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By Nidhi, Advocate



Judgment No.: 099
Dt.: 30-03-2024



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Judgment Deals With

Section/Rule	Section 168A
Authority	Gauhati High Court
Case Name	M/s. Indus Towers Limited VS The Union Of India
Dated	12 th February, 2024

Brief Facts:

The petitioner has assailed Notification no. 09/2023 – Central Tax dated 31.03.2023 & a Demand–cum–Show Cause Notice dated 21.12.2023. The Notification dated 31.03.2023 is issued in exercise of powers conferred by Section 168A of the CGST Act, 2017. By exercising the said power, the time limit specified under for issuance of an order for recovery of tax not paid or short paid or of input tax credit wrongly availed or utilized, relating 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.

Contention of the Petitioner:

After the year 2022, there was no COVID-19 pandemic in existence. Attention was 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 Section 73(10) of the CGST Act, 2017.

Findings & Decision of the Court:

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.

The Court directed that petitioner shall file its reply to impugned SCN & the proceedings initiated pursuant to the impugned SCN may proceed, but no final order in respect of the impugned SCN shall be passed.

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