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

\+ **W.P.(C) 11467/2025 & CM APPL. 47072/2025**

SAAD MINHAJ PROP. OF M/S ELEVARA ENGINEERS .....Petitioner

Through: Mr. Wahaj Ahmad Khan and Mr. Monis Khan, Advs.

versus

SALES TAX OFFICER CLASS II/AVATO AND ANR .....Respondents

Through: Ms. Urvi Mohan, Adv. for GNCTD / Respondent-1

CORAM:
JUSTICE PRATHIBA M. SINGH
JUSTICE SHAIL JAIN

O R D E R

% 04.08.2025

1. This hearing has been done through hybrid mode.

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2. Allowed, subject to all just exceptions. Accordingly, the application is disposed of.

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3. The present petition has been filed by the Petitioner under Article 226 of the Constitution of India, *inter alia*, assailing the impugned order dated 20th February, 2025 by which a demand has been raised against the Petitioner for the period April, 2020 to March, 2021 to the tune of Rs.46,65,228/-.

4. The various grounds on which the Show Cause Notice (hereinafter, '*SCN*') was issued to the Petitioner on 27th November, 2024 are as under:

(i) Reconciliation of turnover in GSTR-07 with supplies declared in GSTR-09;

(ii) The excess Input Tax Credit (hereinafter, '*ITC*') claimed on account of non-reconciliation of information;

(iii) ITC claimed from cancelled dealers, return defaulters and tax nonpayers.

5. A reminder was issued by the Respondent No.1 on 22nd January, 2025, and a personal hearing was also fixed. A reply to the SCN was filed by the Petitioner on 27th January, 2025. In the said reply, the stand of the Petitioner is that for a work contract of this nature, the Petitioner was eligible for a concessional rate of 12% and not 18%. The Petitioner further sought to explain the reconciliation through the reply. Insofar as the other issues are concerned, the submission of the Petitioner was that ITC could be availed of even if the recipient was a cancelled dealer subsequently.

6. The grievances submitted by Mr. Wahaj Ahmad Khan, ld. Counsel for the Petitioner, is that the reply filed by the Petitioner has not been considered by the Adjudicating Authority.

7. The Court has perused the impugned order. Insofar as the responses are concerned, the impugned order records as under:

> ***"Reconciliation of turnover in GSTR-07 with supplies declared in GSTR-09:***
>
> ***<u>Observations and conclusion of the assessing authority :</u>***
>
> *Specific reasons entered*
> *The reply has been examined on the basis of record available on the portal and submission/record provided by the taxpayer and it has been observed that the reply pf the taxpayer is not satisfactory. It has been observed tha that the turnover in GSTR-07 (return filed by TDS deductors) of outward supplies is still greater than the GSTR-09. Therefore, the demand is upheld as per working of DRC 01/SCN.*
> *XXXX*

Scrutiny of ITC availed:

<u>Observations and conclusion of the assessing authority :</u>
Not Agreed with Tax Payer
Specific reasons entered

The reply has been examined on the basis of record available on the portal and submission/record provided by the taxpayer and it has been observed that the reply of the taxpayer is not satisfactory. It has been observed that the taxpayer has not correctly availed input tax on his inward supplies on reconciliation of turnovers in GSTR-09. 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 changed 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. lt has been observed that the taxpayer has not correctly declared tax on his outwards supplies on reconciliation of turnovers in GSTR 09. Therefore, the demand is upheld as per working of DRC 01/SCN.

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<u>ITC claimed from cancelled dealers, return defaulters & tax non payers;</u>
Reason:

…….It is observed that taxpayer has taken ITC from 1 cancelled dealer whose registration is cancelled suo-moto from the DOR hence all the ITC passed by him becomes ineligible. Moreover, the reply of taxpayer is not satisfactory and not provided substantial document, hence, the taxpayer is liable to pay the requisite tax. As seen from the office records, it is observed that taxpayer has taken ITC from the taxpayers who have not paid tax on their outward supplies to them. In light of the above, the demand js upheld as per working of DRC 01.”

8. A perusal of the above would show that the reply has been considered

– may be not to the satisfaction of the Petitioner. However, that by itself cannot be a ground to entertain a writ petition when the order is an appealable order. Moreover, the Petitioner has approached this Court even after the period for filing of the appeal has expired in terms of Section 107 of the Central Goods and Service Tax Act, 2017. However, ld. Counsel for the Petitioner submits that Petitioner is willing to go in appeal if liberty can be granted by the Court.

9. The Court has perused the impugned order, as also heard the ld. Counsels for the parties. The issues raised would require a factual scrutiny of various returns and also the question as to whether the Petitioner is entitled to the concessional rate or not, which is to be determined by the Authorities.

10. Under these circumstances, the Court is not inclined to entertain the present writ petition and grants liberty to the Petitioner to file an appeal.

11. Let the appeal be filed by the 31st August, 2025 along with the requisite pre-deposit.

12. The same shall not be dismissed on the ground of limitation and shall be adjudicated on merits.

13. The writ petition along with the pending applications, is disposed of.

PRATHIBA M. SINGH, J.

SHAIL JAIN, J.

AUGUST 4, 2025/kp/ck