

GAHC010022632024



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/529/2024

M/S INDUS TOWERS LIMITED
(FORMERLY KNOWN AS BHARTI INFRATEL LIMITED)
A PUBLIC LIMITED COMPANY INCORPORATED UNDER THE PROVISIONS
OF THE COMPANIES ACT, 7956 HAVING ITS PLACE OF BUSINESS AT 6TH
FLOOR,
BIJAY CRESENT, G.S. ROAD,
RUKMINIGAON, KAMRUP, ASSAM, 781022 AND IN THE PRESENT
PROCEEDINGS REPRESENTED BY SRI SANJAY WADHWA, THE TAXTION
HEAD OF THE PETITIONER COMPANY.

VERSUS

THE UNION OF INDIA AND 4 ORS.
REPRESENTED BY THE SECRETARY, MINISTRY OF FINANCE, HAVING IS
OFFICE AT 137, NORTH BLOCK, NEW DELHI-110001.

2:THE ASSISTANT COMMISSIONER OF CGST AND CX
DIVISION II
GUWAHATI CGST COMMISSIONERATE
ASSAM
GST BHAWAN
KEDAR ROAD
FANCY BAZAAR
GUWAHATI-781001.

3:THE PRINCIPAL COMMISSIONER OF CGST AND CX
GUWAHATI COMMISSIONERATE
ASSAM
GST BHAWAN
KEDAR ROAD
GUWAHATI-781001

4:THE CENTRAL BOARD OF INDIRECT TAXES AND CUSTOMS
1ST FLOOR

TOWER NBCC PLAZA
1
SECTOR-5 PUSH VIHAR
NEW DELHI-110017

5:THE CHAIRPERSON
GOODS AND SERVICE TAX COUNCIL
5TH FLOOR
TOWER II
JEEVAN BHARTI BUILDING
JANPATH ROAD
CONNAUGHT PLACE
NEW DELHI-11000

Advocate for the Petitioner : MR ANKIT KANODIA

Advocate for the Respondent : SC, GST

BEFORE
HONOURABLE MR. JUSTICE MANISH CHOUDHURY

ORDER

Date : 12.02.2024

Heard Mr. A. Kanodia, learned counsel for the petitioner through virtual mode, assisted by Mr. P. Das, learned counsel for the petitioner and Mr. S.C. Keyal, learned Standing Counsel, CGST for all the respondents.

2. In this writ petition instituted under Article 226 of the Constitution of India, the petitioner has *inter alia* assailed [i] Notification no. 09/2023 – Central Tax dated 31.03.2023 [Annexure-I]; and [ii] a Demand–cum–Show Cause Notice bearing C. No. IV[15]25/SCN-Bharati/II-D/ACG-II/2023/2429 dated 21.12.2023 [Annexure-II], issued by the respondent no. 2 to the petitioner.

3. The Notification dated 31.03.2023 is issued in exercise of powers conferred by Section 168A of the Central Goods and Services Act, 2017 and other identical provisions of the Integrated Goods and Services Tax Act, 2017 and the Union Territory Goods and Services Tax Act, 2017. By exercising the said power, the time limit specified under sub-section [10] of

Section 73 of the CGST Act for issuance of an order under sub-section [9] of Section 73 for recovery of tax not paid or short paid or of input tax credit wrongly availed or utilized, relating *inter alia* to the period, that is, Financial Year : 2018-2019 has been extended upto 31.03.2024. It is on the basis of the said Notification, the Demand–cum–Show Cause Notice dated 21.12.2023 has been issued asking the petitioner to show cause as to why a sum of Rs. 62,06,927/- shall not be demanded and recovered from the petitioner under Section 73[1] of the CGST Act, 2017 and corresponding Section of SGST Act, 2017 as Ineligible Input Tax Credit [ITC] received from the suppliers, who did not file their GSTRTB returns and other amounts under Section 16[4] plus interest and penalty. It is the contention of the petitioner that after the year 2022, there was no COVID-19 pandemic in existence. Attention has been drawn to the order dated 10.01.2022 passed by the Hon'ble Supreme Court of India in *Suo Motu Writ Petition [C] no. 3 of 2020* to contend that the Hon'ble Supreme Court of India after taking all the factors into account, had extended the period of limitation only upto 28.02.2022. Thus, there was no occasion for the Council to take resort to the factor of Covid-19 pandemic in order to extend the time limit under sub-section [10] of Section 73 of the CGST Act, 2017.

4. The learned counsel for the petitioner has also contended that the Hon'ble Allahabad High Court vide Annexure-IV Order, the Hon'ble Gujarat High Court vide Annexure-V Order, the Hon'ble Punjab & Haryana High Court vide Annexure-VI Order, and the Hon'ble Madras High Court vide Annexure-VII Order have granted interim protection to the noticees, similarly situated like the petitioner herein.

5. Mr. Keyal, learned Standing Counsel, CGST has contended that in Civil Appeal no. 4672/2012 [*Naresh Chandra Agarwal vs. Institute of Chartered Accountants of India and others*], decided on 08.02.2024, the Hon'ble Supreme Court of India has dealt on matters relating to challenge made in respect of rules made in exercise of powers conferred by the governing statute.

6. Issue notice, returnable on 15.03.2024.

7. In the Explanation to Section 168A of the CGST Act, 2017, the expression "*force majeure*" means a case of war, epidemic, flood, drought, fire, cyclone, earthquake or any other calamity caused by nature or otherwise affecting the implementation of any of the provisions of the Act. It is noticed that the time limit under sub-section [10] of Section 73 of the SGCT Act was extended once prior to the Notification dated 31.03.2023.

8. The Hon'ble Allahabad High Court vide Annexure-IV Order, the Hon'ble Gujarat High Court vide Annexure-V Order, the Hon'ble Punjab & Haryana High Court vide Annexure-VI Order, and the Hon'ble Madras High Court vide Annexure-VII Order, have provided interim reliefs to the noticees by *inter alia* observing that the proceedings in pursuance of the impugned Show Cause Notice may proceed but no final order shall be passed. The said interim orders are stated to be in operation till date.

9. Having considered the above aspects, including the nature of orders passed by the Hon'ble Allahabad High Court, the Hon'ble Gujarat High Court, the Hon'ble Punjab & Haryana High Court and the Hon'ble Madras High Court, it is observed that the petitioner shall file its reply to the impugned Show Cause Notice on or before 15.03.2024. It is further observed that till the returnable date, the proceedings initiated pursuant to the impugned Show Cause notice may proceed, but no final order in respect of the impugned Show Cause Notice shall be passed.

JUDGE

Comparing Assistant