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

+ **W.P.(C) 6919/2025 & CM APPL. 31310/2025**

M/S KEI INDUSTRIES LIMITED

.....Petitioner

Through: Mr. V. Lakshmikumaran, Mr.
Yogendra A., Mr. Kund Kapoor & Ms.
Purvi Sinha, Advocates.

versus

UNION OF INDIA & ORS.

.....Respondents

Through: Mr. Kshitij Chhabra, Senior Panel
Counsel.
Mr. Shlok Chandra, SSC with Mr.
Ujjwal Jain, Advocates, (M-
9999670588)

CORAM:

JUSTICE PRATHIBA M. SINGH

JUSTICE RAJNEESH KUMAR GUPTA

ORDER

% **22.05.2025**

1. This hearing has been done through hybrid mode.

CM APPL. 31311/2025 (for exemption)

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

W.P.(C) 6919/2025 & CM APPL. 31310/2025

3. The present petition has been filed by the Petitioner – M/s Kei Industries Limited under Article 226 of the Constitution of India, *inter alia*, assailing the Order-in-Original bearing No. DE/GST/ADC(JR)/219/2024-25 dated 31st January, 2025 passed by the Adjudicating Authority *i.e.* Additional Commissioner, Central GST, Delhi East.

4. The short question that arises in the present petition is whether any payment of Integrated Goods and Services Tax (hereinafter, 'IGST') was



required in respect of those expenses which were incurred by the Petitioner but were not cross-charged with the other entities.

5. Mr. V. Lakshmikumaran, Id. Counsel for the Petitioner relies upon the **Circular No. 199/11/2023-GST** dated 17th July, 2023 issued by the Central Board of Indirect Taxes and Customs (hereinafter, 'CBIC') by which the Board has clarified as under:

2	<i>In respect of internally generated services, there may be cases where HO is providing certain services to the BOs for which full input tax credit is available to the concerned BOs. However, HO may not be issuing tax invoice to the concerned BOs with respect to such services, or the HO may not be including the cost of a particular component such as salary cost of employees involved in providing said services while issuing tax invoice to BOs for the services provided by HO to BOs. Whether the HO is mandatorily required to issue invoice to BOs under section 31 of CGST Act for such internally generated services, and/or whether the cost of all components including salary cost of HO employees involved in providing the said services has to be included in the computation of value of services provided by HO to BOs when full input tax credit is available to the concerned BOs.</i>	<i>The value of supply of services made by a registered person to a distinct person needs to be determined as per rule 28 of CGST Rules, read with sub-section (4) of section 15 of CGST Act. As per clause (a) of rule 28, the value of supply of goods or services or both between distinct persons shall be the open market value of such supply. The second proviso to rule 28 of CGST Rules provides that where the recipient is eligible for full input tax credit, the value declared in the invoice shall be deemed to be the open market value of the goods or services. Accordingly, in respect of supply of services by HO to BOs, the value of the said supply of services declared in the invoice by HO shall be deemed to be open market value of such services, if the recipient BO is eligible for all inputs tax credit.</i> <i>Accordingly, in cases where full input tax credit is available to a BO, the value declared on the invoice by HO to the said BO in respect of a supply of services shall be deemed to be the open market value of such services, irrespective of the fact whether cost of any particular component of such services, like employee cost etc., has been included or not in the value of the services in the invoice.</i> <i>Further, in such cases where full input tax credit is available to the recipient, if HO has not issued a tax invoice to the BO in respect of any particular services being rendered by HO to the said BO, the value of such services may be deemed to be declared as Nil by HO to BO, and may be deemed as open market value in terms of second proviso to rule 28 of CGST Rules.</i>
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6. Ld. Counsel also relies upon the decision of the Co-ordinate Bench of this Court in ***Metal One Corporation India Pvt. Ltd. & Ors. v. Union of India & Ors., 2024: DHC: 8298-DB***. The Co-ordinate Bench of this Court in the said judgment held that if the charge is NIL, in that case demand would not be payable. In the said case, the Show Cause Notice as also consequent Order-in-Original have been quashed.

7. Ld. Counsel Mr. Chandra, appearing for the Respondent, relies upon a similar case in ***W.P. (C) 3602/2025*** titled '***Filatex India Ltd. v. Additional Commissioner Central Goods and Service Tax Central Delhi East***' wherein the Court while adjudicating a case in respect of ***Circular No. 199/11/2023-GST*** dated 17th July, 2023 had relegated the party to the appellate remedy.

8. The Court has considered the matter. A perusal of the Order-in-Original clearly shows that there were no cross-charges of expenses with the other entities. Moreover, the second proviso to Rule 28 of the Central Goods and Services Tax Rules, 2017 has been applied without giving benefit of the ***Circular No. 199/11/2023-GST*** and consideration to the said circular.

9. Under such circumstances this Court of the view that the Adjudicating Authority needs to reconsider the matter in the light ***Circular No. 199/11/2023-GST*** dated 17th July, 2023 and the judgment in ***Metal One Corporation India Pvt. Ltd. & Ors. (Supra)*** where the Court observed as under:

“14. In the facts of the present writ petitions, it is conceded that no invoices were generated. In view of the above and in light of the explicit terms of the Circular, the value of the service rendered would have to be treated as „Nil’. This would lead one to the inescapable conclusion of no perceivable or plausible tax



liability possibly being created. Consequently, we are of the considered opinion that the proceedings initiated in terms of the impugned SCNs' and their continuance would be futile and impractical. The impugned SCNs are essentially rendered impotent and would serve no practical purpose."

10. Accordingly, the Adjudicating Authority shall afford a hearing once again to the Petitioner and pass a fresh order in the light of the **Circular No. 199/11/2023-GST** dated 17th July, 2023 and the judgement passed in **Metal One Corporation India Pvt. Ltd. & Ors. (Supra)**.
11. The present petition is disposed of in these terms. Pending applications, if any, are also disposed of.
12. All rights and remedies of the Petitioners are left open.

PRATHIBA M. SINGH, J.

RAJNEESH KUMAR GUPTA, J.

MAY 22, 2025/da/ck