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* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ W.P.(C) 5582/2025

M/S HARSH KHANNA AND SONS HUFPetitioner

Through: Mr. Akhil Krishan Maggu, Mr. Vikas Sareen, Mr. Ayush Mittal, Ms. Maninder Kaur, Ms. Oshin Maggu and Ms. Yashika Kaushik, Advocates.

versus

ASSISTANT COMMISSIONER LAXMI NAGAR
DIVISION GST DELHI EAST COMMISSIONERATE

.....Respondent

Through: Mr. Pranay Mohan Govil, Senior Standing Counsel.

CORAM:
JUSTICE PRATHIBA M. SINGH
JUSTICE RAJNEESH KUMAR GUPTA

ORDER
% 01.05.2025

1. This hearing has been done through hybrid mode.

CM APPL. 25472/2025 (for exemption)

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

W.P.(C) 5582/2025 & CM APPL. 25471/2025 (for stay)

3. The present petition has been filed by the Petitioner – M/s Harsh Khanna and Sons HUF under Articles 226 and 227 of the Constitution of India, *inter alia*, seeking issuance of an appropriate writ assailing the Show Cause Notice bearing Reference No. ZD071124032468I dated 27th November, 2024 (hereinafter, ‘SCN’) issued by the Respondent- Assistant Commissioner, Laxmi Nagar Division, CGST Delhi East Commissionerate



and Order-in-Original bearing No. 70/MSM/ADJ/AC/2024-25 dated 25th February, 2025 passed by the Respondent (hereinafter, ‘*impugned order*’).

4. The impugned order raises a demand in respect of the Input Tax Credit (hereinafter, ‘*ITC*’) availed by the Petitioner to the tune of Rs. 70,45,630/-.

The operative portion of the order reads as under :

“(i) I confirm the demand of ITC of Rs. 70,45,630/- (IGST - Rs.67,31,943/-, CGST - Rs. 1,56,844/-, SGST - Rs. 1,56,843/-) (Rupees Seventy Lakh Forty Five Five Thousand Six Hundred and Thirty only) in violation of Section 16(4), 16(5) and 16(6) of the CGST Act, 2017 and order that the same be recovered from the Noticee under Section 73 of the CGST Act 2017 / DGST Act 2017 read with Section 20 of IGST Act 2017 and Rule 121 of the CGST Rules, 2017.

(ii) I hereby order for the recovery of interest at the appropriate rates on the tax amount mentioned at Sr.No.(i) above from the Noticee under Section 50 of the CGST ACT, read with responding section of the IGST Act, 2017 and SGST act, 2017;

(iii) I hereby order for the recovery of interest amounting to Rs. 2,01,218/- for delayed filing of GSTR 3B returns for the FY 2020-21 under Section 50 of the CGST ACT, read with corresponding section of the IGST Act, 2017 and SGST act, 2017;

(iv) I impose penalty of Rs.7,04,563/- (IGST -Rs. 6,73,194/-, CGST - Rs.15,684.5/-, SGST - Rs. 15,684.5/-) on the Noticee under Section 73 (9) of the CGST /DGST Act, 2017 read with Section 20 of IGST Act 2017 for wrong availment of ITC.

Assistant Commissioner
Laxmi Nagar Division
CGST Delhi (E) Commissionerate”

5. The issue that has arisen is in respect of the Petitioner’s belated filing of returns, which were to be filed by 30th November, 2021 but were filed on



14th December, 2021. Since the deadline under Section 16(5) of the Central Goods and Service Tax Act, 2017 (hereinafter, ‘CGST Act’) to file the returns is 30th November, 2021, the availment of the ITC has not been permitted to the Petitioner and hence, the demand has been raised.

6. A SCN was issued to the Petitioner on 27th November, 2024 along with personal hearing notices, however, the Petitioner did not file a reply or appear in the hearings, leading to passing of the impugned order.

7. The submissions of Mr. Akhil Krishan Maggu, Id. Counsel appearing for the Petitioner is that the delay of 14 days ought to be condoned and the demand deserves to be quashed as even the late payments charges have already been deposited by the Petitioner.

8. In the opinion of this Court, the question as to what is the effect of non-filing of returns within the prescribed period and whether there was a lapse on the Petitioner in even curing the deficiencies which were pointed out by the deficiency memo etc., would be factual aspects, which would have to be appreciated by the Appellate Authority.

9. The impugned order is appealable order under Section 107 of the CGST Act. The difficulty that the Petitioner expresses is that since no reply was filed, there are no documents on record on behalf of the Petitioner.

10. Accordingly, the Petitioner is permitted to avail of the appellate remedy under Section 107 of the CGST Act.

11. In the appeal, the Petitioner may file any documents it is relying upon in order to support its case.

12. The appeal shall be filed along with the pre-deposit.

13. The Appellate Authority shall consider the matter on merits itself and not dismiss it on the ground of limitation. The appeal shall be filed within 45



days.

14. The petition is disposed of in these terms. Pending application(s), if any, also stand disposed of.

PRATHIBA M. SINGH, J.

RAJNEESH KUMAR GUPTA, J.

MAY 1, 2025/nd/ck