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

\+ **W.P.(C) 3889/2025 & CM APPL. 18075/2025**

KUSUM HEALTHCARE PRIVATE LIMITED .....Petitioner

Through: Mr. Yogendra Aldak & Mr. Kunal Kapoor, Advs.

versus

ASSISTANT COMMISSIONER, DIVISION OKHLA, CGST DELHI SOUTH COMMISSIONERATE & ORS. .....Respondent

Through: Mr. Gibran Naushad, SSC with Mr. Suraj Shekhar Singh & Mr. Harshi Singhal, Advs. for R-1. (7985133722) Mr. Santosh Kumar Rout, SC, PNB with Ms. Dharna Veragi, Adv.

CORAM:
JUSTICE PRATHIBA M. SINGH
JUSTICE RAJNEESH KUMAR GUPTA

O R D E R

% **09.07.2025**

1. This hearing has been done through hybrid mode.

2. The present petition has been filed on behalf of the Petitioner- Kusum Healthcare Pvt. Ltd. under Article 226 of the Constitution of India *inter alia* challenging recovery notices bearing Nos. ***C.No. DL- South/Div.Okhla/ R-77 /OIO/Kusum/1044/2023- 24*** dated 25th March, 2025, ***C.No. DL-South/Div Okhla/R-77/OIO/Kusum/1044/2023-24*** dated 28th February, 2025, issued by the Respondent No. 1 and an intimation letter bearing C.No. DL-South/Div.Okhla/R-77/OIO/Kusum/1044/2023-24 dated 19th March, 2025 issued by Respondents Nos. 1, 2 and 3.

3. The facts in brief, as stated by the Petitioner in the writ petition, are that against the Demand Order dated 29th December, 2023 confirming a demand

of Rs.2,05,62,445/-, the Petitioner filed an appeal before the Commissioner (Appeal-II), Central Tax, Delhi by making a pre-deposit of Rs. 20,56,245/- in compliance with the provisions of Section 107(6) of the CGST Act. The Appellate Authority has confirmed the Order in Original on 26.07.2024.

4. It is stated that since the GST Appellate Tribunal is not functioning, the Petitioner is not in a position to prosecute the matter by resorting to the remedy by preferring an appeal before the Tribunal. Attention of this Court has been drawn to a circular bearing ***Circular No. 224/18/2024 – GST*** dated 11th July, 2024 issued by the Central Board of Indirect Taxes and Customs, GST Policy Wing. Paragraph 3 of the said circular reads as under:

> *"3. In cases, where the first appellate authority has confirmed the demand issued by the adjudicating authority, partially or fully, the taxpayers cannot file appeal against the said appellate order at present due to non-operation of GST Appellate Tribunal as yet. As per Section 112 of the CGST Act, every person has statutory remedy of appeal against the order passed by the first appellate authority or by a revisional authority, before the Tribunal. As per section 78 of CGST Act, the recovery proceedings are to be initiated, if the amount payable as per the order issued under the said act is not paid by the concerned person within the said period of three months from the date of service of the said order. It may further be noted that if any person files an appeal in accordance with the requirement of sub-section (8) of section 112 of the CGST Act (i.e., on payment of prescribed pre-deposit), the recovery proceedings for the balance amount is deemed to be stayed till disposal of the appeal as per sub-section (9) of section 112 of the CGST Act. However, as the taxpayers are not able to file appeal under section 112 in Appellate Tribunal against the orders of appellate authority and therefore, are not able to make the pre-deposit under sub-section (8) of*

> *section 112 of CGST Act, in some cases, the tax officers are taking a view that there is no stay against recovery as per sub-section (9) of section 112 of CGST Act. In some cases, taxpayers have either paid or are willing to pay the requisite amount of pre-deposit as per sub-section (8) of section 112 of CGST Act either by crediting in their electronic liability register against the demand so created, or by depositing the said amount through FORM DRC-03. However, tax officers are still resorting to recovery proceedings after completion of period stipulated under section 78 of CGST Act."*

5. It is further stated that in terms of the circular, the Petitioner has already made a pre-deposit and would file the appeal as soon as the Tribunal is constituted. According to the Petitioner, in view of the pre-deposit as is demonstrated in *Annexure P-14* of the writ petition, the recovery notice ought not to have been issued. It is stated that the observations in the notice that the Petitioner has not made the pre-deposit is incorrect.

6. On the last date of hearing, notice was issued and the recovery notices were directed to remain stayed.

7. Today, Mr. Aldak, ld. Counsel for the Petitioner submits that the Petitioner has already availed of the benefit under the guidelines dated 11th July, 2024 and has deposited 10% of the demanded amount. In view thereof, no further recovery action can be taken against the Petitioner in terms of the said circular.

8. Mr. Naushad, ld. Counsel submits that recovery notices were issued by the Respondent Department as the Department was not aware that the deposit in terms of these guidelines were made by the Petitioner.

9. In view of the fact that the Petitioner has deposited the amount in terms of the guidelines, the recovery notices dated 28th February, 2025, 19th March

2025 and 25th March, 2025 are set aside.

10. The writ petition is, accordingly, disposed of. The pending application is also disposed of.

PRATHIBA M. SINGH, J

RAJNEESH KUMAR GUPTA, J

JULY 9, 2025
kk/rks