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\$~88 & 47

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

Date of decision: 09th October, 2025

+ **W.P.(C) 15509/2025**

M/S MOMS CRADLE PRIVATE LIMITEDPetitioner
Through: Mr. Ritaj Kacker, Mr. Deepansh
Dhanija & Ms. Divya Rastogi, Adv.
versus

UNION OF INDIA & ANR.Respondents
Through: Mr. Ruchesh Sinha, SSC with Ms.
Upasana Vashishtha, Adv.

47 AND

+ **W.P.(C) 12251/2025**

M/S MOMS CRADLE PRIVATE LIMITEDPetitioner
Through: Mr. Ritaj Kacker, Mr. Deepansh
Dhanija & Ms. Divya Rastogi, Adv.
versus

THE UNION OF INDIA & ANR.Respondents
Through: Mr. Ruchesh Sinha, SSC with Ms.
Upasana Vashishtha, Adv.

CORAM:
JUSTICE PRATHIBA M. SINGH
JUSTICE SHAIL JAIN

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through hybrid mode.

CM APPL. 63458/2025 in W.P.(C) 15509/2025 (for exemption)

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



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3. The Petitioner - M/s Moms Cradle Private Limited (hereinafter "*Petitioner Company*") has filed **W.P.(C) 12251/2025** challenging the impugned order dated 25th February, 2025 passed under Section 54(11) of the Central Goods and Services Tax, 2017 (hereinafter "*the Act*"), whereby the refund which was granted in favour of the Petitioner Company has been withheld by the GST Department.

4. **W.P.(C) 15509/2025** has been preferred by the Petitioner Company seeking a prayer for permitting the Petitioner Company to file a statutory appeal against the Order-in-Original dated 4th February, 2025.

5. The brief facts leading to these petitions are that the Petitioner Company, which is a company engaged in the export of readymade garments, was registered under the Act with effect from 01st November, 2018. The Petitioner Company is stated to have made an export against six shipping bills after payment of IGST and, was therefore claims refund of the said amount to the tune of Rs.78,29,825/-.

6. Refund was not being granted by the GST Department and writ petition being **W.P.(C) No. 4463/2020** was filed by the Petitioner Company. This Court had directed *vide* order dated 13th August, 2020 that the Department ought to take a decision as to whether the IGST is to be released to the Petitioner Company, as also whether to permit the duty drawback to be claimed by the Petitioner Company.

7. The Petitioner Company then claimed a refund of the IGST, *qua* which, discrepancies were raised from time to time. Finally *vide* order dated 29th May,



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2023, the IGST refund was rejected by the GST Department. Against the said order an appeal was preferred by the CGST Department. The Appellate Authority allowed the appeal partially to the tune of Rs.32,52,301/- which is the amount being prayed for refunded in **W.P.(C) 12251/2025**. The relevant portion of the order reads:

“The appeal filed by M/s Moms Cradle Pvt. Ltd., B-49, New Janki Puri, Uttam Nagar, West Delhi, Delhi 110059 against Order-in-Original No. ZK0705230437853 dated 29.05.2023 is hereby allowed upto the extent of refund of Rs.3252301/-. The impugned order dated 29.05.2023 is set aside upto that extent. The appeal is disposed of in terms of Section 167(12) of CGST Act, 2017.”

8. In the said writ petition, *vide* order dated 13th August, 2025, notice was issued and on 19th August, 2025, Mr. Sinha, Id. SSC had made a submission that the refund is being withheld in view of an order passed raising a demand *qua* fraudulent availment of Input Tax Credit (hereinafter “ITC”).

9. The writ petition being **W.P.(C) 15509/2025** has now been filed praying for permission to file a statutory appeal against the Order-in-Original dated 4th February, 2025 raising the aforesaid demand for fraudulent availment of ITC. The prayer is made on the ground that the Petitioner Company’s director was severely unwell and due to a lapse the said Order-in-Original could not be verified. It is also submitted that the copy of the Order-in-Original that has been uploaded on the portal is unclear and illegible.

10. It is submitted by Mr. Sinha, Id. SCC that the Director of the Petitioner Company had in fact participated during the proceedings conducted by the



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Adjudicating Authority before passing of the said Order-in-Original. The said Director's statement was also recorded to the following effect:

"I RAJ KUMAR DIR- M/S MOMS CRADLE PRIVATE LIMITED received your summon dated 31.01.2024, Please find my reply as per annexure attached in summon.' In the mentioned companies, I have only deal

with 3 firms

- 1. M/S M.V. Trading with GST no. 07AFKPG5789D1Z7*
- 2. M/S RITZ MERCHANDISE WITH GST NO. 07AAXFR0404N1ZR*
- 3. M/S BALAJI MERCHANDISE WITH GST NO. 07AASFB5957H1ZK*

Please find the attached bank statement for the relevant period of transaction occur with mentioned firms.

Please note that since may 2018, all export incentives including DUTY DRAWBACK, RI RATE ON STATE LEIVED, AND GST REFUND ALSO is pending. I have not availed any of GST input credit. An intensive investigation is carried out by your department in June 2019 and in December 2019 department gave us NOC bearing reg. No. DW/GST/AE/PE/BETA/MCPL/234/2019/17038-40 DT. 05.12.2019.

All document asked by you in summon is already submitted while investigation to this department twice. Here I am submitting same document third time to department. Please accept the document. Feel free to ask any other paper if required."

11. The said order was not challenged by the Petitioner within the statutory period of three months, extendable by another month by the Appellate Authority, in terms of Section 107 of the Act.

12. As per Mr. Kacker, Id. Counsel for the Petitioner Company, the said



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Order-in-Original did not come to the knowledge of the Petitioner and hence, the prayer is for permitting the Petitioner to file the appeal under Section 107 of the Act. The further prayer is that, some part of the refund, which is to be granted, may be adjusted *qua* the pre-deposit for filing of the appeal.

13. On the other hand, Mr. Sinha, Id. SSC objects to the entertaining of this writ petition. He submits that the refund, though being processed, now no longer deserves to be paid to the Petitioner Company inasmuch as the said refund amount would be liable to be adjusted in respect of the demand raised against the Petitioner Company to the tune of Rs. 42,76,000/-, as the refund amount is less than the amount demanded from the Petitioner.

14. Mr. Sinha, Id. SSC, also raises a vehement objection to the manner in which the true facts are not being placed before the Court. He submits that the Order-in-Original dated 05th February, 2025 was duly communicated to the Petitioner Company by email as per the registered Email Address- rajkumar2313@gmail.com on 05th February, 2025 at 00.01 hours. The said order was also emailed to various other parties, who were the co-noticees for the said order. Thus, the Petitioner has always had knowledge of this order and to argue that the Petitioner came to know of the said order only when the refund writ was listed before this Court on 19th August, 2025 would be a completely misleading and false statement.

15. Heard Id. Counsels for the parties. The short question is whether the Petitioner would be entitled to be permitted for filing an appeal under Section 107 of the Act. Under Section 107 of the GST Act, an appeal would be liable to be filed within the limitation period, which is three plus one months, *i.e.*, four months in terms of Section 107(1) and (4) of the Act. The said provisions



read as under:

“107. Appeals to Appellate Authority.—(1) Any person aggrieved by any decision or order passed under this Act or the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act by an adjudicating authority may appeal to such Appellate Authority as may be prescribed within three months from the date on which the said decision or order is

communicated to such person.

[...]

(4) The Appellate Authority may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of three months or six months, as the case may be, allow it to be presented within a further period of one month.”

16. This provision has already been considered by the Co-ordinate Bench of this Court in ***W.P.(C) 14279/2024*** titled ***“M/s Addichem Speciality LLP Vs. Special Commissioner I, Department of Trade and Taxes and Anr.”*** wherein, the Court has observed as under:

*“64. A careful reading of the aforesaid decision would bring to the fore that the legislative intention to provide a specific period of limitation, thereby excluding the general applicability of the Limitation Act, 1963, must be respected. **The Supreme Court has observed that the plenary powers of the High Court cannot in any case exceed the jurisdictional powers under Article 142 of the Constitution of India, 1950, and even the Supreme Court cannot extend the period of limitation de hors the provisions contained in any statutory enactment.***

65. Section 107(4) firstly prescribes a general time frame within which an appeal may be preferred. Once



that period has elapsed, it stipulates that the appeal may be instituted within a further period of one month. The provision thus prescribes an additional period of one month within which an appeal may be instituted. That section however stops at that and does not allude to aspects such as sufficient cause or other similar factors which may have prevailed and led to the appeal not being lodged within the time prescribed. The provision thus clearly excludes the general principles which the law recognises as relevant for the purposes of

condonation of delay. It is this facet of Section 107(4) which appears to have weighed upon various High Courts to hold that the said provision excludes the principles underlying Section 5 and other provisions concerned with condonation contained in the Limitation Act. It is this facet which triggers Section 29 of the Limitation Act and results in the exclusion of the other provisions governing condonation contained in that statute.

[...]

69. In summary, the power to condone delay caused in pursuing a statutory remedy would always be dependent upon the statutory provision that governs. The right to seek condonation of delay and invoke the discretionary power inhering in an appellate authority would depend upon whether the statute creates a special and independent regime with respect to limitation or leaves an avenue open for the appellant to invoke the general provisions of the Limitation Act to seek condonation of delay. The facility to seek condonation can be resorted provided the legislation does not construct an independent regime with respect to an appeal being preferred. Once it is found that the legislation incorporates a provision which creates a special period of limitation and proscribes the same being entertained after a terminal date, the general provisions of the



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Limitation Act would cease to apply.

70. In view of the forgoing discussion, as it is evident that each of the appeals was filed beyond the prescribed period of limitation provided by Sections 107 (1) and 107 (4) of the CGST Act, the aforesaid writ petitions lack merit and are accordingly dismissed.”

17. In the present case, there has been no violation of the principles of natural justice as the Petitioner Company had duly participated in the proceedings before passing of the Order-in-Original dated 04th February, 2025. These facts ought to have been disclosed to the Court in either of the petitions.

18. The contention of the Petitioner is that the Order-in-Original dated 04th February, 2025 is not a legible order. If so, the Petitioner had a duty to approach the Department and obtain a legible order, if the Petitioner cannot completely ignore the fact that it had received a copy and had not filed an appeal challenging the same.

19. Be that as it may, as a matter of law, since the delay cannot be condoned, **W.P.(C) 15509/2025** would not be tenable. Accordingly, the same is dismissed. If there is any change in the legal position qua condonation of delay in filing appeals, as the Court is informed that the same is also pending consideration before the Supreme court, then the Petitioner is free to seek revival of the present writ petition.

20. Insofar as the **W.P.(C) 12251/2025** relating to refunds is concerned, let the refund order be passed and the same be adjusted against the demand raised against the Petitioner under Order-in-Original dated 4th February, 2025, in accordance with law.



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21. These petitions are disposed of in the above terms. All pending applications, if any, are also disposed of.

PRATHIBA M. SINGH
JUDGE

SHAIL JAIN
JUDGE

OCTOBER 9, 2025/pd/msh

Signature Not Verified

Signed By: SUNITA
KUMARI
Signing Date: 13.10.2025
18:06:56

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