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

\+ **W.P.(C) 4846/2025**

TECHNO CANADA INC .....Petitioner

Through: Mr.N.K Kantawala, Mr. Abhishek Dutta, Mr, Siddharth Vardhman, Mr.Nishant Kantawala and Mr. Amaya M Nair, Advocates.

versus

UNION OF INDIA & ORS. .....Respondents

Through: Mr. Sushil Kumar Pandey, SPC with Ms. Richa Pandey, Ms. Neha Yadav and Mr. Vaibhav Soni, Advocates for R-1.
Mr. Ruchesh Sinha, Advocate for R-2 to 4.

CORAM:
JUSTICE PRATHIBA M. SINGH
JUSTICE RAJNEESH KUMAR GUPTA

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

% **17.04.2025**

1. This hearing has been done through hybrid mode.

<u>CM APPL. 22182/2025 (for exemption)</u>

2. Allowed, subject to all just exceptions. Application stands disposed of.

<u>W.P.(C) 4846/2025, CM APPLs. 22181/2025 & 22183/2025</u>

3. The present writ petition has been filed by the Petitioner- M/s Techno Canada Inc. under Article 226 of the Constitution of India, *inter alia*, assailing the impugned Order-in-Original bearing no. 46/RK/ADC/CGST/2024-25 dated 23rd January, 2025 passed by the Respondent No.4 - Additional Commissioner, Circle-7, CGST, Delhi South Commissionerate (hereinafter, '*impugned order*'). *Vide* the said impugned order, demands due to excess availment of Input Tax Credit (hereinafter, '*ITC*') has been made against the

Petitioner and penalties have also been imposed.

4. The submission of Mr.N.K Kantawala, ld. Counsel for the Petitioner is two-fold. Firstly that there was no fraud or wilful-misstatement of fact on behalf of the Petitioner and therefore, the extended period of limitation could not have been invoked by the Central Goods and Service Tax (hereinafter, '*CGST*') Department.

5. Secondly, ld Counsel submits that there are glaring errors evident from the record, which indicate that certain documents, though duly filed by the Petitioner and referred to in the impugned order, have erroneously been recorded as not having been filed or considered.

6. It is further submitted by the ld. Counsel for the Petitioner that the question in the present case is to whether the Goods and Service Tax (hereinafter, '*GST*') was payable at the rate of 12% or 18% and the same is a clear issue of law which can be decided by this Court.

7. On behalf of the Respondent it is submitted that this is clearly appealable order under Section 107 of the Central Goods and Service Tax Act, 2017 (hereinafter, '*CSGT Act*') and therefore, the Petitioner ought to be relegated to the Appellate Authority.

8. A perusal of the impugned order would show that there is a detailed discussion as to the nature of services which the Petitioner has provided and the reasons as to why the department is of the opinion that the higher rate of tax would be applicable.

9. The question as to whether there was fraud and wilful-misstatement of fact on behalf of the Petitioner or not would require an analysis of the facts and various returns which were filed by the Petitioner, which cannot not be done in a writ petition.

10. In fact the impugned order is clearly an appealable order under Section 107 of the CGST Act and the Appellant ought to be relegated to the appropriate appellate remedy so that all the issues which have been raised today can be raised before the Appellate Authority.

11. The Court is of the opinion that the nature of the matter and the records that would be required to be perused in a challenge to the impugned order, would not be the scope in a petition under Article 226 of the Constitution of India.

12. The Petitioner is accordingly relegated to the appellate remedy under Section 107 of the CGST Act.

13. Needless to add, that the pre-deposit condition, under Section 74(5) of the CGST Act as exists on the statute book today would be liable to be paid by the Petitioner on the tax demanded and not on the penalties, if the appeal is filed within the next 30 days from today.

14. Mr. Kantawala also submits that whenever there is a classification dispute, the same cannot not be a wilful-misstatement.

15. All the above contentions shall be agitated by the Petitioner before the Appellate Authority who shall consider the same on their merits.

16. The petition is disposed of in above terms. Pending applications, if any, are also disposed of.

17. Needless to add, that this Court has not considered the merits of the present case.

PRATHIBA M. SINGH, J.

RAJNEESH KUMAR GUPTA, J.

APRIL 17, 2025/v/ck