

HIGH COURT OF SIKKIM
Record of proceedings

W.P. (C) No. 41 of 2023

DELTA CORP LIMITED & ANR. PETITIONERS

VERSUS

UNION OF INDIA & ORS. RESPONDENTS

Date: 20.10.2023

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HON'BLE MR. JUSTICE BHASKAR RAJ PRADHAN, J.

For Petitioners : Mr. Harish Salve, Senior Advocate (through V.C.).
Mr. Harish Narasappa, Senior Advocate (through V.C.).
Mr. Raghav Shankar, Advocate.
Mr. Sudesh Joshi, Advocate.
Ms. Shadhna Pradhan, Advocate and
Ms. Gazala Parvin, Advocate.

For Respondent : Ms.Sangita Pradhan, Deputy Solicitor General of
No.1. India (through V.C.) with Ms. Natasha Pradhan,
Advocate.

For Respondent : Mr. Zangpo Sherpa, Additional Advocate General.
No.2.

For Respondent : None.
Nos.3 to 9.

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1. Ms. Shadhna Pradhan appearing as Advocate on record of the petitioners submits that all the respondents have been duly served and affidavit of service has been duly filed. It is further submitted that in addition the respondents have also been notified that the matter is to be heard today. She undertakes to file a further affidavit of service stating the above facts within the course of the day.

2. Heard Mr. Harish Salve, learned Senior Counsel for the petitioners. The learned Senior Counsel submits that the petitioners have challenged, inter alia, Rule 31A of the Central Goods and Service Tax Rules, 2017 as ultra vires the Constitution of India. The petitioners have also challenged the show cause notice

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dated 27.09.2023 issued against the petitioners; the rate notification dated 28.06.2017; circular dated 04.01.2018 and FAQ clarification dated 06.09.2017.

3. It is submitted that although Rule 31A was inserted in the year 2018 the petitioners was issued show cause notice only in the year 2023. It is the petitioners' case that they had been corresponding with the concerned authorities regarding the difficulties faced by them in determining the value of supply made by them particularly after insertion of Rule 31A. However, the issuance of the show cause notice has compelled the petitioners to approach this court challenging the vires of Rule 31A. It is submitted that if the petitioners challenge to Rule 31A is successful the question of responding to the show cause notice would not arise.

4. According to the learned Deputy Solicitor General of India at present only show cause notice has been issued and further steps would be taken on receipt of reply from the petitioners who is now before this Court challenging the vires of the impugned provisions.

5. Issue notice upon the respondents in Writ Petition as well as in I.A. No. 01 of 2023 subject to filing of requisites within three days. A copy of this order shall also be forward to the respondents along with the notice.

6. The learned Deputy Solicitor General of India on behalf of respondent no.1 and the learned Additional Advocate General on behalf of respondent no.2 accepts notice and waives formal notice thereof.

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7. The respondents may also file their response to the interim application praying for stay of the proceedings within a period of two weeks hence.

8. Let I.A. No. 01 of 2023 be heard on 05.12.2023. Until then status quo as of today shall be maintained by the respondents.

9. The learned counsel for the parties are requested not to delay the hearing of the interim application.

10. List on 05.12.2023 on which date I.A. No. 01 of 2023 shall be heard.

Judge