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\* IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision: 06<sup>th</sup> May, 2025

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W.P.(C) 14045/2024 &amp; CM APPL. 58782/2024

M/S KAVISH ISPAT THROUGH PROPRIETOR SUNIL BANSAL

.....Petitioner

Through: Mr. Prabhat Kumar and Mr. Utkarsh  
Kumar, Advocates.

versus

UNION OF INDIA &amp; ORS.

.....Respondents

Through: Mr. Aditya Singla, SSC with Ms. Arya  
Suresh and Mr. Siddharth Saxena,  
Advocates.

Mr Atul Tripathi SSC CBIC for R-2.

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 and 227 of the Constitution of India *inter alia* challenging the Show Cause Notice dated 27<sup>th</sup> May, 2024 (hereinafter '*impugned SCN*') and the order in Form GST DRC-07 dated 31<sup>st</sup> August, 2024 (hereinafter '*impugned order*').
3. The petition further challenges the *vires* of **Notification 56/2023(Central Tax)** dated 28<sup>th</sup> December, 2023 and **Notification 09/2023(Central Tax)** dated 31<sup>st</sup> March, 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.**'. 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 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 notifications therein shall be subject to the outcome of the proceedings before the Supreme Court.

6. On facts, the submission of the Petitioner is that a reply has been filed along with the relevant documents on 27<sup>th</sup> June 2024. However, the same has not been considered, and no personal hearing has been given to the Petitioner. In view thereof, the Petitioner contends that the impugned order ought to be set aside.

7. The Court has perused the record. The impugned SCN clearly shows that a personal hearing was fixed on 28<sup>th</sup> June, 2024. Further, insofar as the consideration of reply is concerned, the impugned order clearly records as under:



**“ Response of the tax payer:**

*The reasons cited by the tax payer for disagreeing/partially disagreeing are:*

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**Reason:**

*It is submitted that even if supplier's registration has been cancelled retrospectively it will not affect the availment of ITC qua Noticee. The issue has been squarely covered by the Hon'ble High Court of Kolkata in the matter of M/s Gargo Traders Vs. Joint Commissioner of Commercial Tax (State Tax), 2023 (75) GSTL 3 (Cal. HC) has held as under: “12. The main contention of the petitioner that the transactions in question are genuine and valid and relying upon all the supporting relevant documents required under law, the petitioner with due diligence verified the genuineness and identity of the supplier and name of the supplier as registered taxable person was available at the Government Portal showing its registration as valid and existing at the time of transaction. (As attached in GST portal)*

**Observations and conclusion of the assessing authority :**

*Not Agreed with Tax Payer*

**Specific reasons entered**

*The reply of taxpayer has been examined from GST portal and found reply is not satisfactory/comprehensive/incomplete supporting document, as the supplier is cancelled due to non-existence of the firm. Hence, demand is created.”*

8. A perusal of the above paragraphs reveals that the order has considered the reply and noted that the supplier's registration itself was cancelled as the firm was non-existent. Considering the fact that the reply has been considered, a personal hearing was granted and the impugned order is an appealable order



under Section 107 of Central Goods and Services Tax Act, 2017(hereinafter ‘CGST Act’), the Court is of the opinion that the order does not warrant interference under the writ jurisdiction.

9. Accordingly, the Petitioner is permitted to file an appeal under Section 107 of the CGST Act along with the prescribed pre-deposit by 10<sup>th</sup> July, 2025. Considering the present petition has been pending before this Court, if the appeal is filed within the stipulated time, the Appellate Authority shall not dismiss the appeal on limitation and shall hear the Petitioner on merits.

10. 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 filing of reply as also access to the notices and related documents.

11. However, it is made clear that the issue in respect of the validity of the impugned notifications is left open and the order of the Appellate 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*’.

12. Petition is disposed of in 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 13<sup>th</sup> May, 2025)