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

Date of decision: 13th August, 2025

+ **W.P.(C) 12199/2025 & CM APPL. 49693/2025**

SURESH KUMAR

.....Petitioner

Through: Mr. Rajeev Aggarwal and Mr.
Shubham Goel, Advs.

versus

COMMISSIONER CGST DELHI NORTH

.....Respondent

Through: Mr. Aakarsh Srivastava, Adv.

CORAM:

JUSTICE PRATHIBA M. SINGH

JUSTICE SHAIL JAIN

JUDGMENT

1. This hearing has been done through hybrid mode.

CM APPL. 49692/2025

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

CM APPL. 49694/2025

3. This is an application for condonation of delay in refiling. For the reasons stated in the application, the delay is condoned. Application is disposed of.

W.P.(C) 12199/2025 & CM APPL. 49693/2025

4. The present petition has been filed by the Petitioner under Article 226 of the Constitution of India, *inter alia*, challenging the following:



| <i>S. No.</i> | <i>Show Cause Notice</i> | <i>Order</i> | <i>DRC-07</i> |
|---------------|------------------------------|--------------------------------|---------------------------------|
| 1. | 26 th July, 2024 | 16 th January, 2025 | 27 th January, 2025 |
| 2. | 3 rd August, 2024 | 1 st February, 2025 | 18 th February, 2025 |

5. Mr. Rajeev Aggarwal, Id. Counsel for the Petitioner submits that insofar as the first order dated 16th January, 2025 is concerned, the Petitioner is willing to prefer an appeal as the ground raised in this matter in respect of the said order is that it is being issued for multiple years. This issue now stands covered by decision of this this Court in ***Ambika Traders through Proprietor Gaurav Gupta v. Additional Commissioner, Adjudication DGGSTI, CGST Delhi North, 2025:DHC:6181-DB***, where the Court has held as under:

“Consolidated SCN for Multiple Financial Years

43. Insofar as the issue of consolidated notice for various financial years is concerned, a perusal of Section 74 of the CGST Act would itself show that at least insofar as fraudulently availed or utilized ITC is concerned, the language used in Section 74(3) of the CGST Act and Section 74(4) of the CGST Act is “for any period” and “for such periods” respectively. This contemplates that a notice can be issued for a period which could be more than one financial year. Similar is the language even in Section 73 of the CGST Act. The relevant provisions read as under:

“73. Determination of tax [, pertaining to the period up to Financial Year 2023-24,] not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for any reason other than fraud or any wilful-misstatement or suppression of facts.—



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(3) Where a notice has been issued **for any period** under sub-section (1), the proper officer may serve a statement, containing the details of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised **for such periods** other than those covered under sub-section (1), on the person chargeable with tax.

(4) The service of such statement shall be deemed to be service of notice on such person under sub-section (1), subject to the condition that the grounds relied upon for such tax periods other than those covered under sub-section (1) are the same as are mentioned in the earlier notice.

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74. Determination of tax [, pertaining to the period up to Financial Year 2023-24,] not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised by reason of fraud or any wilful-misstatement or suppression of facts.—

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(3) Where a notice has been issued **for any period** under sub-section (1), the proper officer may serve a statement, containing the details of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised **for such periods** other than those covered under sub-section (1), on the person chargeable with tax.

(4) The service of statement under sub-section (3) shall be deemed to be service of notice under sub-section (1) of section 73, subject to the condition that the grounds relied upon in the said statement, except the ground of fraud, or any wilful-misstatement or suppression of facts to evade tax, for periods other than those covered under sub-section (1) are the same as are mentioned in the earlier notice.”

44. Some of the other provisions of the CGST Act, which are relevant, include Section 2(106) of the CGST



Act, which defines “tax period” as under:

“2.[...] (106) “tax period” means the period for which the return is required to be furnished”

45. Thus, Sections 74(3), 74(4), 73(3) and 73(4) of the CGST Act use the term “for any period” and “for such periods”. This would be in contrast with the language used in Sections 73(10) and 74(10) of the CGST Act where the term “financial year” is used. The said provisions read as under:

“73.[...] (10) The proper officer shall issue the order under sub-section (9) within three years from the due date for furnishing of annual return for the financial year to which the tax not paid or short paid or input tax credit wrongly availed or utilised relates to or within three years from the date of erroneous refund”

“74.[...] 10) The proper officer shall issue the order under sub-section (9) within a period of five years from the due date for furnishing of annual return for the financial year to which the tax not paid or short paid or input tax credit wrongly availed or utilised relates to or within five years from the date of erroneous refund.”

The Legislature is thus, conscious of the fact that insofar as wrongfully availed ITC is concerned, the notice can relate to a period and need not to be for a specific financial year.

46. The nature of ITC is such that fraudulent utilization and availment of the same cannot be established on most occasions without connecting transactions over different financial years. The purchase could be shown in one financial year and the supply may be shown in the next financial year. It is only when either are found to be fabricated or the firms are found to be fake that the maze of transactions can be analysed and established as being fraudulent or bogus.



47. *A solitary availment or utilization of ITC in one financial year may actually not be capable of by itself establishing the pattern of fraudulent availment or utilization. It is only when the series of transactions are analysed, investigated, and enquired into, and a consistent pattern is established, that the fraudulent availment and utilization of ITC may be revealed. The language in the abovementioned provisions i.e., the word 'period' or 'periods' as against 'financial year' or 'assessment year' are therefore, significant."*

6. Insofar as the second order dated 1st February, 2025 is concerned, the only ground raised is of limitation. According to Id. Counsel for the Petitioner, the limitation period for passing the impugned order came to an end by 5th February, 2025. The impugned order is dated 1st February, 2025, but it was only uploaded along with the DRC-07 only on 18th February, 2025.

7. However, this position is disputed by Mr. Aakarsh Srivastava, Id. SSC for the Respondent who has furnished a copy of an e-mail dated 4th February, 2025 sent by the Additional Director General (North) to various noticees in the order dated 1st February, 2025. Id. SSC submits that Petitioner has received the said e-mail on 4th February, 2025 at the email address being '*mittal_k_satish@yahoo.co.in*'. The said email is taken on record.

8. It is submitted by the Id. Counsel for the Petitioner in response to this e-mail that the e-mail address appears to be of the chartered accountant of the Petitioner and may not be the registered e-mail of the Petitioner. Therefore, the same would not be adequate service under Section 169 of the Central Goods and Service Tax Act, 2017 (hereinafter, '*CGST Act*').

9. This Court in *W.P. (C) 4096/2025* titled '*M/s Raj International v. Additional Commissioner CGST Delhi West & Ors.*' vide decision dated 25th



April, 2025 had noticed that there was no uniform practice that was being followed by the GST Department in service of communications, notices, orders, etc. and accordingly in *M/s Raj International (Supra)* the Court had directed as under:

“5. The screen shot of the GST portal has been placed on record by the Petitioner which shows that the submissions of the Petitioner is clearly uploaded on the portal. Insofar as the Department is concerned, it is submitted by the ld. Senior Standing Counsel that the personal hearing notice was sent by email on the registered email address of the Petitioner. However, this fact is disputed by the Petitioner as he says that the said email was never received. The email dated 23rd January, 2025 is also placed on record.

6. Clearly, there appears to have been a miscommunication in this matter. The Petitioner’s written submissions have not been perused by the Department and the Department’s email has not been received by the Petitioner.

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11. The Department shall make an endeavour to ensure that in terms of Section 169 of the Central Goods and Services Act, 2017, assesseees are served through the common GST portal as also through their personal email and mobile number. In addition, the notice may also be sent through speed post so that situations as have arisen in this case, can be avoided in the future.

10. Further, the Madras High Court in the decision in *Udumalpet Sarvodaya Sangham, Represented by its Secretary, S.Thirumanasampandam, Udumalpet, Tiruppur District. v. The Authority,*



Under Shop and Establishment Act/ Deputy Commissioner of Labour, Coimbatore – 18 & Anr. in W.P.(MD)No.26481/2024 held as under:

“22. In such view of the matter, I am inclined to hold that Section 169 mandates a notice in person or by registered post or to the registered e-mail ID alternatively and on a failure or impracticability of adopting any of the aforesaid modes, then the State can, in addition, make a publication of such notices/ summons/ orders in the portal/ newspaper through the concerned officials.”

11. In the present case, firstly, the order itself is dated 1st February, 2025. Secondly, the e-mail which has been handed over shows that the impugned order has been communicated either to the Petitioner or to his Chartered Accountant. The said email was also served through email on several other Noticees against whom the demands were raised.

12. Thereafter, Form DRC-07 was uploaded on 19th February, 2025. Usually, there is a gap between the passing of the order and the uploading of the Form DRC-07 for each of the parties. In the present case, it is noticed that there are a total of 650 noticees and allegation pertains to fraudulent availment of Input Tax Credit (hereinafter, ‘ITC’) to the tune of Rs.173 crores.

13. When there are 650 noticees, obviously, the generation of DRC-07 for each of the noticees could take some reasonable time so long as the order has been communicated through e-mail or post or other modes as contained in Section 169 of the CGST Act. Accordingly, the delay in uploading Form DRC-07 or the order on the portal would not make the order barred by limitation.

14. *Prima-facie* this Court is of the opinion that e-mail dated 4th February, 2025 is sufficient mode of service. However, the impugned order being an



appealable order, the Petitioner is permitted to challenge the same by an appeal under Section 107 of the CGST Act. In the said appeal, the Petitioner is also permitted to raise the issue of limitation.

15. Let the appeals challenging the impugned orders be filed by 30th September, 2025 along with the requisite pre-deposit. If the same are filed by the said date, they shall not be dismissed on the ground of limitation and shall be adjudicated on merits.

16. The present writ petition is disposed of in above terms. Pending applications, if any, are also disposed of.

PRATHIBA M. SINGH
JUDGE

SHAIL JAIN
JUDGE

AUGUST 13, 2025/kp/ck