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

+ **W.P.(C) 4266/2025 & CM APPL.19712/2025**

MS ASHISH METALS

.....Petitioner

Through: Mr. Sunil Upadhyay, Ms. Suchetan,
Mr. Gourav Agarwal and Mr. Harish
Kumar Gaur, Advs.

versus

UOI & ANR.

.....Respondents

Through: Mr. Nune Balraj, SPC for UOI with Ms.
Meghna Rao and Mr. Harshit Goel,
Advs. for R-1.
Mr. Pranay Mohan Govil, Sr. Standing
Counsel.

CORAM:

JUSTICE PRATHIBA M. SINGH

JUSTICE RAJNEESH KUMAR GUPTA

ORDER

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03.04.2025

1. This hearing has been done through hybrid mode.
2. This is a petition under Article 226 of the Constitution of India challenging the impugned Order-in-Appeal dated 10th December, 2024 ('OIA').
3. A Show Cause Notice dated 22nd September, 2022 ('SCN') was issued to the Petitioner by Respondent No.2/Department on the ground that the Petitioner had availed excess Input Tax Credit ('ITC') to the tune of Rs.79,76,771.52/-. The case of the Petitioner is that it had not availed any ITC and it was only due to a typographical error that the said credit was shown as having been availed of in the year 2018-19. The SCN was adjudicated and the Order-in-Original dated 1st February, 2024 was passed wherein the demand of Rs.79,76,771.52/- was confirmed against the Petitioner along with the



applicable interest and a penalty of Rs.7,97,677/-. The operative portion of the order reads as under:

“ORDER

- i. I confirm the demand of Rs.79,76,771.52/- (Rupees Seventy Nine Lakhs Seventy Six Thousand Seven Hundred Seventy One and Fifty Two Paise only) (IGST: Rs.0/-, CGST: Rs.3988385.76/- & SGST: Rs.3988385.76/-) towards excess availment of ITC and order that the same be recovered from M/s ASHISH METALS, Legal Name: ASHISH JAIN (GSTIN: 07ARUPJ4528P1ZX) along with applicable interest under Section 73(1) and Section 50 of the CGST Act, 2017 / DGST Act, 2017 respectively, read with Section 20 of IGST Act, 2017 read with Rule 121 of the CGST Rules, 2017 (as amended).*
- ii. I impose penalty of Rs.7,97,677/- (Rupees Seven Lakhs Ninety-Seven Thousand Six Hundred and Seventy-Seven only) on M/s ASHISH METALS, Legal Name: ASHISH JAIN (GSTIN: 07ARUPJ4528P1ZX) under Section 122 of the CGST / DGST Act, 2017 read with Section 73(9) of the CGST /DGST Act, 2017 and Section 20 of IGST Act, 2017.”*

4. This order was challenged by the Petitioner before the Commissioner(Appeals) who has rejected it *vide* the impugned order dated 10th December, 2024. Thus, the present petition has been filed.

5. The Petitioner’s submissions are two-fold. Firstly, the learned Counsel for the Petitioner submits that the said ITC was never availed of, though the same was reflected in the statement in the following manner.



ASHISH METALS (07ARUPJ4528P1ZX)

F.Y.:2018-19

GSTR - 3B OFF SET

MONTH	ITC ELIGIBLE			ITC TAKEN		
	IGST	CGST	SGST	IGST	CGST	SGST
APRIL	NILL	NILL	NILL	NILL	NILL	NILL
MAY	NILL	8,12,936.00	8,12,936.00	NILL	8,12,936.00	8,12,936.00
JUNE	NILL	3,09,979.00	3,09,979.00	NILL	3,09,979.00	3,09,979.00
JULY	NILL	3,47,757.00	3,47,757.00	NILL	3,47,757.00	3,47,757.00
AUGUST	NILL	4,14,207.00	4,14,207.00	NILL	46,02,300.00	46,02,300.00
SEPTEMBER	NILL	2,29,449.00	2,29,449.00	NILL	NILL	NILL
OCTOBER	NILL	3,30,743.00	3,30,743.00	NILL	3,60,619.00	3,60,619.00
NOVEMBER	NILL	4,59,479.00	4,59,479.00	NILL	4,59,479.00	4,59,479.00
					(39,88,519.00)	(39,88,519.00)
DECEMBER	NILL	2,10,090.00	2,10,090.00	NILL	2,10,090.00	2,10,090.00
JANUARY	NILL	4,69,856.00	4,69,856.00	NILL	4,69,856.00	4,69,856.00
FEBRUARY	NILL	4,07,149.00	4,07,149.00	NILL	4,07,149.00	4,07,149.00
MARCH	NILL	5,26,336.00	5,26,336.00	NILL	5,26,336.00	5,26,336.00
TOTAL		45,17,981.00	45,17,981.00		45,17,982.00	45,17,982.00

For ASHISH METALS
FOR ASHISH METALS

Aashish Jaiswal
Prop./Auth. Sign.

Consolidated 3B Offset Summary
ASHISH METALS (07ARUPJ4528P1ZX)
F.Y. : 2018-2019

Month	ITC Eligible (NRC)			
	IGST	CGST	SGST	CESS
April				
May		8,12,935	8,12,935	
June		3,09,979	3,09,979	
July		3,47,757	3,47,757	
August		46,02,300	46,02,300	
September				
October		3,60,619	3,60,619	
November		4,59,479	4,59,479	
December		2,10,090	2,10,090	
January		4,69,856	4,69,856	
February		4,07,149	4,07,149	
March		5,26,336	5,26,336	
Grand Total	0	85,06,500	85,06,500	0

For ASHISH METALS

Aashish Jaiswal
Prop./Auth. Sign.

This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above.

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6. According to the Petitioner, their Chartered Accountant had inadvertently committed an error in entering the values of ITC availed for the month of August 2018 which reflects to the tune of Rs. 46,02,300/- (CGST) and Rs. 46,02,300/- (SGST). This error was sought to be rectified by the Petitioner, though belatedly in the year 2020.

7. Ld. Counsel for the Petitioner further submits that the Respondent/Department, being conscious of the fact that such errors can happen in filing the returns, had issued a **Circular No 26/26/2017** dated 29th December, 2017. The circular allowed the assesseees who had not utilized the credit for offsetting their liabilities, to edit the entered values by using the edit facility. The relevant portion of the circular reads as under:

	Use "Edit" facility to rectify the over reported input tax credit	Additional cash, if required, may be deposited in the cash ledger by creating challan in FORM GST PMT-06	Pay (through cash) / Reverse such over reported input tax credit with interest in return of subsequent month (s).
Input tax credit was over reported	While filing their FORM GSTR 3B for the months of July, 2017, Company E inadvertently, reported their eligible input tax credit, as Rs. 20,00,000/- instead of Rs. 10,00,000/-. What can they do? Since, the company has submitted details of their input tax credit but not used such credit for offsetting their liabilities, they can reduce their input tax credit by using the "edit" facility.	While filing their FORM GSTR 3B for the months of July, 2017, Company E inadvertently, reported their eligible input tax credit, as Rs. 20,00,000/- instead of Rs. 10,00,000/-. What can they do? Since, the company has submitted details of their input tax credit but not used such credit for offsetting their liabilities, they can reduce their input tax credit by using the "edit" facility. Since, they have deposited Rs. 10,00,000/- only in their input tax credit ledger they may deposit additional Rs. 10,00,000/- in the cash ledger by creating challan in FORM GST PMT-06 .	While filing their FORM GSTR 3B for the months of July, 2017, Company E inadvertently, reported their eligible input tax credit, as Rs. 20,00,000/- instead of Rs. 10,00,000/-. Company E also utilized their additional input tax credit and filed their returns. What can they do? Since, the company had utilized ineligible credit to offset such liabilities, the company will have to pay (through cash) / Reverse such over reported utilized input tax credit with interest.

8. However, in the present case, the grievance of the Petitioner is that the said facility was not made available to it and the SCN dated 22nd September, 2022 was issued against the Petitioner.

9. On behalf of the Respondent, it is submitted that the Department, *vide Circular No. 224/18/2024* dated 11th July, 2024 (hereinafter '*Guidelines*'), has issued Guidelines for recovery of outstanding dues in cases where the first



appeal has been disposed of, till the Appellate Tribunal comes into operation. The impugned OIA is an appealable order passed in first appeal. He submits that in terms of paragraphs 4 and 5 of the said Circular, if the Petitioner deposits 10% of the amount, the recovery would be stayed.

10. Heard the Counsels for the parties. It is noticed that the proceedings have gone on for a long time in respect of the SCN and there are detailed orders passed by the Adjudicating Authority as also by the Appellate Authority. The case of the Petitioner is that the SCN was adjudicated *ex-parte* as no notice was received by the Petitioner. However, in the appeal the Petitioner was given an opportunity to challenge the Order in Original. The impugned order is an appealable order under Section 112 of the CGST Act.

11. The Department has acknowledged the lack of an appellate tribunal and has thus published the above Guidelines, which provide as under:

*In order to facilitate the taxpayers to make the payment of the amount of pre-deposit as per sub-section (8) of section 112 of CGST Act, and to avail the benefit of stay from recovery of the remaining amount of confirmed demand per sub-section (9) of section 112 of CGST Act, **it is hereby clarified that cases where the taxpayer decides to file an appeal against the order of the appellate authority and wants to make the payment of the amount of pre-deposit as per sub-section (8) of section 112 of CGST Act, he can make the payment of an amount equal to the amount of pre-deposit by navigating to Services Ledgers>> Payment towards demand, from his dashboard.** The taxpayer would navigated to Electronic Liability Register (ELL) Part-II in which he can select the order, out of the outstanding demand orders, against which payment is intended to be made. The amount so paid would be mapped against the selected order and demand amount would be reduced in the balance liability the aforesaid register. **The said amount deposited by the taxpayer will be adjusted against the amount of pre-deposit required to be deposited at the time of filing appeal before the Appellate***



Tribunal.

5. The tax payer also needs to file an undertaking/declaration with the jurisdictional proper officer that he will file appeal against the said order of the appellate authority before the Appellate Tribunal, as and when it comes into operation, within the timelines mentioned in section 112 of the CGST Act read with Central Goods and Services Tax (Ninth Removal of Difficulties) Order, 2019 dated 03.12.2019. On providing the said undertaking and on payment of an amount equal to the amount of pre-deposit as per the procedure mentioned in para 4 above, the recovery of the remaining amount of confirmed demand as per the order of the appellate authority will stand stayed as per provisions of sub-section (9) of section 112 of CGST Act.

12. Considering the above position and the following circumstances:

- (i) *ex-parte* nature of the Order in Original
- (ii) the option to edit being provided *vide* the **Circular No 26/26/2017** dated 29th December, 2017,

this Court is of the opinion that the Petitioner ought to be relegated to follow the procedure prescribed in paragraphs 4 & 5 of the above Guidelines by making a deposit of 10% of the demanded amount.

13. Accordingly, the Petitioner is given time of eight weeks to make the said pre-deposit in terms of paragraph 4 of the Guidelines. Upon the said pre-deposit being made, as per the Guidelines, the demand which has been confirmed by the Appellate Authority, shall remain stayed until the constitution of the GST Appellate Tribunal. Upon the Appellate Tribunal being notified, the Petitioner is free to file its appeal by following the prescribed procedure.



14. The present petition is disposed of in the above terms. All pending applications, if any, are also disposed of.

PRATHIBA M. SINGH, J.

RAJNEESH KUMAR GUPTA, J.

APRIL 3, 2025/dk/Ar.