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

Date of Decision: 19th August, 2025

\+ **W.P.(C) 8206/2024**

HEAL HEALTH CONNECT SOLUTIONS PRIVATE LIMITED THROUGH ITS DIRECTOR MR DIVYA SRIVASTAVA .....Petitioner

Through: Mr. Rakesh Kumar & Mr. Parveen Kumar Gambhir, Advs.

versus

THE COMMISSIONER DELHI GOODS AND SERVICES TAX AND ORS .....Respondents

Through: Mr. K.G. Gopalakrishnan, Adv.

CORAM:
JUSTICE PRATHIBA M. SINGH
JUSTICE SHAIL JAIN

<u>Prathiba M. Singh, J.</u> (Oral)

1. This hearing has been done through hybrid mode.

2. The present petition has been filed by the Petitioner under Articles 226 and 227 of the Constitution of India, *inter alia* challenging the validity of ***Notification no. 09/2023 – Central Tax*** (*hereinafter 'impugned notification')* dated 31st March, 2023, as also the Show Cause Notice (*hereinafter 'SCN'*) dated 05th December, 2023 and Demand Order dated 20th February, 2024 (*hereinafter 'impugned order'*).

3. At the outset, Mr. Rakesh Kumar, ld. Counsel submits that in this petition, the challenge to impugned Notification is not pressed and the same may be subject to outcome of the decision by the Supreme Court in ***S.L.P. (C) No. 4240/2025*** titled ***M/s HCC-SEW-MEIL-AAG JV v. Assistant Commissioner of State Tax & Ors.***

4. In so far as the SCN is concerned, the same has been raised on various following heads.

(i) Reconciliation of GSTR-01 with GSTR-3B
(ii) The excess input tax credit (ITC) claimed on account of non-reconciliation of information declared in GSTR-3B
(iii) Excess ITC availed in GSTR-3B compared to the tax on inward supplies declared by the suppliers
(iv) Invalid ITC under Sec 16(4)

5. Ld. Counsel for the Petitioner thereafter informs that the ground no. (i) as raised in the SCN has been dropped in the impugned order. In so far as ground no. (iii) is concerned, it is his submission that, in view of Section 16(4) of the Central Goods and Services Tax Act of 2017 (*hereinafter 'the Act'*) the said Input Tax Credit (*hereinafter 'ITC'*) has been rejected i.e., for filing of the return beyond the prescribed period. The ITC claimed is for the period February 2019 and March 2019. It is the ld. Counsel's submission that in view of Section 16(5) of the Act, the limitation has been extended till 30th November, 2021.

6. Mr. Gopalakrishnan, ld. Counsel submits that the order is appealable under Section 107 of the Act and therefore the Petitioner ought to be relegated to avail the Appellate remedy.

7. In response, ld. Counsel for the Petitioner submits that the Petitioner is willing to avail the appellate remedy, but the pre-deposit may be waived, as the Petitioner is entitled to substantial amount of ITC.

8. The Court has considered the matter. Section 16(5) of the Act reads as under:

> *"Section 16. Eligibility and conditions for taking input tax credit.-*
>
> *(1) Every registered person shall, subject to such conditions and restrictions as may be prescribed and in the manner specified in section 49, be entitled to take*

credit of input tax charged on any supply of goods or services or both to him which are used or intended to be used in the course or furtherance of his business and the said amount shall be credited to the electronic credit ledger of such person.

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(4) A registered person shall not be entitled to take input tax credit in respect of any invoice or debit note for supply of goods or services or both after the 6[thirtieth day of November] following the end of financial year to which such invoice or 7[****] debit note pertains or furnishing of the relevant annual return, whichever is earlier.

8[Provided that the registered person shall be entitled to take input tax credit after the due date of furnishing of the return under section 39 for the month of September, 2018 till the due date of furnishing of the return under the said section for the month of March, 2019 in respect of any invoice or invoice relating to such debit note for supply of goods or services or both made during the financial year 2017-18, the details of which have been uploaded by the supplier under sub-section (1) of section 37 till the due date for furnishing the details under sub-section (1) of said section for the month of March, 2019.]

[(5) Notwithstanding anything contained in sub-section (4), in respect of an invoice or debit note for supply of goods or services or both pertaining to the Financial Years 2017-18, 2018-19, 2019-20 and 2020-21, the registered person shall be entitled to take input tax credit in any return under section 39 which is filed up to the thirtieth day of November, 2021."

9. The amendment, in Section 16(5) of the Act, is clear to the effect that for the Financial Year 2018-19, the limitation for filing returns is extended till 30th

November, 2021. On the other hand, the Adjudicating Authority has proposed to impose the demand based on the following reasoning:

*"• **Invalid ITC under Sec 16(4)***
Under Sec. 16(4) of the CGST & SGST Acts, 2017, a registered person shall not be entitled to take input tax credit for supply of goods or services after the due date of furnishing the return under Sec. 39 for the month of September, Apr 18-Mar 19 (FY) i.e., 20 Oct, 2019. However, it is observed that, you have availed input tax credit after this due date. Therefore, you are not entitled to the ITC claimed in the GST 3B return as below:

S. No.	*Tax Period*	*Dt. Of filing of return*	*ITC Claimed*				
			SGST	*CGST*	*IGST*	*CESS*	*Total*
1	*2*	*3*	*4a*	*4b*	*4c*	*4d*	*4e*
1	*Feb, 2019*	*2019-10-25*	*9122*	*9122*	*22703*	*0*	*40947*
2	*Mar, 2019*	*2019-10-25*	*360581*	*360581*	*8261*	*0*	*729423*

The above amount of ITC is proposed to be recovered."

10. A bare perusal of the reasoning makes it clear that the relevant financial year in the present case is FY 2018-19 and Section 16(5) clearly extends the period for filing returns up till 30th November, 2021. The reasoning given is therefore, *prima facie* not sustainable However, the Court would not like to make a final order, as the entire order is an appealable order.

11. In the unique facts of this case, where *prima facie*, the Court is of the view that the Petitioner is entitled to credit/refund of ITC, the pre-deposit is waived.

12. All rights and contentions of parties are left open.

13. The Petitioner may approach the Appellate Authority by 15th October, 2025. The Appellate Authority shall consider the matter without being affected by the observations of this Court in today's order.

14. The access to the portal, if already not available, shall be made available to the Petitioner within one week to download any documents which he may require. If the appeal is filed within the stipulated time it shall not be dismissed on the ground of limitation and shall be adjudicated on merits.

15. It is further made clear that the decision of the Appellate Authority shall be subject to the decision of the Supreme Court in ***S.L.P. (C) No. 4240/2025*** titled ***M/s HCC-SEW-MEIL-AAG JV v. Assistant Commissioner of State Tax & Ors.***

16. The petition and pending applications, if any, are disposed of in the above terms.

PRATHIBA M. SINGH
JUDGE

SHAIL JAIN
JUDGE

AUGUST 19, 2025/*pd/Ar.*