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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ W.P.(C) 4710/2024 and CM APPL. 19286/2024 (Interim Relief)

METALAX INDUSTRIESPetitioner
Through: Ms. Vibhooti Malhotra, Mr. Bhuvesh Satija, Mr. Udit Sharma & Mr. Aniket, Advs.

versus

GST OFFICER WARD 66 & ORS.Respondents
Through: Mr. Rajeev Aggarwal, ASC with Mr. Shubham Goel, Adv. for R1.
Mr. Harpreet Singh, SSC with Ms. Suhani Mathur, Adv. for R2&3.

+ W.P.(C) 6915/2024 and CM APPL. 28763/2024 (Interim Relief)

METALAX INDUSTRIESPetitioner
Through: Ms. Vibhooti Malhotra, Mr. Bhuvesh Satija, Mr. Udit Sharma & Mr. Aniket, Advs.

versus

GST OFFICER WARD 66 & ORS.Respondents
Through: Mr. Rajeev Aggarwal, ASC with Mr. Shubham Goel, Adv. for R1.
Mr. Harpreet Singh, SSC with Ms. Suhani Mathur, Adv. for R2&3.

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA
HON'BLE MR. JUSTICE DHARMESH SHARMA

ORDER
26.11.2024

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1. These two writ petitions which pertain to **Financial Years**¹ 2017-18 and 2018-19 impugn the proceedings initiated by the State

¹ F.Y.



Goods and Service Tax² authorities by issuance of the **Show Cause Notices³** which are impugned before us as also the final orders passed upon the culmination of those SCN proceedings.

2. The challenge essentially proceeds on the basis of Section 6(2)(b) of the **Central Goods and Services Tax Act, 2017⁴** in light of the SCN dated 31 August 2022 pertaining to the subject period and thus it being contended that once the said authority had commenced an investigation, it would be impermissible for the State GST authorities to examine the said period or to pass any order of assessment pursuant thereto.

3. Our attention was also drawn to the view that we had expressed in **DLF Home Developers Limited vs. Sales Tax Officer Class II Avato Ward 107 Special Zone 12 Delhi & Anr.⁵** on 04 September 2024 and which came to be reiterated in **DLF Home Developers Limited v. Sales Tax Officer Class II⁶**.

4. We had while construing the provisions of Section 6(2)(b), in *DLF Home Developers* held as follows:-

“2. The present petition is confined only to the demand in respect of ITC to be reversed on non-business transactions and exempt supplies. The petitioner’s challenge to the said demand is premised on the basis that the Directorate General of GST Intelligence (hereafter the DGGI) has also issued a show cause notice dated 02.02.2024 for the tax period 01.07.2017 to 31.03.2021, which also includes the demand proposed on the aforesaid issue. It is the petitioner’s case that two authorities cannot proceed simultaneously in respect of the same issue.

3. The impugned order indicates that respondent no.1 is also fully conscious of the same and therefore, it has proceeded to confirm

² GST

³ SCNs

⁴ CGST Act

⁵ W.P.(C) 11052/2024

⁶ W.P.(C) 11037/2024



the demand without adjudicating the same. The relevant extract of the impugned order is set out below :-

“

On ITC to be reversed on non-business transactions & exempt supplies: The taxpayer has informed that the proceeding under the subject has already been taken up by DGGI (HQ), New Delhi had referred section 6(2)(b) of CGST Act 2017 and stated that parallel proceeding cannot be started. Deputy Director Investigation (INV-DGGI (HQ) New Delhi vide letter no DGGI/INV/GST/2722-2023/INV/o/o/Pr.OGG(HQ)/2028 dated 20.12.2023 DGGI (HQ) has acknowledged the fact. Since the proceeding on the issue at being executed by DGGI (HQ), New Delhi, the demand raised through DRC01 stands as it is.”

4. We find merit in the contention that respondent no.1 cannot adjudicate a demand, which is also the subject matter of other proceedings. Since, the period covered under the impugned order is also subsumed in the show cause notice issued by the DGGI, both the proceedings cannot be carried on simultaneously.

5. Mr. Rajeev Aggarwal, the learned counsel appearing for respondent no.1 states, on instructions, that the demand, in respect of ITC to be reversed on non-business transactions and exempt supplies, be set aside as the same would be adjudicated by the DGGI.

6. In view of the above, the impugned demand is required to be set aside to the extent as noted above. It is so directed.

7. It is clarified that the concerned Authority shall adjudicate the said issue pursuant to a show cause notice dated 02.02.2024 issued by the DGGI.

8. The present petition is allowed in the aforesaid terms. The pending application is also disposed of.”

5. Consequently, and in view of the above, we allow the present writ petitions and quash the impugned orders dated 29 December 2023 [W.P.(C) 4710/2024] and 30 April 2024 [W.P.(C) 6915/2024] as well as the impugned SCN dated 31 August 2022 issued for F.Y. 2017-18 [W.P.(C) 4710/2024] and F.Y. 2018-19 [W.P.(C) 6915/2024].

6. The aforesaid direction shall be subject to the final outcome of the investigation that is being undertaken by the Directorate General



of Goods and Services Tax Intelligence. It shall thus be open for the State GST authorities to review the steps liable to be taken upon culmination of those proceedings.

7. All rights and contentions of respective parties on merits are kept open.

YASHWANT VARMA, J.

DHARMESH SHARMA, J.

NOVEMBER 26, 2024
Ch

