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

Date of Decision: 28th May, 2025

\+ **W.P.(C) 7414/2025**

PANKAJ GARG .....Petitioner

Through: Mr. Vikas Jain, Mr. Aviral Saxena, Mr. Hardik Jayal, Ms. Shrawani and Mr. Nilesh Singh, Advocates.

versus

SALES TAX OFFICER CLASS-II WARD 77, ZONE 7, DELHI .....Respondent

Through: Mr. Sumit K. Batra, Advocate for GNCTD.

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. 33238/2025 (for exemption)

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

W.P.(C) 7414/2025 & CM APPL. 33237/2025 (for stay)

3. The present petition has been filed by the Petitioner – Pankaj Garg under Articles 226 and 227 of the Constitution of India seeking to quash the Document/Show Cause Notice dated 19th November, 2024 along with its attachments, as also seeking to quash the *ex-parte* order dated 19th February, 2025 (hereinafter '*impugned order*') passed under Section 73(9) of the Central Goods and Services Tax Act (hereinafter *'the Act'*).

4. The present case is a curious case where the Petitioner seeks to describe the Document/Show Cause Notice dated 19th November, 2024 and summary thereof, issued by the Respondent-Delhi GST Department (hereinafter *'Department'*), as not being a valid Show Cause Notice under Section 73 of the Act on two grounds;

(i) that the title of the Show Cause Notice reads - `Summary of Show Cause Notice'; and

(ii) that there is actually no Show Cause Notice given to the Petitioner.

5. Mr. Vikas Jain, ld. Counsel appearing for the Petitioner submits that the Department has in fact not served any Show Cause Notice on the Petitioner and, therefore, the Petitioner was not under any obligation to reply to the same. The reason why ld. Counsel argues so, is because, apart from the Form GST DRC-01, there is merely a summary which is attached to the said Form and there is no Show Cause Notice which is attached. Ld. Counsel has taken pains to take the Court through two decisions in support of his case, which are as under :

(i) ***Construction Catalysers vs. State of Assam [W.P.(C) 3912/2024 decided on 26th September, 2024];***

(ii) ***Metal Forgings and Another vs. Union of India [(2003) 2 SCC 36].***

6. He has also placed on record other sample notices which are issued by the Department, which are titled as Show Cause Notice under Section 73 of the Act, which in this case has not been issued. Hence the said document, according to the ld. Counsel for the Petitioner, cannot be treated as a Show Cause Notice that has been duly issued to the Petitioner.

7. Mr. Sumit K. Batra, ld. Counsel appearing for Department firstly submits that this is a case where the Input Tax Credit (hereinafter *'ITC'*) has been availed by the Petitioner from cancelled dealers, defaulters and non-payers of tax. The two entities from whom ITC has been availed of are *Mangal International* and *Gupta Metals*.

8. It is submitted that Mangal International is the Sole Proprietorship concern of one Mr. Rahul Kumar, who has given a statement to the Department that his PAN Card has been wrongly utilized and in fact, he has not had any transaction with the Petitioner. However, on a query from the Court, Mr. Batra, ld. Counsel concedes that the title of the document is, in fact, wrongly described as '*Summary of Show Cause Notice*'.

9. The Court has heard the matter. It is noticed that the proceedings emanate from a letter which is uploaded on the dashboard of the Petitioner's GST portal. For ease of reference, a screenshot of the portal is extracted below :

Notices and Orders | 77 | Additional Notices and Orders

Type of Notice/Order	Description	Ref ID	Date of Issuance	Action
DETERMINATION OF TAX	Order for Determination of Tax	ZD0702250449657	19/02/2025	View
DETERMINATION OF TAX	Intimation of issue of reminder in Form GST DRC-01	ZD070225033232X	14/02/2025	View
DETERMINATION OF TAX	Intimation of issue of reminder in Form GST DRC-01	ZD070125002121B	02/01/2025	View
DETERMINATION OF TAX	Intimation of issue of reminder in Form GST DRC-01	ZD071224025813M	24/1[illegible]	View
DETERMINATION OF TAX	Show Cause Notice and Summary thereof in Form GST DRC-01	ZD0711240162107	19/11/2024	View
DETERMINATION OF TAX	Order for proceedings dropped	ZD0708241127781	31/08/2024	View
VOLUNTARY PAYMENT	Acknowledgement of acceptance	ZD0708241127690	31/08/2024	View
DETERMINATION OF TAX	Intimation of issue of reminder in Form GST DRC-01	ZD070824011106Q	03/08/2024	View
DETERMINATION OF TAX	Show Cause Notice and Summary thereof in Form GST DRC-01	ZD070524044016O	29/05/2024	View
DETERMINATION OF TAX	Show Cause Notice and Summary thereof in Form GST DRC-01	ZD070322018153Y	29/03/2022	View

10. A perusal of the above image clearly indicates that the document dated

19th November, 2024, has been described as a '*Show Cause Notice and summary thereof in Form GST DRC-01*'. However, in light of the contentions raised, it is not sufficient to rely solely on the screenshot reflecting the document's title; rather, the contents of the document itself need to be examined to determine its true character and legal sufficiency. Therefore, the Document in dispute is also extracted below:

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FORM GST DRC - 01

[See rule 100(2) & 142(1)(a)]

Reference No. - ZD0711240162107 Date - 19-11-2024

To

GSTIN/ID: 07AKEPG1947J1Z5
Name: PANKAJ GARG
Address : 1/1536/D-12, GROUND FLOOR, GALI NO 4, FRIENDS COLONY SHAHDARA, East Delhi, Delhi, 110095

Tax Period : APR 2020 - MAR 2021 F.Y.- 2020-2021

Act/ Rules Provisions - CGST/SGST ACT 2017

Section / sub-section under which SCN is being issued - 73

Summary of Show Cause Notice

(a) Brief Fact of the Case : AS PER ATTACHMENT

(b) Grounds : AS PER ATTACHMENT

(c) Tax and other dues :

(Amount in Rs.)

Sr. No.	Tax Rate (%)	Turnover	Tax Period		Act	POS (Place of Supply)	Tax	Interest	Penalty	Fee	Others	Total
			From	To								
1	2	3	4	5	6	7	8	9	10	11	12	13
1	0	0.00	APR 2020	MAR 2021	SGST	NA	12,06,937.00	8,98,755.00	1,20,694.00	0.00	0.00	22,26,386.00
2	0	0.00	APR	MAR	CGST	NA	12,06,937.	8,98,755.00	1,20,694.00	0.00	0.00	22,26,386.00

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			2020	2021			00					
Total							24,13,874.00	17,97,510.00	2,41,388.00	0.00	0.00	44,52,772.00

Show Cause Notice is attached.

Supporting documents attached by officer:

Ward_77_7_2020-21_07AKEPG1947J1Z5_0_20241119_085312_344.pdf : SCN

Details of personal hearing and due date to file reply:

Sr. No.	Description	Particulars
1	Date by which reply has to be submitted	20-12-2024
2	Date of personal hearing	23-12-2024
3	Time of personal hearing	11:00 am
4	Venue where personal hearing will be held	WARD 77 8TH FLOOR (DT&T)

Signature
Name: Manoj Kumar
Designation: Sales Tax Officer Class II / AVATO
Jurisdiction: Ward 77:Zone 7:Delhi

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Department of Trade & Taxes
Government of N.C.T. of Delhi

Attachment to Show Cause Notice

Office details Designation of the assessing officer Ward Zone	GSTO Ward 77 7
Details of the Tax payer Name Legal Name GSTIN	M/S DARSH INDUSTRIES PANKAJ GARG 07AKEPG1947J1Z5
Financial Year	2020-21

You have filed annual return in GSTR-09 for the financial year **2020-21**.

On examination of the information furnished in this return under various heads and also the information furnished in GSTR-01, GSTR-2A, GSTR-3B, EWB and other records available in this office it is found that you have not declared your correct tax liability while filing the annual returns of GSTR-09. The summary of under declared tax is as follows:

SGST Rs.**2226386**
CGST Rs.**2226386**
IGST Rs.**0**
CESS Rs.**0**
Total Rs.**4452772**

The details of the above tax liability are as follows:

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1. Excess claim of ITC:

The excess input tax credit (ITC) claimed on account of non-reconciliation of information

Under Sec 16(2)(c) every registered person shall be entitled to take credit of ITC on supply of goods or services to him subject to the condition that the tax charged in respect of such supply has been actually paid to the Government either in cash or through utilization of ITC admissible in respect of such supply.

It is observed that the taxpayer has not correctly availed input tax on his inward supplies on reconciliation of turnovers in GSTR-09.

· Scrutiny of ITC availed:

S.No	Description	SGST	CGST	IGST	CESS	Total
1	2	3	4	5	6	7
1	ITC in the current FY as per Table 8A of GSTR-09	12539653	12539653	106	0	25079412
2	ITC from ISD (GSTR-2A/6G of GSTR-09)	0	0	0	0	0
3	ITC from import (GSTR-2A/8G of GSTR-09)	0	0	0	0	0
4	ITC availed against inward Supplies liable to Reverse Charge (RCM) 4A(3) [other than 4A(1) & 4A(2)]	0	0	0	0	0
5	Reversals in Table 4B of GSTR-3B	40461	40461	0	0	80922
6	ITC carried forward from current FY to subsequent FY, Table 8C of GSTR-09	-173276	-173276	106	0	-346446
7	ITC Available for use in the current FY (S.No. 1+2+3+4-5-6)	12672468	12672468	0	0	25344936
8	ITC availed in current FY as per 4C of GSTR-3B	12712929	12712929	0	0	25425858
9	Net excess ITC availed (S. No. 8-7)	40461	40461	0	0	80922

· ITC claimed from cancelled dealers, return defaulters & tax non payers:

Under Sec 16(2)(c) every registered person shall be entitled to take credit of ITC on supply of goods or services to him subject to the condition that the tax charged in respect of such supply has been actually paid to the Government either in cash or through utilization of ITC admissible in respect of such supply.

However as seen from the office records, it is observed that you have taken ITC from the tax payers who have not paid tax on their outward supplies to you.

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S.No	Issue	SGST	CGST	IGST	CESS	Total
1	2	3	4	5	6	7
1	Supplier registration cancelled before date of invoice	1166476	1166476	0	0	2332952
2	Supplier failed to file GSTR-3B and did not pay tax on the invoices declared in GSTR-01	0	0	0	0	0
3	Supplier filed GSTR-3B with Nil turnover and did not declare or pay tax corresponding to the invoices declared in GSTR-01	0	0	0	0	0
4	Total(S.NO. 1+2+3)	1166476	1166476	0	0	2332952

The above amount of ITC is proposed to be recovered.

Summary :

The total tax payable on account of these deficiencies after giving credit to the payments made in cash and ITC adjusted is arrived as follows:

S.No	Act	Total tax due in (Excess claim of ITC) above	Interest	Penalty	Total (3+4+5)
1	2	3	4	5	6
1	SGST	1206937	898755	120694	2226386
2	CGST	1206937	898755	120694	2226386
3	IGST	0	0	0	0
4	CESS	0	0	0	0
5	Total	2413874	1797510	241388	4452772

(The detailed workings of the above in tabular form are attached as annexures for reference)

Therefore, it is proposed to assess the registered taxpayer for the net tax payable indicated above under Section 73 of the CGST/SGST/IGST Act. The registered taxpayer may therefore pay the tax along with interest and penalty as per applicable provisions of CGST/SGST/IGST Act and Rules and reply accordingly in DRC06 within stipulated time. The reply filed will be considered before passing the final assessment orders.

Sd /-

Proper Officer

MANOJ KUMAR Digitally signed by MANOJ KUMAR Date: 2024.11.19 15:41:18 +05'30'

11. A perusal of the above document reveals that while the document

Signature Not Verified
Signed By:NAMITA DHYANI
Signing Date:02.06.2025 17:54:25

description on the portal is accurate, the title of the document at page no.78 incorrectly reads '*Summary of Show Cause Notice*'. The appropriate title ought to have been '*Show Cause Notice under Section 73 of the Act*'. Furthermore, a review of page no. 80 also shows that this is a summary of the Show Cause Notice, wherein the tax heads have been mentioned and the declared tax has also been mentioned. Further, page nos. 81 to 82 of the petition, after giving all the details of the various heads, under which tax has been demanded concludes as under :

> *"Therefore, it is proposed to assess the registered taxpayer for the net tax payable indicated above under Section 73 of the CGST/SGST/IGST Act. The registered taxpayer may therefore pay the tax along with interest and penalty as per applicable provisions of CGST/SGST/IGST Act and Rules and reply accordingly in DRC06 within stipulated time. The reply filed will be considered before passing the final assessment orders."*

12. A conjoint perusal of the above documents clearly shows:

(a) that there is a notice under Section 73 of the Act;

(b) It is described as a Show Cause Notice in the dashboard;

(b) that the Title wrongly states summary of Show Cause Notice;

(c) that a reply is expected from the Assessee.

After having perused the above documents, it is clear that any Assessee, who is regularly using the GST portal clearly would know that the description on the same is stated as show cause notice and summary thereof;

13. Further, the following aspects are also relevant:

(i) The watermark on the disputed document clearly states '*Notice*' as is done so in most Show Cause Notices that are duly served.

(ii) Three reminder notices are issued, which also clearly state as under:

"***<u>With reference to the show cause notice referred above</u>***, *neither you have filed any reply, nor you have appeared on the date mentioned in the notice to explain the reasons for the charges mentioned therein"*

"***<u>With reference to the show cause notice referred above</u>***, *neither you have filed any reply, nor you have appeared on the date mentioned in the notice to explain the reasons for the charges mentioned therein."*

"***<u>With reference to the show cause notice referred above</u>***, *neither you have filed any reply, nor you have appeared on the date mentioned in the notice to explain the reasons for the charges mentioned therein."*

These three reminders which have been issued describe the disputed document as a *'Show Cause Notice'*.

14. The Gauhati High Court in its judgment in ***Construction catalysers (supra)*** observed as under :

"29. On the basis of the above analysis and determination, this Court disposes of the instant batch of writ petitions with the following observations and directions:-

(A) The Summary of the Show Cause Notice in GST DRC-01 is not a substitute to the Show Cause Notice to be issued in terms with Section 73 (1) of the Central Act as well as the State Act. Irrespective of issuance of the Summary of the Show Cause Notice, the Proper Officer has to issue a Show Cause Notice to put the provision of Section 73 into motion.

(B) The Show Cause Notice to be issued in terms with Section 73 (1) of the Central Act or State Act cannot be confused with the Statement of the determination of tax to be issued in terms with Section 73 (3) of the Central Act or the State Act. In the instant writ petitions, the attachment to the Summary of Show

> *Cause Notice in GST DRC-01 is only the Statement of the determination of tax in terms with Section 73 (3). The said Statement of determination of tax cannot substitute the requirement for issuance of the Show Cause Notice by the Proper Officer in terms with Section 73 (1) of the Central or the State Act. Under such circumstances, initiation of the proceedings under Section 73 against the petitioners in the instant batch of writ petitions without the Show Cause Notice is bad in law and interfered with."*

15. A perusal of the above judgment reveals that in the matter under consideration, only a DRC-01 along with a summary was furnished to the Petitioner, and no formal Show Cause Notice was issued. It was in those specific circumstances that the Show Cause Notice was quashed. However, the facts of the present case are clearly distinguishable. It is well settled that an incorrect description of a document, by itself, does not negate its substantive content. In such situations, it is the substance of the document that must prevail over its form. The dashboard is clear, the watermark with the word '***notice***' is clear and prominent and there can be no doubt that the document in question was a notice under Section 73 of the Act. A form DRC-01 is itself in the nature of a notice to show-cause. The said summary states that it is a Show Cause Notice under Section 73 of the Act. The reminders which were given to the Petitioner also made it clear that the earlier document was a Show Cause Notice. Under such circumstances, the plea that the document is not a Show Cause Notice is a completely frivolous and a specious plea being taken by the Petitioner, to simply justify the non-filing of its reply.

16. While there is no doubt that the Department ought to take adequate precaution to ensure that such errors of misdescription do not occur, what appears to be merely an inadvertent error, in the light of all the accompanying

documents and circumstances cannot be the basis for seeking quashing. In view thereof, this Court is of the opinion that the impugned order does not warrant interference in exercise of writ jurisdiction. In the totality of circumstances, this Court is unable to accept the Petitioner's contention that the disputed document is merely a summary and not a Show Cause Notice, solely on the ground of an inadvertent misdescription in the title.

17. At this stage, ld. Counsel for the Petitioner prays for time to file an appeal challenging the impugned order. Considering the impugned order is an appealable order under Section 107 of the Act, the Petitioner is permitted to file an appeal along with the requisite pre-deposit by 15th July, 2025.

18. If the same is filed within the stipulated time, it shall not be dismissed on the ground of being barred by limitation and shall be adjudicated on merits.

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

PRATHIBA M. SINGH
JUDGE

RAJNEESH KUMAR GUPTA
JUDGE

MAY 28, 2025/*nd/Ar.*