



2025:UHC:7269-DB

**IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL
THE HON'BLE CHIEF JUSTICE MR. G. NARENDAR**

AND

**THE HON'BLE JUSTICE MR. ALOK MAHRA
Writ Petition Misc. Bench No. 668 of 2025**

18 August, 2025

M/s Radha Krishna

.....Petitioner

Versus

State Of Uttarakhand and Others

.....Respondents

Presence:-

Mr. Rishab Ranghar, learned counsel for the petitioner.

Ms. Puja Banga, learned Brief Holder for the State of Uttarakhand
through Video Conferencing.

JUDGMENT : (per Mr. G. Narendar C. J.)

Heard learned counsel for the petitioner
and learned State counsel.

2. The brief facts, necessary for disposal of the present writ petition are that, the petitioner is a registered proprietor under the Central Goods and Services Tax Act, 2017 ("CGST Act") carrying on business under the trade name *M/s Radhe Krishna*. The petitioner is aggrieved by the recovery citation dated 05.08.2025 issued by the Tehsildar under Section 79(1)(c) of the CGST Act for recovery of an amount of ₹12,58,552/-.



3. It is not in dispute that a notice in FORM GST ASMT-10 under Section 61 of the Act was issued on 18.07.2022, pointing out discrepancies between the Input Tax Credit (ITC) claimed in GSTR-3B and the ITC reflected in GSTR-2A for the financial year 2017-18, calling upon the petitioner to furnish explanation within 30 days. Subsequently, on 30.11.2022, a show cause notice in FORM GST DRC-01 was issued under Section 73(1) alleging wrongful availment of ITC and proposing a demand of ₹11,44,137.48/-.

4. Thereafter, further notices dated 04.02.2023 and 15.02.2023 were issued, to which no reply was filed within the stipulated time. Consequently, the respondent department passed a final order dated 31.05.2023 under Section 73(9) of the Act, raising a demand of ₹12,58,552/- (comprising tax of ₹11,44,138/- and penalty of ₹1,14,414/-), and issued a demand notice in FORM GST DRC-07 under Rule 142(5) of the CGST Rules, 2017.



4. Learned counsel for the petitioner would submit that the petitioner was not aware of the subsequent notices dated 04.02.2023 and 15.02.2023 and could not file a reply due to lack of knowledge with the GST regime. It is urged that the petitioner challenged the final order dated 31.05.2023 by filing a statutory appeal in FORM GST APL-01 on 06.08.2025 under Section 107(1) of the Act read with Rule 108(1) of the Rules, within limitation. Along with the appeal, the petitioner deposited 10% of the disputed tax amounting to ₹1,14,414/-, in compliance with Section 107(6).

5. It is contended that despite pendency of the statutory appeal and compliance with the mandatory pre-deposit requirement, the Tehsildar proceeded to issue the impugned recovery citation under Section 79(1)(c), which is ex facie arbitrary and contrary to law.

6. Per contra, learned State counsel would submit that the recovery citation was issued prior



to filing of the appeal but admits that the petitioner has deposited the mandatory pre-deposit while filing the statutory appeal.

7. It is admitted that the petitioner has filed a statutory appeal under Section 107 within the period of limitation prescribed under Section 107(4) of the Act, and has deposited the pre-deposit of 10% of the disputed tax as mandated by Section 107(6).

8. In view of the settled legal position, once a statutory appeal has been preferred in compliance with Section 107(6), recovery of the balance demand is deemed to be stayed till disposal of the appeal. Consequently, initiation of recovery proceedings under Section 79 of the Act, during pendency of such appeal is unsustainable in law. Accordingly, the recovery citation dated 05.08.2025 issued by the Tehsildar under Section 79(1)(c) of the CGST Act is hereby quashed and set aside.

9. It is clarified that the rights and liabilities



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of the parties shall abide by the final outcome of the statutory appeal. Liberty is reserved to the parties to take recourse to remedies available under law, depending upon the result of the appeal.

10. The writ petition stands disposed of in the above terms.

11. Pending applications, if any, stand disposed of accordingly.

(G. NARENDAR, C. J.)

(ALOK MAHRA, J.)

Dated: 18.08.2025
Mamta