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

\+ **W.P.(C) 17631/2024, CM APPL. 74939/2024 & CM APPL. 74940/2024**

AARN IRON AND STEEL PRIVATE LIMITED .....Petitioner

Through: Mr. Kumar Bhaskar, Advocate (M: 8789421428)

versus

GST OFFICER WARD 64 NEW DELHI & ORS. .....Respondents

Through: Mr. Piyush Beriwal, Mr. Sandip Munian, Ms. Jyotsna Vyas, Advocates for R-2.

Mr. Sushil Kumar Pandey, SPC with Ms. Richa Pandey and Ms. Neha Yadav, Advocates, for R-3/IDP.

Mr. Udit Malik, Advocate for GST Department (through VC).

CORAM:
JUSTICE PRATHIBA M. SINGH
JUSTICE AMIT SHARMA

<u>O R D E R</u>

% **24.12.2024**

1. This hearing has been done through hybrid mode.

2. The present petition has been filed under Article 226 and 227 of the Constitution of India seeking issuance of a writ in the nature of *mandamus* directing waiver from payment of the mandatory statutory pre-deposit of 10% of the disputed tax amount under Section 107 of the Central Goods & Services Tax Act, 2017 (hereinafter referred to as "*CGST Act*") in order to enable the Petitioner to file an appeal against the orders dated 29th August, 2024 and 19th November, 2024.

3. The brief facts are that a Show Cause Notice was issued by the GST Department on 20th May, 2024, (hereinafter referred to as "*the SCN*") seeking recoveries of excess Input Tax Credit (ITC) for the Financial Year 2019-20 along with penalty and interest thereto, on the following three aspects:

a) Excess claim of ITC on account of non-conciliation of information;

b) ITC claimed on commodities/services not eligible for ITC; and

c) ITC claimed from (retrospectively) cancelled supplying dealers.

4. A reply was filed by the Petitioner to the SCN and a final order was passed on 29th August, 2024. As per the said final order, with respect to excess ITC, the Department had decided in favour of the Petitioner. However, it was also held therein that the Petitioner had availed excess Input Tax Credit. Thus, a demand of Rs.2,53,15,600/- (Two Crores Fifty Three Lakhs Fifteen Thousand Six Hundred only) as principal and a sum of Rs. 4,89,20,836/- (Four Crore Eighty Nine Lakhs Twenty Thousand Eight Hundred Thirty Six only) including penalty and interest had been raised by the Department.

5. The Petitioner thereafter moved an application seeking review of the said final order passed on 29th August, 2024, which was rejected on 19th November, 2024. The Petitioner wishes to file an appeal challenging both the orders before the Appellate Authority.

6. The submission on behalf of the Petitioner is that under Section 107(6)(b) to the CGST Act, the Petitioner is to deposit 10% of the remaining amount of tax in dispute. It is submitted that the Petitioner does not have the financial means to deposit such a substantial amount. Hence, it is prayed that the said condition be waived of or the amount to be deposited be reduced.

7. The prayer of the Petitioner is opposed both by the ld. Counsel for the GST Officer, Delhi as also by the ld. Counsel for the Ministry of Finance,

Union of India. It is submitted by the ld. Counsels that unlike in other statutes, the Appellate Authority under the CGST Act has not been vested with the discretion to give any waiver of the pre-deposit. This has been a conscious departure taken by the Legislature in the case of GST payment which is very crucial.

8. This Court has not examined the legislative scheme. However, at this stage, the Petitioner now prays that he may be given four weeks' additional time to file the appeal.

9. Considering the fact that the issue as to whether any exemption, waiver or any reduction can be granted qua GST demands or not is yet to be adjudicated by this Court, it is deemed appropriate to permit the Petitioner, as a unique case, to file the appeal challenging both impugned orders, within a period of four weeks from today.

10. The Petitioner may file the appeal in accordance with law by 20th January, 2025.

11. This order shall not act as a precedent. The questions of law which arise in this petition are left open.

12. With the aforesaid direction, the petition stands disposed of along with all pending applications.

PRATHIBA M. SINGH, J.

AMIT SHARMA, J.

DECEMBER 24, 2024/*bsr/ms*