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* IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision: 21st May, 2025

+ W.P.(C) 4347/2025, CM APPL. 20078/2025 & CM APPL. 20079/2025

INFINITI RETAIL LIMITED

.....Petitioner

Through: Mr. Prakash Shah, Sr. Advocate with
Mr. Rajat Mittal, Mr. Mohit Rawal,
Mr. Mihir Mehta and Mr. Suprateek
Neogi, Advocates.

versus

UNION OF INDIA & ORS.

.....Respondents

Through: Mr. Anurag Ojha, SSC with Mr.
Dipak Raj, Mr. Subham, Ms. Garima
Kumar and Mr. Deep Raj, Advocates
for R-2 to 4.

CORAM:**JUSTICE PRATHIBA M. SINGH****JUSTICE RAJNEESH KUMAR GUPTA****Prathiba M. Singh, J. (Oral)**

1. This hearing has been done through hybrid mode.
2. The present petition has been filed by the Petitioner-Infiniti Retail Limited under Article 226 of the Constitution of India, *inter alia*, assailing the Order-in-Original dated 03rd February, 2025 (hereinafter, '*impugned order*') passed by the Respondent No.2- Additional Commissioner, CGST Delhi, West Commissionerate.
3. *Vide* the impugned order, a demand has been raised against the Petitioner on various grounds in the following terms:

“(i) *I, hereby confirm the Invocation of the extended period of limitation as provided under Section 74 (1) of the*



CGST Act 2017 for demand and recovery of CST payable on M/s INFINITI RETAIL LIMITED (CROMA);

- (ii) I hereby, confirm the demand of the wrongly availed Input Tax Credit [CGST, SGST & IGST] collectively amounting to R: 91,59,91,060/- (Rupees Ninety-One Crore Fifty Nine Lakh Ninety-One Thousand Sixty Only) as detailed in Para No: 13, L7, 18, 19,20&21 of the SCN under Section 74(1) read with Section 74(9) of the CGST Act along-with Interest payable thereon under Section 50 of the CCST Act, 2017 and order to recover the same.*
- (iii) I, hereby, confirm the demand of Interest as applicable from them under Section 50 of CGST Act, 2017 read with relevant provisions of Delhi GST Act, 2017 and Section 20 of IGST Act, 2017 on the amount of GST as mentioned in point (ii) above and order to recover the same.*
- (iv) I, hereby, impose penalty equal to the amount mentioned at point (ii) under Section 74(1) read with Section 74(9) and read with Section 122 of the CGST Act, 2017 and relevant provisions of Delhi GST Act, 2017 and Section 20 of IGST Act, 2017 and order to recover the same.*
- (v) I, hereby, confirm the demand of the short payment of tax [CGST, SGST & IGST] collectively amounting to GST Rs. 16,80,26,918/- (Rupees Sixteen Crore Eighty Lakh Twenty-Eight Thousand Nine Hundred Eighteen Only) as detailed in Para No. 8, 10 11, 12, 15 & 16 of the SCN from them under Section 74(1) read with Section 74(9) of the CGST Act read with similar provisions of Delhi GST Act, 2017 and Section 20 of the IGST Act and order to recover the same.*
- (vi) I, hereby, confirm the demand of Interest as applicable from them under Section 50 of CGST Act, 2017 read with relevant provisions of Delhi GST Act, 2017 and Section 20 of IGST Act, 2017 on the amount of GST as*



mentioned in point (v) above.

(vii) *I, hereby, impose penalty equal to the amount of tax as mentioned in point (v) above from them under Section 74(1) read with Section 74(9) and read with Section 122 of the CGST Act, 2017 and relevant provisions of Delhi GST Act, 2017 and Section 20 of IGST Act, 2017 and order to recover the same.*

(viii) *I, hereby, confirm the demand of Interest amount to Rs. 19,31,640/- (Rupees Nineteen Lakh Thirty-One Thousand and Six Hundred Forty only) as detailed in Para No. 9 & 14 of the SCN from M/s INFINITY RETAIL LIMITED (CROMA) under Section 50 of the CGST Act, 2017 and order to recover the same.”*

4. The submission of Mr. Prakash Shah, Id. Senior Counsel for the Petitioner is that the impugned order has been passed without bearing in mind the directions given by this Court in the previous writ petition being **W.P.(C) 12459/2024** titled **‘Infiniti Retail Limited v. Union of India’** dated 10th September, 2024. In the said decision, the Court had directed as under:

“6. As noted above, the impugned SCN is premised on the audit report. The petitioner is essentially aggrieved in the manner in which the audit was conducted and contends that its responses have been completely disregarded

7. Prima facie, there does appear to be certain gaps in the communications. The petitioner has been throughout asserting that it had provided all the documents as sought for and on the other hand, the respondents have been issuing reminders to the petitioner to provide such documents.
8. The petitioner seeks to contest the demands as proposed in the

9. The learned counsel appearing on behalf of the petitioner also submits that the petitioner would be satisfied if the order is passed directing the adjudicating authority to consider the responses to the show cause notices uninfluenced by the observations made in the audit memo or audit report.



10. In view of the above controversy, this Court consider it apposite to direct that the adjudicating authority shall not implicitly rely on the observations made in the audit memo or audit report. The adjudicating authority shall examine the petitioner's response/reply to the impugned SCN and independently take the decision in regard to the proposed demand.

11. The petitioner is also at liberty to file all the documents as considered necessary to contest the demands as proposed under the impugned SCN.

12. In view of the above directions, the petitioner will not be prejudiced by the audit report/audit memo in so far as the adjudication of the impugned SCN is concerned.

13. All rights and contentions of the parties are reserved.”

5. As per the above-mentioned decision, the Adjudicating Authority was to not implicitly rely on the audit memo or the audit report but was to examine the Petitioner's reply and take an independent decision in respect of the demand raised against the Petitioner.

6. The submission on behalf of the Petitioner is that there is no consideration afforded to the reply which has been filed by the Petitioner and the demand has been raised blindly following the contents of the Show Cause Notice (hereinafter, 'SCN') itself. The mere reproduction of the reply filed by the Petitioner would not be sufficient and a serious consideration for the same was required.

7. The Court has considered the matter. Directions given by this Court in ***W.P.(C) 12459/2024*** ought to have been complied with by the Adjudicating Authority both in letter and spirit. The manner in which the impugned order has been framed would show that it primarily relies on the SCN. The reply filed by the Petitioner has been summarised in the impugned order and the oral submissions made by the Chartered Accountant appearing for the tax



payer *i.e.* Petitioner have also been set out. However, in the findings portion of the impugned order, the manner in which the said reply has been afforded due consideration by finalising the demand, is unclear.

8. The question however is whether the matter deserves to be remanded. In the opinion of this Court, no useful purpose would be served in sending the matter back to the Adjudicating Authority as the reasons that were to be given by the said AA, have been spelt out – though not in a fully satisfactory manner.

9. The impugned order is an appealable order. It is noticed that a substantial portion of the demand which has been raised is in respect of availment of Input Tax Credit (hereinafter ‘ITC’) of Central Goods and Service Tax (hereinafter, ‘CGST’) and State Goods and Service Tax (hereinafter, ‘SGST’) when it should have been ITC in respect of Integrated Goods and Service Tax (hereinafter, ‘IGST’). The said relevant paragraph being paragraph 34 (l) of the impugned order is set out below:

“I note that the noticee had taken ITC of CGST and SGST on the basis of invoices, which were issued by suppliers who were registered outside Delhi, which means that the place of supply in respect of such supplies was out of Delhi.

In terms of the provisions of Section 16(2)(b) of the CGST Act, 2017, ITC of the tax paid by the suppliers is available to the recipient subject to the conditions that the recipient has received goods or services or both. Payment of CGST and SGST by the suppliers suggests that the place of supply in respect of such involves was outside Delhi, because had the suppliers made supplies to the noticee in Delhi, they would have charged IGST on such supplies and not CGST & SGST. That being the case, the noticee availed ITC of Rs. 77,36,28,252/-((2017-18-Rs.6,75,10,042 (CGST-Rs.3,37,55,021 & SGST – Rs.3,37,55,021/-) ; 2018-19-



Rs.15,06,05,576/- (CGST- Rs.7,53,02,788/- & SGST- Rs.7,53,02,788/-) : 2019-20 Rs.19,41,30,164/- (CGST- Rs.70,65,082/-) : 2020-21 Rs.36,13,82,470/- (CGST - Rs.18,06,91,235/- & SGST – Rs.18,06,91,235/-)), as detailed in (RUD-16) to the notice, in contravention of the provisions of Section 16(2)(b) of the CGST Act, 2017.

*In view of the above, ITC of Rs. 77,36,28,252/- {(2017-18-s.6,75,10,042/- (CGST-Rs.3,37,55,021/- & SGST-RS.3,37,55,021/-) 2018-19-Rs.15,06,05,576/- (CGST- Rs.7,53,02,788/- & SGST- Rs.7,53,02,788/-): 2019-20-Rs.19,41,30,164/- (CGST-Rs.9,70,65,082/-): 2020-21 – Rs.36,13,82,470/- (CGST – Rs.18,06,91,235/- & SGST-Rs.18,06,91,235/-)} as detailed in (RUD-16) to the notice is liable to be demanded and recovered from the noticee under Section 74 of the CGST Act, 2017 alongwith applicable Interest under Section 50(3) of the Act, *ibid.*”*

10. All the remaining demands are factual in nature based upon the returns of the Petitioner.

11. In the opinion of this Court, the impugned order being an appealable order under Section 107 of the Central Goods and Service Tax Act, 2017, various facts and documents would be required to be gone into to ascertain as to whether any of the demands are justified or not. The same would be beyond the scope of writ jurisdiction which this Court is presently exercising.

12. However, insofar as the appeal under Section 107 of the Central Goods and Service Tax Act, 2017 is concerned, there is a mandatory pre-deposit that is imposed by the statute of 10 % that would be required to be deposited by the Petitioner. The discussion in paragraph 34 (1) of the impugned order would show that at best even if the impugned order is correct, the question would be whether the availment of ITC would be *qua* IGST or *qua* SGST/CGST. The availment of ITC itself does not appear to be



in question even as per the impugned order itself.

13. Under these unique and peculiar circumstances, the Petitioner is relegated to avail of its appellate remedy under Section 107 of the Central Goods and Service Tax Act, 2017, in accordance with law.

14. In so far as the pre-deposit *qua* paragraph 34 (l) of the impugned order, in respect of availment of ITC is concerned, the same is waived as the entitlement to avail ITC appears to be not in doubt.

15. The Petitioner is permitted to file the appeal before the concerned Appellate Authority within a period of six weeks along with the pre-deposit in terms of statute except in respect of the amount mentioned in paragraph 34 (l) of the impugned order for the amount of Rs. 77,36,28,252/-.

16. The Appellate Authority would consider all the facts and determine whether the ITC is wrongly availed of and whether the Order-in-Original is liable to be interfered with. The Petitioner shall be bound by the said determination subject to any remedies it may avail of. Contentions of all parties are left open.

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

**PRATHIBA M. SINGH
JUDGE**

**RAJNEESH KUMAR GUPTA
JUDGE**

MAY 21, 2025/MR/ck