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

\+ **W.P.(C) 9288/2025, CM APPL. 39299/2025 & CM APPL. 39300/2025**

JAI SHREE RAW MATERIAL THROUGH ITS PROPRIETOR MR. SUMIT KUMAR .....Petitioner

Through: Mr. Rakesh Kumar and Mr. Parveen Gambhir, Advs. (M:9811595510, 9810220294)

versus

COMMISSIONER OF CENTRAL GOODS AND SERVICE TAX AND ANR. .....Respondents

Through: Mr. Harpreet Singh, Sr. Standing Counsel with SI SAtyam PS GK-I.

CORAM:
JUSTICE PRATHIBA M. SINGH
JUSTICE RAJNEESH KUMAR GUPTA

O R D E R

% 08.07.2025

1. This hearing has been done through hybrid mode.

CM APPL. 39299/2025 (for exemption)

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

W.P.(C) 9288/2025 & CM APPL. 39300/2025

3. The present petition has been filed by the Petitioner challenging the impugned order dated 14th January, 2025 by which a demand has been raised upon the Petitioner to the tune of Rs.2,55,346/-.

4. One of the grounds raised as the basis of the demand, is that M/s Phinix Impex, from whom the ITC was availed of for the financial years 2017-18, was a non-existent firm.

5. Ld. Counsel for the Petitioner submits that the Petitioner had filed a

reply to the Show Cause Notice dated 2nd August, 2024. The said reply was filed by the Petitioner on 2nd October, 2024. However, in the impugned order it is recorded that no reply was filed by the Petitioner. Relevant portion of the impugned order is set out below:

> *"12. I have carefully gone through the facts of the case, the allegations as per the subject SCN, though the Noticee neither appeared for personal hearing nor submitted any kind of written submissions and also the relevant legal provisions.*
>
> *13. Before delving further into the case, I note that neither the Noticee nor his authorized representative appeared for Personal Hearing despite the numerous opportunities were provided to them in the matter.* ***The Noticee has also not submitted their reply to the SCN.*** *Hence, I am of the considered view that in the present case, Principles of Natural Justice as well as Principles of Adjudication have been duly followed and ample opportunities have been provided to the Noticees to put forth their defence in personal hearing. Thus, I have no option but to adjudicate the present case ex-parte on the basis of records available. The role of the Noticee is quintessentially to be understood and considered as per the evidences available on record, if any, in the entire gambit of the case."*

6. A perusal of the record would show that there was, in fact, a reply filed by the Petitioner dated 2nd October, 2024, which appears to have not been considered while passing the impugned order.

7. The impugned order is an appealable order under Section 107 of the Central Goods and Service Tax Act, 2017.

8. Considering the fact that the reply filed by the Petitioner dated 2nd October, 2024, appears to not have been considered by the Adjudicating

Authority, let the Petitioner approach the Appellate Authority along with the requisite pre deposit within a period of six weeks.

9. If the appeal is filed by the Petitioner under Section 107 of the Central Goods and Service Tax Act, 2017, within six months, the same shall be considered on merits and shall not be dismissed on grounds of limitation. The Appellate Authority shall also consider the reply filed by the Petitioner.

10. The petition, along with pending applications, is disposed of in the above terms.

PRATHIBA M. SINGH, J.

RAJNEESH KUMAR GUPTA, J.

JULY 8, 2025/*dk/ss*