2025:DHC:3562-DB

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

Date of decision: 6th May, 2025

\+ **W.P.(C) 16622/2024 & CM APPL. 70346/2024**

M/S SHIVANGI POLY PRODUCT .....Petitioner

Through: Mr. Pranay Jain and Mr. Karan Singh, Advocates.

versus

UNION OF INDIA & ANR. .....Respondents

Through: Mr. Premtosh K. Mishra, CGSC with Mr. Manish Vashist and Mr. Sajal Bhardwaj, Advocates for UOI.
Mr. Harish Kumar Gupta, SSC, CBIC (Mob. 9810101462).

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– M/s Shivangi Poly Product under Article 226 of the Constitution of India challenging the show cause notice dated 29th May, 2024 (hereinafter, *'the SCN'*) issued by the Department of Trade and Taxes, GNCTD, pertaining to the Financial Year 2019-20, as also the consequent order dated 24th August, 2024 passed by the office of Sales Tax Officer Class II/ AVATO (hereinafter, *'the impugned order'*).

3. The petition also challenges the *vires* of ***Notification No. 56/2023-Central Tax dated 28th December, 2023*** (hereinafter *'impugned*

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notification').

4. The validity of the impugned notification was under consideration before this Court in a batch of petitions with the lead petition 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 notification 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).*
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> *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).*
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> *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.*
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> *2. However, in the present petition, we are concerned with Notification Nos.9 & 56/2023 dated 31-3-2023 respectively.*
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> *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").*
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> *4. We have heard Dr. S. Muralidhar, the learned Senior counsel appearing for the petitioner.*
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> *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.*
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> *6. There are many other issues also arising for consideration in this matter.*
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> *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.*
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> *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.*
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> *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.*
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> *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.***
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> ***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 in ***S.L.P. No. 4240/2025*** titled ***M/s HCC-SEW-MEIL-AAG JV v. Assistant Commissioner of State Tax & Ors.***

6. In the present case, the submission of the Petitioner, on facts, is that the SCN dated 29th May, 2024 and the consequent impugned order have been passed without providing the Petitioner with an opportunity to file a reply or attending a personal hearing. It is further contended by the Petitioner that the issuance of SCN and passing of subsequent impugned order are barred by limitation in light of the challenge raised to the impugned notification.

7. On the other hand, Mr. Harish Kumar Gupta, ld. Counsel appearing for the Respondent No. 2– Department submits that the Petitioner has filed his GST returns for the year 2019-2020 only on 29th June, 2023 under the GST Amnesty Scheme and thus, the Petitioner is not entitled to maintain any challenge to the impugned notification.

8. Ld. Counsel for the Petitioner submits that in light of the above stated submission of the Respondent-Department, the Petitioner is ready to drop the challenge to the impugned notification.

9. In view of the fact that the GST returns for the year 2019-2020 have been filed belatedly and the Petitioner had full knowledge of the issuance of show cause notice and the consequent impugned order, the present petition does not merit consideration. However, in the opinion of this Court, the Petitioner ought to be given a chance to raise a challenge before the appellate authority.

10. Accordingly, the Petitioner is granted time till 10th July, 2025, to file an appeal before the appellate authority under Section 107 of the Central Goods and Service Tax Act, 2017.

11. If the appeal is filed by the Petitioner before 10th July, 2025, along with the mandatory pre-deposit, the same shall be adjudicated upon merits and shall not be dismissed on the ground of limitation.

12. It is also made clear that the observations made by this Court in the present petition shall have no bearing upon the decision of the appellate authority.

13. However, it is recorded that the issue in respect of the validity of the impugned notification has not been pressed by the Petitioner.

14. The present petition is disposed of in said terms. Pending applications, if any, stand disposed of.

PRATHIBA M. SINGH
JUDGE

RAJNEESH KUMAR GUPTA
JUDGE

MAY 6, 2025/*MR/ss*

(corrected and released on 13th May, 2025)