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

\+ W.P.(C) 13769/2024

M/S JSW STEEL LIMITED .....Petitioner

Through: Mr. Arvind Datar, Sr. Adv. with Mr. Rahul Unnikrishnan, Mr. Devashish Marwah and Mr. Yashovardhan Suri, Advs.

versus

DIRECTORATE GENERAL OF GST INTELLIGENCE, & ORS. .....Respondents

Through: Ms. Anushree Narain, SCC for R-1, R-4 & R-5
Mr. Harpreet Singh, SSC with Mr. Jatin Kumar Gaur and Ms. Suhani Mathur, Advs. for R-2
Mr. Rohan Jaitley, CGSC with Mr. Dev Pratap Shahi, Mr. Yogya Bhatia and Ms. Ranjana Jetley, Advs. for R-3

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA
HON'BLE MR. JUSTICE RAVINDER DUDEJA

<u>O R D E R</u>

% **01.10.2024**

<u>CM APPL. 57701/2024 (Exemption)</u>

Allowed, subject to all just exceptions.

Application stands disposed of.

<u>W.P.(C) 13769/2024 & CM APPL. 57700/2024 (Interim relief)</u>

1. Notice. Since the respondents are represented by Mr. Jaitley, Ms. Narain and Mr. Singh, let a reply be filed within a period of six weeks. The petitioner shall have two weeks therefrom to file a rejoinder affidavit.

2. The challenge which the writ petitioner mounts is to **Circular**

No. 212/6/2024-GST dated 26 June 2024[1] issued by the **Central Board of Indirect Taxes and Customs**[2] as well as the **Show Cause Notice**[3] dated 02 August 2024.

3. Although the impugned SCN seeks to examine various aspects, Mr. Datar, learned senior counsel appearing for the writ petitioner, submits that the challenge in the present writ petition stands restricted to the following two issues:-

(a) guarantee commission and the service tax liability raised in connection therewith; and

(b) the aspect of discounts and Section 15(3)(b) of the **Central Goods and Services Tax Act, 2017**[4] which are impacted by the impugned Circular.

4. We note that the SCN proceedings themselves pertain to the period of 2017-18 to 2022-23. Insofar as Section 15(3)(b) of the CGST Act is concerned, the impugned Circular makes the following provisions:

> "2.1 Section 15 of the CGST Act provides for value of taxable supply of goods or services or both. Sub-section (3) of the said section provides that the value of supply shall not include discount given by the supplier, subject to certain conditions. As per clause (b) of the said sub-section, any discount which is given after the supply has been effected shall not be included in the value of the supply, only if it satisfies the following conditions:
>
> > i. Such discount is established in terms of an agreement entered into at or before the time of such supply;
> >
> > ii. Such discount must be specifically linked to the relevant invoices
> >
> > iii. Input Tax Credit attributable to such discount on the basis of document issued by the supplier has been duly reversed by the recipient.

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[1] Impugned Circular
[2] CBIC
[3] SCN
[4] CGST Act

2.2 Accordingly, wherever any discount is offered by the supplier to the recipient, by issuance of a tax credit note as per section 34 of the CGST Act, after the supply has been effected, the said discount can be excluded from the value of taxable supply only if the conditions of clause (b) of sub-section (3) of section 15 of the CGST Act are fulfilled. Such conditions inter alia includes the requirement of reversal of input tax credit by the recipient attributable to the said discount.

2.3 However, there is no system functionality/ facility presently available on the common portal to enable the supplier or the tax officer to verify the compliance of the said condition of proportionate reversal of input tax credit by the recipient.

2.4 In view of the above, till the time a functionality/ facility is made available on the common portal to enable the suppliers as well as the tax officers to verify whether the input tax credit attributable to such discounts offered through tax credit notes has been reversed by the recipient or not, the supplier may procure a certificate from the recipient of supply, issued by the Chartered Accountant (CA) or the Cost Accountant (CMA), certifying that the recipient has made the required proportionate reversal of input tax credit at his end in respect of such credit note issued by the supplier.

xx xx xx

2.7 In cases, where the amount of tax (CGST+SGST+IGST and including compensation cess, if any) involved in the discount given by the supplier to a recipient through tax credit notes in a Financial Year is not exceeding Rs 5,00,000 (rupees five lakhs only), then instead of CA/CMA certificate, the said supplier may procure an undertaking/ certificate from the said recipient that the said input tax credit attributable to such discount has been reversed by him, along with the details mentioned in Para 2.5 above.

2.8 Such certificates issued by the CA/CMA or the undertakings/ certificates issued by the recipient of supply, as the case may be, shall be treated as a suitable and admissible evidence for the purpose of section 15(3)(b)(ii) of the CGST Act, 2017. The supplier shall produce such certificates/undertakings before the tax officers, if required, during any proceedings such as scrutiny, audit, investigations, etc. Even for the past period, where ever any such evidence as per section 15(3)(b)(ii) of CGST Act in respect of credit note issued by the supplier for post-sale discounts is required to be produced by him to the tax authorities, the concerned taxpayer may procure and provide such certificates issued by CA/CMA or the undertakings/ certificates issued by the recipients of supply, as the case may be, to the concerned investigating/audit/adjudicating authority as evidence of requisite reversal of input tax credit by his recipients."

5. The CBIC appears to have taken into consideration a functionality handicap besetting the online portal and software as a consequence of which the respondents are stated to be unable to ascertain and undertake an online verification with respect to reversal of **Input Tax Credit**[5] by the recipient of goods or services.

6. Mr. Datar submits that in case the impugned Circular were to hold, the petitioner would have to produce a Chartered Accountant's Certificate pertaining to each and every credit note and transaction of supply in question which had been undertaken right from 2017-18 onwards. It was submitted that the aforesaid would clearly be an impossibility and in any case should not affect transactions undertaken prior to 26 June 2024.

7. Insofar as the aspect of guarantee commission is concerned, we take note of the allegations which stand levelled in the impugned SCN and where the respondents view a failure on the part of the writ petitioner to discharge perceived GST liabilities considering commission income @ 0.75% of the corporate guarantee which may have been extended.

8. Our attention, however, has been drawn to RBI Circular No. RBI/2021-22/121 dated 09 November 2021 in terms of which the Central Bank itself restrains parties from obtaining consideration by way of commission in respect of guarantees of the genre with which we are concerned.

9. We thus find that the writ petition raises issues which warrant further consideration.

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[5] ITC

10. We accordingly provide that while the respondents may continue with the proceedings forming part of the impugned SCN dated 02 August 2024, they shall desist from ruling on the issues pertaining to discounts and Section 15(3)(b) as well as guarantee commission.

11. We, additionally and in light of challenge which stands entertained, grant the petitioner 30 days' time to file a response to the impugned SCN.

12. Let the writ petition be called again on 09.01.2025.

YASHWANT VARMA, J.

RAVINDER DUDEJA, J.

OCTOBER 1, 2024/ns