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

\+ **W.P.(C) 17967/2025**

M/S SAWHNEY HANDLOOM .....Petitioner

Through: Mr. Rehan Narula and Mr. Sandeep Narula, Advs.

versus

CGST DELHI EAST COMMISSIONERATE & ANR. .....Respondent

Through: Ms. Naincy Jain, Adv. for R-1.
Ms. Anita & Ms. Swati Puri, Advs. for R-2.
Mr. Akash Panwar, Adv. for R-1 &3.

CORAM:
JUSTICE PRATHIBA M. SINGH
JUSTICE SHAIL JAIN

<u>O R D E R</u>

% **19.12.2025**

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 Order-in-Original dated 8th April, 2024 (hereinafter, *'impugned order'*) passed by the Adjudicating Authority by which the tax demand has been confirmed against the Petitioner to the tune of Rs.74,824/- and a penalty of Rs.10,000/- has been imposed.

3. A brief background of the present case is that the Petitioner had filed an application for cancellation of GST registration and *vide* order dated 19th May, 2022, Petitioner's GST registration was cancelled. Thereafter, a Show Cause Notice dated 11th December, 2023 (hereinafter, *'SCN'*) was issued to the Petitioner raising a tax demand of Rs. 74,824/- along with penalty. However, it is the Petitioner's case that the same was not received. The

impugned order was then passed confirming the tax demand and penalty against the Petitioner.

4. The submission on behalf of the Petitioner is that with the enactment of Section 16(5) of the Central Goods and Services Tax Act, 2017 (hereinafter, *'CGST Act'*), if the tax returns were filed prior to 30th November, 2021, the tax payer is entitled to take Input Tax Credit (hereinafter, *'ITC'*) in respect of four financial years *i.e.,* 2017-18, 2018-19, 2019-20 and 2020-21.

5. Thus, it is the submission of ld. Counsel for the Petitioner that in the present case, the impugned order would not sustain as the said provision has a retrospective effect.

6. On the last date of hearing *i.e.,* 27th November, 2025, ld. Counsel for the Respondent was directed to seek instructions.

7. Today, Ms. Jain, ld. Counsel has reverted with instructions and she submits that a proper mechanism for availment of ITC after the retrospective amendment of Section 16(5) of the CGST Act was put in place, however, the Petitioner did not avail of the said mechanism. In the facts of this case, it is noticed that Petitioner has not even filed a reply to the SCN despite the same having been served upon the Petitioner through email.

8. The stand of the Petitioner is that the email is unauthorized.

9. Heard. No tax payer who receives an email from the Department can simply remain silent and not reply to the same and, thereafter, file a writ petition challenging the final order which has been passed that too in such a belated manner.

10. In this case, the Petitioner did not file the reply to the SCN, did not attend any personal hearing and the impugned order was also passed on 8th April, 2024, but the challenge has been raised almost 18 months later. In the

opinion of this court the Petitioner has been recalcitrant in the manner in which it has dealt with the SCN. The Department cannot be faulted under such circumstances and for passing the impugned order.

11. At this stage, the Petitioner has been given the option to avail of the appellate remedy. However, the Petitioner submits that he would be willing to file a rectification and request for the Department to re-look in this matter.

12. In the opinion of this Court, this would be a proper course of action especially considering the fact that Section 16(5) of the CGST Act has been amended and the Petitioner may be entitled to some benefit under the said provision.

13. Under these circumstances, the writ petition is disposed of permitting the Petitioner to file a rectification application under Section 161 of the CGST Act by 15th January 2026.

14. If the rectification application is failed by 15th January, 2026 it shall not be dismissed on the ground of being barred by limitation and shall be adjudicated on merits.

15. In the said rectification application, the benefit being claimed under Section 16(5) of the CGST Act shall be set out in detail by the Petitioner and this argument of the Petitioner shall be considered by Department and a reasoned order shall be passed in view of the third proviso to Section 161 of the CGST Act.

16. A personal hearing shall also be granted to the Petitioner on the following email address and mobile no.:

- ***Email Address: narulalawfirm@gmail.com***
- ***Mobile: 8076434637***

17. In respect of the order passed under the rectification application, all

rights and remedies of the parties are left open to be availed of in accordance with law.

18. The rectification order shall be passed by the Department within a period of two months.

19. The petition is disposed of in these terms. Pending applications, if any, are also disposed of .

PRATHIBA M. SINGH, J.

SHAIL JAIN, J.

DECEMBER 19, 2025
dj/ck