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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: 25th September, 2025

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W.P.(C) 14918/2025

MS RS TRADING CO

.....Petitioner

Through: Mr. Abhas Mishra, Adv.

versus

PRINCIPAL COMMISSIONER OF CGST & ORS.Respondents

Through: Mr. Shashank Sharma, SSC with Ms.
Malika Kumari, Adv.

CORAM:

JUSTICE PRATHIBA M. SINGH

JUSTICE SHAIL JAIN

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through hybrid mode.

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2. Allowed, subject to all just exceptions. The application is disposed of.

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3. The present petition has been filed by the Petitioner under Article 226 of the Constitution of India, *inter alia*, challenging the impugned Order-in-Original dated 18th June, 2025 passed by the Additional Commissioner, CGST, North Delhi (*hereinafter 'impugned OIO'*). The Petitioner also challenges the impugned Show Cause Notice dated 31st March, 2023 (*hereinafter 'impugned SCN'*).

4. *Vide* the impugned OIO, a demand to the following effect has been raised against the Petitioner:



***“31. In view of the above discussions and findings,
I pass the order as under:***

ORDER

A. Demand/Penalty in r/o Noticee No-01 (M/s RS Trading).

i. I confirm the demand of Input Tax Credit amounting to **Rs. 6,27,82,280/- (Rupees Six Crore Twenty-Seven Lakh Eighty-Two Thousand Two Hundred Eighty only)** under Section 74(1) of the CGST/SGST Act, 2017 read with Section 20 of the IGST Act, 2017 and order to recover the same from them;

ii. I confirm the demand of **Interest** under Section 50 of the CGST/SGST Act, 2017 read with Section 20 of the IGST Act, 2017, on the amount of demand confirmed at (above and order to recover the same from them;

iii. I impose penalty equivalent to the amount of demand confirmed at (i) above, upon **Noticee No. 1** under **Section 74(1)** of the CGST/SGST Act, 2017 read with Section 20 of the IGST Act, 2017 and order to recover the same from them.

iv. I impose penalty equivalent to the total amount of ITC fraudulently **availed** and **passed-on** as detailed in **Column (4) in Table-II** below, upon **Noticee No. 01** under **Section 122(1)(ii)** of the CGST/SGST Act, 2017 read with Section 20 of the IGST Act, 2017 and order to recover the same from them; and

V, I impose penalty of **Rs. 10,000/-**, upon **Noticee No. 01** for violation of **Section 122(1)(x)** of the CGST/SGST Act, 2017 read with Section 20 of the



IGST Act, 2017 and order to recover the same from them.”

5. The GST Department’s case against the Petitioner is that various non-existing units had passed on Input Tax Credit (*hereinafter ‘ITC’*) to the Petitioner, and the main person who was found to be involved in the case is Mr. Manish Kumar, who was the proprietor of the Petitioner (*hereinafter ‘proprietor’*).
6. GST Department conducted searches at the Petitioner’s residential and office premises. The statement of the proprietor was also recorded. Thereafter, statements of various third parties have also been recorded. In his statement, the Proprietor has, in fact, admitted that he did not know any persons in these firms, and that he used brokers to conduct the said business. Some of the statements were in fact subsequently retracted by the proprietor, and he was also arrested, as he was unable to deposit the evaded GST liability as well.
7. The proprietor was arrested on 4th March 2021, under Section 69 of the Central Goods and Service Tax Act, 2017 (*hereinafter ‘the Act’*) for allegedly committing offences under Section 132(1)(b) and 132(1)(c) of the Act.
8. As per the impugned OIO, the Petitioner was found to be engaged in fraudulent availment of ineligible ITC on the strength of fake and bogus invoices from non-existing suppliers. The entire investigation was done against 17 firms, which were completely fake and non-existent. These firms were suppliers of the Petitioner, who were all found to be non-existent and whose GST registrations were cancelled. The total ITC availed by the Petitioner is to the tune of Rs.7,96,55,413/-.
9. Ld. Counsel for the Petitioner submits that the Petitioner is not in a



position to make the pre-deposit. Further, Id. Counsel for the Petitioner places reliance upon circular dated 6th July, 2022 issued by Central Board of Indirect Taxes and Customs, titled '*Clarification on various issues relating to applicability of demand and penalty provisions under the Central Goods and Services Tax Act, 2017 in respect of transactions involving fake invoices*' (hereinafter '*circular dated 6th July 2022*'). It is submitted that as per the circular dated 6th July 2022, no tax demand could have been imposed upon the Petitioner, and only penalty could have been demanded.

10. Id. Counsel for the Respondent, on the other hand, submits that the impugned OIO is an appealable order, and the Petitioner ought to be relegated to the appellate remedy.

11. The Court has considered the matter. It is pertinent to note that Petitioner got its GST registration only on 6th July 2019, and that the entirety of the suspicious transactions took place during the financial years 2019-20 and 2020-21. It is further noted that immediately thereafter, upon the arrest of the Petitioner, the business operations of the Petitioner were also discontinued. Thus, there is some basis for the GST Department to argue that the Petitioner itself was incorporated to pass on fraudulent ITC, in an illegal and unlawful manner as the Petitioner's GST registration was alive for less than two Financial years.

12. The Court has also perused the reply filed by the Petitioner to the impugned SCN. However, the same does not inspire any confidence at this stage.

13. In any case, since the impugned OIO is an appealable order under Section 107 of the Act, the Court is of the opinion that an appeal ought to be filed by the Petitioner, along with the requisite pre-deposit.



14. The present writ petition was filed within the period of limitation prescribed under Section 107 of the Act. Now, even the period of limitation for filing the appeal has expired. Since the petition was filed within the period of limitation, the Petitioner is permitted to file the appeal by 15th December 2025, along with the requisite pre-deposit.

15. If the Appeal is filed by the Petitioner within the stipulated time, it shall be adjudicated on merits and shall not be treated as barred by limitation.

16. Accordingly, the present petition is disposed of in above terms. Pending applications, if any, are also disposed of.

PRATHIBA M. SINGH
JUDGE

SHAIL JAIN
JUDGE

SEPTEMBER 25, 2025
kk/sm