



\$~63

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

Date of Decision: 28th August, 2025

+ **W.P.(C) 13121/2025, CM APPL. 53682/2025 & CM APPL. 53683/2025**

KURLON RETAIL LIMITED

.....Petitioner

Through: Mr. Manish Mishra, Ms. Joybrata Misra
and Mr. Sameer Samal, Advs.

versus

SALES TAX OFFICER & ORS.

.....Respondents

Through: Mr. Sumit K. Batra, Adv.

CORAM:

JUSTICE PRATHIBA M. SINGH

JUSTICE SHAIL JAIN

JUDGMENT

Prathiba M. Singh, J.

1. This hearing has been done through hybrid mode.
2. The present petition has been filed, *inter alia*, challenging the impugned order dated 21st August, 2024 passed in respect of Financial Year 2019-20 by the office of Sales Tax Officer Class II/ AVATO, Delhi, raising a demand of Rs. 31,58,436/- under the head of 'net access ITC availed'. The petition also challenges the *vires* of **Notification No. 56/2023-Central Tax** dated 28th December, 2023 and **Notification No. 56/2023-State Tax** dated 7th July, 2024 (hereinafter '*impugned notifications*').
3. The validity of the impugned notifications 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 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.”

4. 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.

5. 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***’.

6. In the present case, the submission of the Petitioner, on facts, is that the SCN dated 17th May, 2024, from which the impugned order arises, was uploaded on the ‘*Additional Notices Tab*’. Thereafter, reminders were issued to the Petitioner on 16th July, 2024 and 30th July, 2024 and the same are also



stated to be uploaded on '*Additional Notices Tab*'. Therefore, the same was not brought to the knowledge of the Petitioner due to which no reply was filed. Hence, the impugned order was passed without providing the Petitioner with an opportunity to challenge the case on merits.

7. Further, it is submitted on behalf of the Department that the SCN dated 17th May, 2024, was uploaded after the issue with the '*Additional Notices Tab*' was fixed and thus, the argument is not sustainable. Further, it is submitted that the opportunity for personal hearing was also afforded to the Petitioner. However, the same was not attended and thus, the impugned order was passed.

8. The Court has heard the parties. In fact, this Court in ***W.P.(C) 13727/2024*** titled '*Neelgiri Machinery through its Proprietor Mr. Anil Kumar V. Commissioner Delhi Goods And Service Tax And Others*', under similar circumstances where the SCN was uploaded on the '*Additional Notices Tab*' had remanded the matter in the following terms:

"6. Be that as it may, intention is to ensure that the Petitioner is given an opportunity to file its reply and is heard on merits and that orders are not passed in default. Since there is no clarity on behalf of the Department, this Court follows the order dated 9th September, 2024 in Satish Chand Mittal (Trade Name National Rubber Products) vs. Sales Tax Officer SGST, Ward 25-Zone 1 as also order dated 23rd December, 2024 in Anant Wire Industries vs. Sales Tax Officers Class II/Avato, Ward 83 & Anr (W.P.(C) 17867/2024; DHC) where the Court under similar circumstances has remanded back the matter to ensure the Noticee/Petitioners get a fair opportunity to be heard. The order of the Court in Sathish Chand Mittal (Supra) reads as under:



“4. It is the petitioner’s case that he had not received the impugned SCN and, therefore, he had no opportunity to respond to the same. For the same reason, the petitioner claims that he had not appear for a personal hearing before the Adjudicating Authority, which was scheduled on 17.10.2023 and later rescheduled to 30.11.2023 as per the Reminder.

5. The petitioner also states that the impugned SCN, the Reminder and the impugned order are unsigned.

6. Mr. Singhvi, the learned counsel appearing for the respondent, on advance notice, fairly states that the principal issue involved in the present case is squarely covered by the decisions of this Court in M/s ACE Cardiopathy Solutions Private Ltd. v. Union of India & Ors.: Neutral Citation No. 2024:DHC:4108-DB as well as in Kamla Vohra v. Sales Tax Officer Class II/ Avato Ward 52 : Neutral Citation No.2024:DHC:5108- DB.

7. He states that possibly, the petitioner did not had the access of the Notices as they were projected on the GST Portal under the tab ‘Additional Notices & Orders’. He submits that the said issue has now been addressed and the ‘Additional Notices & Orders’ tab is placed under the general menu and adjacent to the tab ‘Notices & Orders’.

8. In view of the above, the present petition is allowed and the impugned order is set aside.

9. The respondent is granted another opportunity to reply to the impugned SCN within a period of two weeks from date. The Adjudicating Authority shall consider the same and pass such order, as it deems fit, after affording the petitioner an opportunity to be heard. 10. The present petition is disposed of in the aforesaid terms. 11. All pending applications are also disposed of.”

7. The impugned demand orders dated 23rd April, 2024 and 5th December, 2023 are accordingly set aside. In response to show cause notices dated 04th December, 2023 and 23th September, 2023, the Petitioner shall file



its replies within thirty days. The hearing notices shall now not be merely uploaded on the portal but shall also be e-mailed to the Petitioner and upon the hearing notice being received, the Petitioner would appear before the Department and make its submissions. The show cause notices shall be adjudicated in accordance with law.

8. The petitions are disposed of in the above terms. The pending application(s), if any, also stand disposed of.”

9. There is no doubt that after 16th January 2024, changes have been made to the GST portal and the ‘Additional Notices Tab’ has been made visible. In the present case, the SCN was issued on 17th May, 2024. A perusal of the screenshot of the GST Portal of the Petitioner also clearly shows that the ‘Additional Notices Tab’ is clearly visible and accessible to the Petitioner. The same is extracted herein below:

Goods and Services Tax
Government of India, States and Union Territories

Dashboard Services GST Law Downloads Search Taxpayer Help and Taxpayer Facilities e-Invoice News and Updates

Dashboard Services User Services Additional Notices and Orders

Annexure P-5

Notices and Orders

Type of Notice/Order	Description	Ref ID	Date of Issuance	Action
DETERMINATION OF TAX	Order for Determination of Tax	ZD0706240738855	21/08/2024	View
DETERMINATION OF TAX	Intimation of issue of reminder in Form GST DRC-01	ZD070724062540H	30/07/2024	View
DETERMINATION OF TAX	Intimation of issue of reminder in Form GST DRC-01	ZD070724029600K	16/07/2024	View
DETERMINATION OF TAX	Show Cause Notice and Summary thereof in Form GST DRC-01	ZD0705240115281	17/05/2024	View

Note:

Goods and Services Tax
Government of India, States and Union Territories

Dashboard Services GST Law Downloads Search Taxpayer Help and Taxpayer Facilities e-Invoice News and Updates

Dashboard Additional Notices and Orders Case Details

Case ID: AD0705240136457
GSTIN/UIN/Temporary ID: 07AAECK8867C12B
Date Of Application/Case Creation: 17/05/2024
Tax Period(s): Apr 2019 to Mar 2020
Status: Order for creation of demand issued

INTIMATIONS
NOTICES
REPLIES
ORDERS

Type	Order Number	Order Date	Attachments
Assessment order and GST DRC-07	ZD0706240738855	21/08/2024	KURLON 07AAECK8867C12B_3_DRC07_20240821_092503_788.pdf DRC07_ORDER_ZD0706240738855_20240821060609.pdf



10. Hence, the argument of the Petitioner pertaining to ‘*Additional Notices Tab*’ is not tenable in the present case. However, considering the fact that the impugned order was passed without hearing the submissions and contentions of the Petitioner and since the impugned notifications are under challenge before the Supreme Court, as also this Court, the Court deems it appropriate to set aside the impugned order.

11. Accordingly, the impugned order is set aside. The Petitioner is granted time till 30th September, 2025 to file the reply to the SCN. Upon filing of the reply, the Adjudicating Authority shall issue a notice for personal hearing to the Petitioner. The personal hearing notice shall be communicated to the Petitioner on the following mobile no. and e-mail address:

- **Email:** manish.mishra@jsalaw.com
- **Mobile No.:** 9818776660

12. The 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 orders with respect to both the SCNs shall be passed accordingly.

13. 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 of this Court in *W.P.(C) 9214/2024 titled Engineers India Limited v. Union of India & Ors.*

14. All rights and remedies of the parties are left open. Access to the GST Portal, shall be provided within one week, to the Petitioner to enable



2025:DHC:7571-DB



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

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

PRATHIBA M. SINGH
JUDGE

SHAIL JAIN
JUDGE

AUGUST 28, 2025
dj/ss