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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of decision: 30th May, 2025

+ **W.P.(C) 8028/2025 & CM APPL. 35217/2025**
M/S LALA SHIVNATH RAI SUMERCHAND CONFECTIONER
PRIVATE LIMITEDPetitioner

Through: Mr. Garuav Gupta, Adv.
(9811013940)

versus

ADDITIONAL COMMISSIONER, CGST DELHI-WEST, NEW
DELHIRespondent

Through: Ms. Monica Benjamin, SSC with Ms.
Nancy Jain, Adv.

CORAM:
JUSTICE PRATHIBA M. SINGH
JUSTICE RAJNEESH KUMAR GUPTA

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through hybrid mode.

CM APPL. 35218/2025

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

W.P.(C) 8028/2025 & CM APPL. 35217/2025

3. The present petition has been filed by the Petitioner- M/s Lala Shivnath Rai Sumerchand Confectioner Private Limited, *inter alia*, challenging the Show Cause Notice dated 05th August, 2025 (hereinafter, 'SCN') and Order-in-Original bearing no. 314/CGST WEST/GST/SKG/ADC/2024-25 dated 05th February, 2025 (hereinafter, '*impugned order*') for the Financial Year 2017-18. *Vide* the said order, the following demands have been raised:-

“(i) I confirm the demand of ineligible input tax credit



amounting to Rs 11,47,55,615/-(Rupees Eleven Crores forty-seven lakh fifty five thousand six hundred fifteen only) used for discharging outward tax liability for the financial year 2017-18 to 2022-23 in contravention to Notification No. 46/2017 Central Tax (Rate) dated 15.11.2017 from the Noticee, under the provisions of Section 74(1) of CGST Act, 2017 read with the SGST Act 2017 & IGST Act, 2017. I order to recover the same from the Noticee.

(ii) I confirm the demand of Short Payment of Rs. 17,13,756/- over the years from 2017- 18 to 2022-23 from the Noticee, under section 74(1) of CGST Act 2017 read with SGST Act ,2017 & Section-20 of IGST Act 2017. I order to recover the same from the Noticee.

(iii) I confirm the demand of Rs 14,94,27,762/-of ineligible ITC as discussed in Para No. 16 of this order, under section 74(1) of CGST Act 2017 read with SGST Act ,2017 and Section 20 of IGST Act,2017. I order to recover the same From the Noticee.

(iv) I confirm the amount of Rs.31,47,311/- excess availed & Utilized by the Noticee in their GSTR-3B as compare to GSTR-2A under section 74(1) of CGST Act, 2017 read with SGST Act, 2017 & Section-20 of IGST Act, 2017. I order to recover the same from the Noticee.

(v) I confirm the demand of Interest at appropriate rate under Section Section-50 of CGST & DGST Act, 2017 read with Section-20 of IGST Act ,2017 from the Notices in respect of the amount specified in (i), (ii), (iii) & (iv) above and I order to recover the same from the Noticee.

(vi) I Impose a penalty equivalent to the amount mentioned in (i), (ii), (iii) & (iv) above on the Noticee, under section-74(1) of CGST & DGST Act, 2017 read with Section-20 of IGST Act 2017 and I order to recover the same from the Noticee



(vii) I Impose a penalty of Rs. 25,000/- for CGST & Rs.25,000/- for SGST on the Noticee under Section-125 of CGST& DGST Act, 2017 read with Section-20 of IGST Act, 2017. I order to recover the same from the Noticee.

(viii) I refrain to impose any penalty under Section-122 in view of the provisions of Section 75(13) of 125 of CGST & DGST Act, 2017 read with Section-20 of IGST Act,2017 as penalty under Section-74 of CGST & DGST Act.2017.

54. The noticees are hereby informed that in terms of the Section 74(11) of the CGST Act. 2017 read with State GST Act, 2017, Where any person served with an order issued under sub-section (9) pays the tax along with interest payable thereon under section 50 and a penalty equivalent to fifty per cent of such tax within thirty days of communication of the order, all proceedings in respect of the said notice shall be deemed to be concluded.”

4. The short question that arises in the present petition is that the Petitioner runs a sweetmeat shop and a restaurant which is accompanying the same with about 30 persons seating. The SCN has been issued on the ground that a restaurant cannot avail of Input Tax Credit (hereinafter, ‘ITC’) as the GST charged on restaurants is only 5%. However, in the sweetmeat shop, the GST charges are higher.

5. The case of the Petitioner is that the sweetmeat shop is permitted to avail of the ITC and therefore, the SCN is untenable.

6. Mr. Gupta, Id. Counsel for the Petitioner has pointed to the Court that there is a double demand which has been raised in the matter firstly by utilizing the ITC availed of and secondly, by not allowing the ITC which has been availed of. This, according to the Petitioner, amounts to duplication and



calling for payment of the same amount twice over.

7. Ms. Benjamin, Id. SSC for the Respondent submits that the impugned order is an appealable order.

8. The impugned order has raised the following demands against the Petitioner:

“

Order

(i) I confirm the demand of ineligible input tax credit amounting to Rs 11,47,55,615/- (Rupees Eleven Crores forty-seven lakh fifty five thousand six hundred fifteen only) used for discharging outward tax liability for the financial year 2017-18 to 2022-23 in contravention to Notification No. 46/2017 Central Tax (Rate) dated 15.11.2017 from the Noticee, under the provisions of Section 74(1) of CGST Act, 2017 read with the SGST Act 2017 & IGST Act, 2017. I order to recover the same from the Noticee.

(ii) I confirm the demand of Short Payment of Rs. 17,13,756/- over the years from 2017- 18 to 2022-23 from the Noticee, under section 74(I) of CGST Act 2017 read with SGST Act ,2017 & Section-20 of IGST Act 2017. I order to recover the same from the Noticee.

(iii) I confirm the demand of Rs 14,94,27,762/- of ineligible ITC as discussed in Para No. 16 of this order, under section 74(1) of CGST Act 2017 read with SGST Act ,2017 & Section -20 of IGST Act,2017. I order to recover the same From the Noticee.

(iv) I confirm the amount of Rs.31,47,311/- excess availed & Utilized by the Noticee in their GSTR-3B as compare to GSIR-2A under section 74(1) of CGS1 Act, 2017 read with SGST Act, 2017 & Section-20 of IGST Act, 2017. I order to recover the same from the Noticee.

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(vi) I Impose a penalty equivalent to the amount mentioned in (i), (ii), (iii) & (iv) above on the Noticee, under section-74(l) of CGST & DGST Act, 2017 read with Section-20 of IGST Act 2017 and I order to recover the same from the Noticee

(vii) I Impose a penalty of Rs. 25,000/- for CGST & Ks.25.000/- tor SGST on the Noticee under Section-125 of CGST& DGST Act, 2017 read with Section-20 of IGST Act, 2017. I order to recover the same from the Noticee.

(viii) I refrain to impose any penalty under Section-122 in view of the provisions of Section- 75(13) of 125 of CGST & DGST Act, 2017 read with Section-20 of IGST Act,2017 as penalty under Section-74 of CGST & DGST Act.2017

54. The noticees are hereby informed that in terms of the Section 74(11) of the CGST Act. 2017 read with State GST Act, 2017, Where any person served with an order issued under sub-section (9) pays the tax along with interest payable thereon under section 50 and a penalty equivalent to fifty per cent of such tax within thirty days of communication of the order, all proceedings in respect of the said notice shall be deemed to be concluded.”

9. On a *prima facie* view, it appears that there would be duplication of two demands as demand qua reversal of availed ITC and demand qua utilisation of ITC would be one and the same thing. But both have been separately demanded in the impugned order. Accordingly, in the peculiar facts of the case, the Petitioner is relegated to the Appellate Authority. However, the pre-deposit shall be only in respect of demands under paragraphs (ii), (iii) & (iv) of the operative part of impugned order.

10. The appeal is permitted to be filed by 15th July, 2025 along with the



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requisite pre-deposit. If any deposits have already been made by the Petitioner, adjustment thereof shall be given *qua* the pre-deposit

11. If the same is filed within the time stipulated, the appeal shall be heard on merits and shall not be dismissed on the ground of being barred by limitation.

12. The petition is disposed of. Pending application(s), if any, also stand disposed of.

PRATHIBA M. SINGH
JUDGE

RAJNEESH KUMAR GUPTA
JUDGE

MAY 30, 2025
kk/ck