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

Date of Decision: 22nd May, 2025

+ **W.P.(C) 7044/2025**

PREETI KHANNA PROP HIYA SALESPetitioner

Through: Mr. Ruchir Bhatia & Mr. Abhishek
Anand, Advocates.

versus

ADDITIONAL COMMISSIONER OF CENTRAL GOODS AND
SERVICES TAX DELHI NORTH & ANR.Respondents

Through: Mr. R. Ramachandran, Sr. Standing
Counsel with Mr. Prateek Dhir,
Advocates.

CORAM:

JUSTICE PRATHIBA M. SINGH

JUSTICE RAJNEESH KUMAR GUPTA

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through hybrid mode.

CM APPL. 31815/2025 (for exemption)

2. Allowed. Subject to all just exceptions. The application is disposed of.

W.P.(C) 7044/2025 & CM APPL. 31816/2025

3. The present petition has been filed by the Petitioner under Articles 226 & 227 of the Constitution of India, *inter alia*, challenging the impugned order dated 1st February, 2025, *vide* which demand has been raised against the Petitioner in respect of wrongful availment of Input Tax Credit (‘ITC’).

4. The Show Cause Notice dated 13th July, 2024, was issued to 650 parties, wherein the allegation was that one M/s Marabha Overseas Pvt. Ltd. had undertaken overvaluation of goods to claim export incentives. Another



connected company namely, M/s. Dev Sales Corporation was also under investigation, however, a search warrant issued in respect of the registered address of the said firm could not be executed since the said firm was not operating at the said registered address. The said firm's PAN number, mobile number and email IDs were analysed and it was revealed that a total of 160 firms had registered on the same mobile numbers and email IDs on the GST portal. The said 160 firms were found to have been issued good-less invoices having taxable value collectively amounting to Rs. 8393 Crores with ineligible Input Tax Credit equivalent to Rs. 1025.51 Crores. Thus, there was a complete network of fake / non-existing firms, through which fraudulently ITC was being availed.

5. Insofar as the Petitioner - Ms. Preeti Khanna is concerned, she is the proprietor of the firm - M/s. Hiya Sales Corporation, which was one of the firms that had allegedly availed of the ITC and hence, there was a demand raised against her.

6. The submission of Mr. Bhatia, Id. Counsel for the Petitioner is that this is the second time that the same transaction between the Petitioner and M/s. Radhey Enterprises has been made subject matter of a show cause notice under Section 74 of the Central Goods and Services Act, 2017. In the first round, the show cause notice was issued on 13th July, 2022 and the Order-in-Original was passed on 26th June, 2024. In the said Order-in-Original, a demand of Rs. 16,29,986/- towards inadmissible ITC of CGST and DGST was confirmed along with penalty.

7. The said Order-in-Original was carried in appeal before the First Appellate Authority, wherein *vide* Order-in-Appeal dated 29th October, 2024, the appeal was allowed and the Order-in-Original was set aside. Mr. Bhatia,



ld. Counsel submits that the same transaction cannot become subject matter of the second show cause notice and hence the entire proceeding itself deserves to be quashed.

8. In addition, it is submitted that the second show cause notice was not received by the Petitioner and it was actually served on the Petitioner only on 20th January, 2025, just a few days before the passing of the impugned order.

9. Mr. R. Ramachandran, ld. Sr. Standing Counsel appearing for the Department submits that the second show cause notice was emailed to the Petitioner on 27th July, 2024. A copy of the email has been placed on record. As per the Department, the said email was also uploaded on the GST portal and a reply was also filed by the Petitioner. Thereafter, the impugned order has been passed, as per the Department.

10. Heard ld. Counsel for the parties. The allegations in the impugned order are quite serious. There is a complete network of firms which are alleged to be involved in fraudulent availment of ITC. The Petitioner is the proprietor of one such entity. Insofar as the Petitioner is concerned, in the first round when the show cause notice was issued, it was concerned only with the transactions involving the Petitioner's proprietary concern and M/s Radhey Enterprises. However, the subject matter of the second show cause notice and the impugned order is of a much bigger network of entities alleged to be fraudulently availing the ITC, running into more than Rs.1,000 crores.

11. The Court is of the opinion that there cannot be a comparison between these two kinds of transactions. The impugned order is itself an appealable order under Section 107 of the CGST Act and therefore, the Petitioner ought to avail of the appellate remedy before approaching this Court invoking its writ jurisdiction.



12. Mr. Bhatia, Id. Counsel for the Petitioner, at this stage submits that in the earlier round of litigation, the Petitioner had deposited 10 percent of the demand as pre-deposit with the Appellate Authority. No refund has been taken of the said amount. It is prayed that the said amount be adjusted towards the pre-deposit to be made in respect of the appeal against the impugned order.

13. Accordingly, it is directed that the earlier pre-deposit made with the Appellate Authority, be adjusted towards the pre-deposit for appeal against the impugned order. The Petitioner may file the appeal by 15th July 2025, in which case the appeal shall be adjudicated on merits and shall not be dismissed on the ground of being barred by limitation.

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

15. All rights and contentions of the both parties are left open.

PRATHIBA M. SINGH
JUDGE

RAJNEESH KUMAR GUPTA
JUDGE

MAY 22, 2025/da/msh