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

\+ **W.P.(C) 5703/2025, CM APPL. 26027/2025 & CM APPL. 26028/2025**

KMG INDUSTRIAL TRADERS PVT. LTD & ANR. .....Petitioners

Through: Mr. Pradeep Jain & Shubhankar Jha, Advs. (M: 9212023661)

versus

THE ADDITIONAL COMMISSIONER ADJUDICATION, CGST .....Respondent

Through: Ms. Monica Benjamin, SSC, Ms. Nancy Jain, Adv. (M: 8882573792)

CORAM:
JUSTICE PRATHIBA M. SINGH
JUSTICE RAJNEESH KUMAR GUPTA

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

% 01.05.2025

1. This hearing has been done through hybrid mode.

<u>CM APPL. 26028/2025 (for exemption)</u>

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

<u>W.P.(C) 5703/2025 & CM APPL. 26027/2025 (for stay)</u>

3. The present petition has been filed by the Petitioner– M/s KMG Industrial Traders Pvt. Ltd. challenging the Order-in-Original No. 84/ADJ-DGG1/DN/2024-25 dated 27th January, 2025*(hereinafter, 'the impugned order')* passed by the Officer of the Principal Commissioner of Central GST, Delhi North *(hereinafter, 'the Department')*, wherein a demand to the tune of Rs.27.15 crores has been raised against the Petitioner.

4. The allegation of the Department is that the fake input tax credit

(hereinafter, 'ITC') has been passed by five firms i.e., M/s Delta Agrotech Pvt. Ltd., M/s Galux International, M/s Shriram Overseas, M/s Y. M. Foodways Pvt. Ltd. and M/s Sant Overseas to M/s KMG Industrial Traders Pvt. Ltd. i.e., the Petitioner firm in terms of the Goods and Service Tax *(hereinafter, 'GST')* returns.

5. The case of Mr. Jain, ld. Counsel for the Petitioner is two fold:

i. *Firstly*, that the reply filed by the Petitioner on 15th April, 2024 in response to the show cause notice bearing no. SCN-03/AKM/22-23 issued u/s 74 of Central Goods and Service Tax Act, 2017 dated 31st March, 2023 has not been considered by the Department;

ii. *Secondly*, it is submitted that the personal hearing notices were also not duly served upon the Petitioner within the stipulated time.

6. Ms. Benjamin, Ld. Senior Standing Counsel for the Department objects to the entertaining of this petition by this Court on the ground that the personal hearing notices were repeatedly served upon the Petitioner. In fact, on one of the dates fixed for personal hearing, i.e., 14th January, 2025, the Petitioner took an adjournment through their counsel.

7. Ld. Counsel for the Department further submits that since the impugned order is an appealable order, the Petitioner shall be relegated to the appellate remedy.

8. This Court has heard the submissions made by the parties. It is noticed that the Petitioner has already deposited Rs.2.5 crores with the Department on 16th September, 2020, which forms a substantial part of the 10% pre-deposit which has to be furnished mandatorily in order to file an appeal under Section

107 of the Central Goods and Service Tax Act, 2017 *(hereinafter, 'the CGST Act').*

9. Accordingly, let the Petitioner approach the appellate authority under Section 107 of the CGST Act along with the remaining pre-deposit amount within 30 days. If the Petitioner approaches the appellate authority with the pre-deposit as directed, the appellate authority shall consider the interim reply filed by the Petitioner of 15th April, 2024, as also any other documents which the Petitioner may wish to submit in support of his case. After such consideration, the appellate authority shall adjudicate the appeal on merits.

10. If the appeal is filed within 30 days along with the balance pre-deposit amount, the same shall not be dismissed on the ground of limitation and shall be adjudicated on merits.

11. All rights and remedies of the Petitioners are left open.

12. The petition is disposed of in these terms. Pending applications, if any, are also disposed of.

PRATHIBA M. SINGH, J.

RAJNEESH KUMAR GUPTA, J.

MAY 1, 2025
dj/ss