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

+ W.P.(C) 10986/2022 & CM APPL.32131/2022

SEEMA GUPTA

..... Petitioner

Through: Ms.Nidhi Gupta, Advocate.

versus

UNION OF INDIA & ORS.

..... Respondents

Through: Mr.Yash Aggarwal, Govt.Pleader for R-1.

Mr.Sumit K.Batra, Advocate with Mr.Manish Khurana and Mr.Kshitij Chhabra, Advocates for R-2.

Mr.Akshay Amirtanshu, Sr.Standing Counsel with Mr.Ashutosh Jain and Mr.Pratik Samajpati, Advocates for R-3,4&5.

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

ORDER

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27.09.2022

Present writ petition has been filed challenging Clause (A)(b) of the Notification No.04/2022-Central Tax (Rate) dated 13th July, 2022, as unsustainable being ultra vires Article 14 of the Constitution of India and also beyond the powers conferred under the Goods And Services Tax Act, 2017 (GST).

In the present writ petition, it has been averred that by way of the impugned notification dated 13th July, 2022, the exemption granted by a

previous Notification dated 28th July, 2017 for renting of residential accommodation is no longer available to tenants who are registered under GST. It is further averred that this amendment is particularly affecting those who are doing their business as a proprietary concern, like the Petitioner. It is also averred that denial of exemption solely on the basis that the tenant is registered under GST is not based upon any intelligible differentia and the said differentia has no rational relation to the object sought to be achieved.

On 30th August, 2022, the respondent no.1, 3, 4 & 5 had filed a counter affidavit in which it was averred as under:-

“i. In this background, the GoM observed that renting of dwelling to businesses merited imposition of GST, while the existing exemption of renting of residential dwellings to non-businesses may continue. There is no justification for exemption where the service of renting of residential dwellings is supplied to a business (registered person).

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o. Clearly, where the residential dwelling is rented by a person who is the proprietor of a proprietorship firm in his personal capacity for use as his own residential dwelling, and such renting is not on account of its business i.e., not accounted for in the firms account but is on personal account, the exemption shall continue to be available to him. Similarly, where the residential dwelling is rented by a partner of a partnership firm in his personal capacity for his own residential use and not accounted for in business entity's account, the exemption will be available. The same would be the position in case of partnership firms or other forms of businesses”

Thereafter, the respondents No. 3, 4 & 5 had taken time to file a clarificatory / supplementary affidavit.

On the last date of hearing, learned counsel for the respondents No.3, 4 and 5 had handed over a supplementary affidavit. However, on the said date, learned counsel for the respondents No.3, 4 and 5 had prayed for some further time to file a better affidavit.

Today, he has handed over a second supplementary affidavit dated 23rd September, 2022. The same is taken on record.

In the said affidavit, it has been averred as under:-

“3. The following is submitted for consideration of this Hon’ble Court:

a. The Government is bound to tax or exempt any supply of goods and services only on recommendations of the GST Council.

b. Since the government is bound by the recommendations of the GST Council, a proposal to amend Notification No.04/2022 – Central Tax (Rate) to bring in greater clarity regarding taxability of registered persons, is being examined to be placed before the GST Council, as the Notification No.04/2022-Central Tax (Rate) dated 13.07.2022 does not specify that GST would be charged only where the registered person has rented (taken on rent) residential dwelling in course or furtherance of business.

c. However, for the present purposes, it is reiterated for clarity that renting of a residential dwelling to a proprietor of a registered proprietorship firm who rents it in his personal capacity for use as his own residence and not for use in the course or furtherance of business of his proprietorship firm and such renting is on his own account and not that of the proprietorship firm, shall be exempt from tax under Notification No.04/2022-Central Tax (Rate) dated 13.07.2022.”

Learned counsel for the respondent No.2 states that the said respondent shall also be bound by the aforesaid clarification.

Consequently, the aforesaid clarification that renting of a residential dwelling by a proprietor of a registered proprietorship firm, who rents it in his/her own personal capacity for use as his/her own residence as well as not for use in the course or furtherance of business of his/her proprietorship firm and such renting is on his/her own account and not that of proprietorship firm shall be exempt from GST, is accepted by this Court and all the respondents are held bound by the same.

Accordingly, no further orders are called for in the present writ petition and the same along with application stands disposed of.

MANMOHAN, J

MANMEET PRITAM SINGH ARORA, J

SEPTEMBER 27, 2022
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