

112 CWP-8065-2024

**HUDA URBAN ESTATE AND TOWN AND COUNTRY PLANNING
EMPLOYEES WELFARE ORGANIZATION**

V/S

UNION OF INDIA AND OTHERS

Present: Mr. Deepak Gupta, Advocate
for the petitioner.

Mr. Gagandeep Singh Malhotra, Jr. Standing Counsel
for respondents No.1 and 2.

Ms. Tanisha Peshawaria, DAG, Haryana
for respondents No.3, 4 and 5.

Learned counsel for the petitioner has assailed the provisions of Section 108 of Finance Act, 2021 whereby Section 7(1)(aa) has been introduced vide notification dated 21.12.2021 under the Goods and Services Tax Act, 2017 w.e.f. 01.07.2017.

Learned counsel submits that by introducing Section 7(1)(aa), the very definition of person as provided in Section 2(84) of the GST Act, 2017 stands modified, without there being any modification made therein.

It is submitted that as per Section 2(84) of the Act, a person includes an association of persons or a body of individuals, whether incorporated or not in India or outside India, whereas by introducing Section 7(1)(aa), it has been explained that for the purposes of the said clause, it is clarified that notwithstanding anything contained in any other law for the time being in force or any judgment, decree or order of any Court, tribunal or authority, the person and its members or constituents shall be deemed to be two separate persons and the supply of activities or transactions *inter se* shall be deemed to take place from one such person to another.

Learned counsel submits that such explanation and definition of person would result in the very clause of mutuality being done away with and would create a disturbance of mutual transaction between the members of an association, body of individuals or a company. It is submitted that the same has also been made retrospective wrongfully from 2017.

Learned counsel submits that based on the said clause, the notice for demand under Section 73(1) of the HGST/CGST Act, 2017 has been issued for FYs: 2019-20, 2020-21, 2021-22 and 2022-23 against the petitioner.

Notice of motion.

Mr. Gagandeep Singh Malhotra, Jr. Standing Counsel accepts notice on behalf of respondents No.1 and 2; and Ms. Tanisha Peshawaria, DAG, Haryana accepts notice on behalf of respondents No.3 to 5. They seek time to file reply. May do so, on or before the next date of hearing with a copy in advance to the counsel opposite.

In the meanwhile, until further orders, the effect and operation of the show cause notice dated 18.12.2023 (Annexure P-8) shall remain stayed.

List again on 03.09.2024.

(SANJEEV PRAKASH SHARMA)
JUDGE

(SUDEEPTI SHARMA)
JUDGE

09.05.2024
mohit goyal