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

Date of Decision: 8th October 2025

\+ **W.P.(C) 15330/2025 & CM APPL. 62793/2025**

AMIT KUMAR BASAU & ANR. .....Petitioners

Through: Mr. Abhishek Garg & Mr. Naman Mehta, Advs.

versus

SALES TAX OFFICER CLASS II/AVATO WARD 13 (SPECIAL ZONE) ZONE 12 DELHI & ORS. .....Respondents

Through: Mr. Sumit K. Batra, Adv. (9911211000) Mr. Arun Khatri, SSC with Ms. Anoushka Bhalla, Adv

CORAM:
JUSTICE PRATHIBA M. SINGH
JUSTICE SHAIL JAIN

JUDGMENT

Prathiba M. Singh, J.

1. This hearing has been done through hybrid mode.

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2. Allowed, subject to all just exceptions. The application is disposed of.

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3. The present petition has been filed under Articles 226 & 227 of the Constitution of India, *inter alia*, challenging the impugned order dated 13th August, 2024 passed by the Sales Tax Officer Class II/Avato Ward 113(Special Zone), Zone 12, Delhi *(hereinafter 'impugned order')*. The present petition also challenges the impugned Show Cause Notice dated 22nd May, 2024 *(hereinafter*

'impugned SCN') issued for the financial year 2019-20. *Vide* the impugned order the tax demand raised against the Petitioner is Rs.23,34,336/- and the total demand including interest and penalty is Rs.45,10,960/-.

4. Additionally, the present petition also challenges the following Notifications:

- ***Notification No. 09/2023- Central Tax dated 31st March 2023***
- ***Notification No. 09/2023- State Tax dated 22nd June 2023***
- ***Notification No. 56/2023 - Central Tax dated 28th December 2023***
- ***Notification No. 56/2023 - State Tax dated 11th July 2024*** *(hereinafter, 'the impugned notifications').*

5. The challenge in the present petition is similar to a batch of petitions wherein *inter alia*, the impugned notifications were challenged. ***W.P.(C) No. 16499/2023*** titled ***DJST Traders Private Limited v. Union of India &Ors.*** was the lead matter 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 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.

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."*
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> ***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.***
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> ***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.***
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> ***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."***

6. The abovementioned writ petition and various other writ petitions have been disposed of by this Court on subsequent dates, either remanding the matters or relegating the parties to avail of their appellate remedies, depending upon the fact situation. All such orders are subject to further orders of the

Supreme Court.

7. 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 notifications in the present proceedings shall also be subject to the outcome of the decision of the Supreme Court.

8. 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.***

9. On facts, ld. Counsel for the Petitioner submits that the Petitioner – Mr. Amit Kumar Basau, is a partner in the Petitioner No.2 - M/s Basau Construction (India), which is a partnership firm. However, the same is unregistered. Thereby, the petition has been preferred by the Petitioner No.1 – Mr. Amit Kumar Basau.

10. Ld. Counsel for the Respondents has taken an objection that since the partnership firm is an un-registered firm, the writ petition is not maintainable.

11. Per Contra, Ld. Counsel for the Petitioner relies on the decision of the Supreme Court in ***Haldiram Bhujiawala v. Anand Kumar Deepak Kumar,*** **(2000) 3 SCC 250** to argue that unregistered partnership firms can file a writ petition through a partner.

12. The impugned SCN was issued to the Petitioner on 22nd May, 2024. Thereafter, a reminder notice was also issued to the Petitioner, on 25th July, 2024. The submission of the Petitioner is that no reply has been filed by the

Petitioner to the impugned SCN, nor any personal hearing has been attended. Thus, the impugned order has been passed without hearing the Petitioner.

13. The Court has heard the parties. In fact, this Court in ***W.P.(C) 4779/2025*** titled ***'Sugandha Enterprises through its Proprietor Devender Kumar Singh V. Commissioner Delhi Goods And Service Tax And Others'*** under similar circumstances where no reply was filed to the SCN had remanded the matter in the following terms:

> *"6. On facts, however, the submission of the Petitioner in the present petition is that the Petitioner was not afforded with an opportunity to file a reply to the SCN dated 23rd May, 2024 and the impugned order was passed without affording the Petitioner with an opportunity to be heard. Hence, the impugned order is a non-speaking order and is liable to be set aside on the said ground.*
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> *7. Heard. The Court has considered the submissions made. The Court has perused the records. In this petition, as mentioned above, no reply to the SCN has been filed by the Petitioner. Relevant portion of the impugned order reads as under:*
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> > *And whereas, the taxpayer had neither deposited the proposed demand nor filed their objections/ reply in DRC-06 within the stipulated period of time, therefore, following the Principle of Natural Justice, the taxpayer was granted opportunities of personal hearing for submission of their reply/objections against the proposed demand before passing any adverse order.*
> >
> > *And whereas, neither the taxpayer filed objections/reply in DRC 06 nor appeared for personal hearing despite giving sufficient opportunities, therefore, the undersigned is left*

with no other option but to upheld the demand raised in SCN/DRC 01. DRC 07 is issued accordingly.

8. This Court is of the opinion that since the Petitioner has not been afforded an opportunity to be heard and the said SCN and the consequent impugned order have been passed without hearing the Petitioner, an opportunity ought to be afforded to the Petitioner to contest the matter on merits.

9. Accordingly, the impugned order is set aside. The Petitioner is granted 30 days' time to file the reply to SCN. Upon filing of the 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:...."

14. Under such circumstances, considering the fact that the Petitioner did not get a proper opportunity to be heard and no reply to the impugned SCN has been filed by the Petitioner, the matter deserves to be remanded back to the concerned Adjudicating Authority.

15. Further, Section 69 of the Indian Partnership Act, 1932 has an embargo on an un-registered firm from filing a suit or enforcement of a right. The same reads as under:

*"**69. Effect of non-registration.—**(1) No suit to enforce a right arising from a contract or conferred by this Act shall be instituted in any Court by or on behalf of any person suing as a partner in a firm against the firm or any person alleged to be or to have been a partner in the firm unless the firm is registered and the person suing is or has been shown in the Register of Firms as a partner*

in the firm.

*(2) **No suit to enforce a right arising from a contract shall be instituted in any Court by or on behalf of a firm against any third party unless the firm is registered and the persons suing are or have been shown in the Register of Firms as partners in the firm**."*

16. However, the exception to the said provision is set out in the following decisions:

- ***Haldiram Bhujiawala & Anr. v. Anand Kumar Deepak Kumar & Anr. [(2000)3 SCC 250]:***

*"9. The question whether Section 69(2) is a bar to a suit filed by an unregistered firm even if a statutory right is being enforced or even if only a common law right is being enforced came up directly for consideration in this Court in Raptakas Brett Co. Ltd. v. Ganesh Property. In that case, Majmudar, J. speaking for the Bench clearly expressed the view that **Section 69(2) cannot bar the enforcement by way of a suit by an unregistered firm in respect of a statutory right or a common law right…."***

- ***Shiv Developers v. Aksharay Developers & Ors. [2022 SCC OnLine 114]***

"35. In our view, the questions arising in this matter could be directly answered with reference to the principles enunciated by this Court in the case of Raptakos Brett & Co. Ltd. v. Ganesh Property: (1998) 7 SCC 184, which have further been explained and applied by this Court in the cases of Haldiram Bhujiawala and Purushottam (supra). We may take note of the principles vividly exposited in the case of Haldiram Bhujiawala (supra) that to attract the bar of Section 69(2) of the Act of 1932, the contract in question must be the one entered into by firm with the third-party

> *defendant and must also be the one entered into by the plaintiff firm in the course of its business dealings;* ***and that Section 69(2) of the Act of 1932 is not a bar to a suit filed by an unregistered firm, if the same is for enforcement of a statutory right or a common law right."***

17. Therefore, Section 69(2) of the Partnership Act, 1932 cannot place a bar to a suit filed by an unregistered firm, if a statutory or common law right is being sought to be enforced. In the present case, the writ petition seeks reliefs under the CGST Act, under which the Petitioner no.2 has a registration - despite being an unregistered Partnership firm. Such a firm, which is paying taxes and has any grievances against the Department cannot be non-suited from enforcing statutory rights. Moreover, since the Partner has also been impleaded, it cannot be held that the writ petition is maintainable. In view of the above, since the partner has been made a party to the writ petition and has filed the present writ petition as Petitioner No.1, the writ petition is held to be maintainable.

18. Accordingly, in view of the above stated observations, the impugned order is set aside. The Petitioner is granted time till 30th November 2025, to file the reply to impugned SCN. Upon filing of the 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.: 9056299999***
- ***E-mail Address :*** *abhishek@agslegal.com*

19. The reply filed by the Petitioner to the impugned SCN, along with the

submissions made in the personal hearing proceedings shall be duly considered by the Adjudicating Authority, and a fresh order with respect to the impugned SCN shall be passed accordingly.

20. However, it is made clear that the issue in respect of the validity of the impugned notifications is left open. Any order passed by 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'.***

21. The petition is disposed of in above terms. All pending applications, if any, are also disposed of.

PRATHIBA M. SINGH
JUDGE

SHAIL JAIN
JUDGE

OCTOBER 8, 2025
kk/sm