DB



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI***Date of Decision: 23rd April, 2025*+ **W.P.(C) 17167/2024 & CM APPL.72859/2024**

POWER2SME PVT. LTD.

.....Petitioner

Through: Mr. Akhil Gupta, Adv.
(M:9810966988)

versus

COMMISSIONER OF DELHI GST DEPARTMENT OF TRADE
AND TAXES AND ANR.RespondentsThrough: Mr. K.G. Gopalakrishnan, Ms. Nisha
Mohandas and Mr. Kunwar Raj Singh,
Advs for GNCTD.**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– POWER2SME Pvt. Ltd. challenging the Order-in-Original dated 16th August, 2024 (*hereinafter, 'the impugned order'*) passed under Section 73 of the Central Goods and Services Tax Act, 2017 (*hereinafter, 'CGST Act, 2017'*).
3. Additionally, the present petition also challenges the Notification No. 56/2023- Central Tax dated 28th December, 2023 issued by the Central Board of Indirect Taxes and Customs (*hereinafter, 'the impugned notification'*).
4. The present petition is a part of a batch of petitions wherein *inter alia*, the impugned notification has been challenged. The **W.P.(C) No. 16499/2023** titled ***DJST Traders Private Limited v. Union of India & Ors.*** is the lead matter in the said batch of petitions. On the last date of hearing *i.e.*, 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 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. As observed by this Court in the order dated 22nd April, 2025 as well, since the challenge to the above mentioned notifications is presently under consideration before 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 challenge made by the Petitioner to the impugned notification in the present proceedings shall also be subject to the outcome of the decision of the Supreme Court.

6. On facts, however, the submission of the Petitioner in the present petition is that a show cause notice dated 31st May, 2024 (*hereinafter, ‘the SCN’*) was issued upon the Petitioner pertaining to the tax period April 2019-March 2020. A reply to the SCN was filed by the Petitioner on 1st July, 2024. Thereafter, a notice for personal hearing was issued, however, the same could not be attended by the Petitioner. The Petitioner, however, requested for an adjournment and sought another date for personal hearing.

7. It is the case of the Petitioner that no subsequent notice for personal hearing was issued to the Petitioner and thus, no further opportunity for personal hearing was afforded. Ld. Counsel for the Respondents dispute the said position of the Petitioner.



8. It is further submitted by the Petitioner that the impugned order has been passed on the grounds that are beyond those raised in the SCN. Hence, the reply filed by the Petitioner to the SCN is not sufficient to support their contentions and a personal hearing is extremely crucial for fair adjudication of the SCN.

9. Heard. The Court has considered the submissions made and has perused the records. Relevant portion of the impugned order reads as under:

In order to follow the principal of natural justice the noticee was given personal hearing to explain his point of view with regard the above said issue. The Noticee did not avail the PH but send the reply alongwith documents through speed post having EH 238060361IN wherein the reply filed on the portal was sent. From the perusal of the reply it is made out that he is in possession of tax invoices, e-way bills, and payment proof only and stating that the suppliers had filed their GST 3B. However, as regards the actual receipt of good/services the noticee failed to produce any supporting documents. Further, regarding fulfilling of essential ingredient as mentioned in section 16 (2) (c) of the Act, 2017 the noticee failed to prove that the tax collected by his supplier from him was actually paid to the government. Since, the taxpayer failed to produce any supporting documents to prove the admissible purchase and receipt of goods/services from the above stated cancel taxpayers.

10. In view of the above position, this Court is of the opinion that the impugned order has been passed without affording the Petitioner with sufficient opportunity to be heard. Thus, an opportunity ought to be afforded to the Petitioner to contest the matter on merits. The Petitioner is permitted to file a supplementary reply within a period of 30 days.

11. Accordingly, the impugned order is set aside. The Petitioner is granted 30 days' time to file a supplementary reply to SCN. Upon filing of the



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supplementary reply, the Adjudicating Authority shall issue to the Petitioner, a notice for personal hearing. The personal hearing notice shall be communicated to the Petitioner on the following mobile no. and e-mail address:

Mobile No.: 9810966988

E-mail Address : advguptaakhil@gmail.com

12. The supplementary 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 order with respect to the SCN shall be passed accordingly.

13. However, it is made clear that the issue in respect of the validity of the impugned notification is left open. Any order passed by the Adjudicating Authority shall be subject to the outcome of the decision of the Supreme Court.

14. The present writ petition is disposed of in above terms. All the pending applications, if any, are also disposed of.

**PRATHIBA M. SINGH
JUDGE**

**RAJNEESH KUMAR GUPTA
JUDGE**

APRIL 23, 2025

dj/ss

(corrected & released on 29th April, 2025)