2026:DHC:4585-DB

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

*Date of decision: 17th April, 2026*

\+ W.P.(C) 5122/2026 & CM APPL. 25100/2026

**M/S FARDAR EXPRESS INDIA PVT. LTD.**
THROUGH ITS AUTHORISED SIGNATORY
MR. SURENDER KUMAR SHARMA
HAVING THEIR REGISTERED PRINCIPAL
PLACE OF BUSINESS AT
KH NO. 331/1/2, G/F,
RANGPURI ROAD,
NEW DELHI – 110037 **....PETITIONER**

Through: Mr. Nikhil Gupta, Ms. Neelam Murpana, Mr. Rochit Abhishek, Mr. Prince Nagpal and Mr. Devang Dwivedi, Advocates

Versus

1. **UNION OF INDIA**
THROUGH THE SECRETARY,
MINISTRY OF COMMERCE, GOVERNMENT OF INDIA,
CENTRAL SECRETARIAT,
NORTH BLOCK,
NEW DELHI-110 001 **…RESPONDENT NO.1**

2. **THE ADDITIONAL COMMISSIONER**
CGST DELHI SOUTH COMMISSIONERATE,
2ND & 3RD FLOOR, EIL ANNEXE BUILDING,
PLOT 2B, BHIKAJI CAMA PLACE,
NEW DELHI-110066. **…RESPONDENT NO.2**

3. **THE PRINCIPAL COMMISSIONER**

2026:DHC:4585-DB

CGST DELHI SOUTH COMMISSIONERATE,
2ND & 3RD FLOOR, EIL ANNEXE BUILDING,
PLOT 2B, BHIKAJI CAMA PLACE,
NEW DELHI-110066. **...RESPONDENT NO.3**

Through: Mr. Ayush Gaur, Senior Panel Counsel with Mr. Debasish Mishra, Government Pleader and Ms. Ridhi Kapoor, Mr. Abhishek Budhiraja and Mr. Varun Parashar, Advocate for respondent no.1/UOI
Ms. Monica Benjamin, SSC with Ms. Nancy Jain, Advocate for respondent no.2 and 3

**CORAM:**
**HON'BLE MR. JUSTICE NITIN WASUDEO SAMBRE**
**HON'BLE MR. JUSTICE AJAY DIGPAUL**

**JUDGMENT (ORAL)**

**NITIN WASUDEO SAMBRE, J.**

1. This writ petition under Article 226 of the Constitution of India is preferred by the petitioner questioning the Show Cause Notice dated 29th June, 2025 along with corresponding Form DRC-01 issued by respondent no.2 under Section 74 of the Central Goods & Services Act, 2017 (hereinafter referred to as ***'the Act'***), so also, the Order-in-Original dated 12th December, 2025 issued on 17th December, 2025 along with Form GST DRC-07 for the relevant financial year.

2. The petitioner, a private limited Company registered under the GST regime, having its place of business at New Delhi, holds

registration as an "Authorized Courier" under Customs Laws, which entitles it in the said capacity to file courier shipping bills for customs clearance of international courier consignments.

3. An agreement came to be entered into by the petitioner and *M/s Budget Courier Pvt. Ltd*., having its office at New Delhi, for the period from 1st July, 2017 to 31st March, 2027 for the arrangements mentioned therein such as receiving consignments upon arrival at Airport, completing customs clearance and handing them over to *M/s Budget Courier Pvt. Ltd. (*hereinafter referred to as the ***'License Agreement'***). The said agreement provides for other terms and conditions as well.

4. During the financial years 2017-18 and 2018-19, in terms of the above referred license agreement, the petitioner claimed to have undertaken limited services of receiving In-bound consignments at the airport, completing customs clearance and handing them over to *M/s Budget Courier Pvt. Ltd* and against such services provided, a fee was charged, which is reflected in the accounts disclosed in the GST returns. Further, *M/s Budget Courier Pvt. Ltd.* was carrying door to door delivery across the country so as to hand over the same to the ultimate consignees.

5. The Directorate General of GST Intelligence (***'DGGI'***), in the course of development of intelligence concerning authorized courier service agents, sought data from Express Industry Council of India (***'EICI'***), which is functioning as a custodian for the New Courier Terminal, Delhi, regarding the total weight of export and import of courier consignments handled by the authorized companies. Of the 69 companies in regard to whom data was furnished, which includes bills

such as airline particulars, courier company name, Master Air Way Bill number, number of bags and weight, additional data in relation to courier shipping bills was called for from the DG system, Mumbai such as registration number of the couriers, airline details, draft departure and destination, Master Air Way bill number, CSB weight, number of House Air Way Bills and their numbers, actual weight and number of bags.

6. Upon comparative analysis of both the data, having noticed major discrepancies in the matter of non-reporting of actual weight and sales in the GST returns, and in the matter of non-payment of GST in handling courier of In-bound and Out-bound consignments which includes clearance and door delivery of couriers, summons were issued to the petitioner on 20th February, 2025, directing appearance and submission of relevant documents.

7. The Director of the petitioner appeared on 18th March, 2025 before the respondent in response to summons dated 28th February, 2025 and submitted documents pertaining to nature of business operations. A further summons was issued to appear and submit additional reconciliations and documents pertaining to quantity of goods handled for export and import through House Air Way bill and/or Master Air Way bills.

8. Upon analysis of the same, the impugned demand-cum-Show Cause Notice came to be issued in the Form GST DRC-01 for the period 2018-19 to 2023-24 proposing a demand of Rs.3,01,53,112/- under Section 74 of the Act along with applicable interest under Section 50 of the Act and an equivalent penalty. The aforesaid

demand was based on rates prescribed in the DHL Express "*Service and Rates Guide 2018*".

9. Personal hearing was offered to the petitioner *vide* notices dated 21st August, 2025, 11th September, 2025 and 9th October, 2025. On 29th October, 2025, reply in Form DRC-06 was submitted by the petitioner, which led to passing of the impugned Order-in-Original dated 12th December, 2025, issued on 17th December, 2025, thereby confirming the demand as referred above in the Show Cause Notice along with the applicable interest under Section 50 of the Act and equivalent penalty under Section 74(9) of the Act.

10. Amongst others, the contentions raised while challenging the impugned Show Cause notice and the Order in Original referred above, learned counsel for the petitioner urged that the proceedings before the respondents-Authorities are based on erroneous premises *viz*. the petitioner being incorrectly considered as a supplier of end-to-end courier services. It is urged that the license agreement dated 1st July, 2017 with *M/s Budget Courier Pvt. Ltd*. provides for limited facilitative services as could be inferred from recitals mentioned therein.

11. According to him, the computation of demand based on *Service & Rates Guide, 2018* is wholly misplaced as it reflects an arbitrary approach in the matter of adopting unrelated premium rates. Certain procedural defects including non-quantification of interest in the Show Cause Notice, non-issuance of Pre-Show Cause Notice intimation etc. are also sought to be canvassed.

12. Learned counsel for the respondents, at the outset, have raised a preliminary objection as to maintainability of the present writ petition

on the ground that Section 107 of the Act provides for a statutory remedy of appeal. According to them, against the Order in Original, once the statute provides for a statutory remedy of appeal under Section 107, this Court, unless the petitioner qualifies the conditions for bypassing the statutory remedy of appeal, should be slow in entertaining the petition.

13. In reply to the above, learned counsel for the petitioner states that the statutory remedy of appeal cannot operate as an absolute bar in exercise of writ jurisdiction as the proceedings are without jurisdiction. So as to substantiate the aforesaid contention, reliance is placed on the judgments in the matter of ***Krishnadatt Awasthy Vs. State of M.P.*** *(2025) [7 SCC 545]* and ***Tin Box Company Vs. CIT***, *(2001) 249 ITR 216 (SC),* alleging that the statutory remedy of appeal in the matter of violation of the principles of natural justice will not operate as an embargo.

14. It is the contention of learned counsel for the petitioner that non-consideration of the petitioner's reply amounts to a violation of the principles of natural justice, leave apart, the wrongful invocation of provisions of Section 74 of the Act. Reliance in this regard is placed on the judgments in the matter of ***Whirlpool Corporation Vs. Registrar of Trade Marks*** *[(1998) 8 SCC 1]*, ***Harbanslal Sahnia Vs. Indian Oil Corporation Ltd.*** *[(2003) 2 SCC 107]* and ***Godrej Sara Lee Ltd. Vs. Excise and Taxation Officer*** *[2023 SCC Online SC 95]*.

15. We have considered the rival submissions.

16. The position of law, as it stood in the matter of maintainability of writ petition under Article 226 of the Constitution of India when there exists an alternate remedy of statutory appeal, has been dealt

with by the Hon'ble Apex Court and rightly so pointed out by learned counsel for the petitioner in the judgment of ***Whirlpool Corporation*** *(supra),* which has been followed in a catena of other judgments cited *supra*, but there are certain exceptions to the aforesaid principle and such exceptions are limited to the extent (a) the Impugned Order is without jurisdiction; (b) the order is passed in violations of the principles of natural justice; (c) breach of fundamental rights; or (d) in case of challenge of vires of statute or delegated legislation.

17. The relevant observations of the Hon'ble Apex Court in the matter of ***Assistant Commissioner of State Tax & Ors. Vs. Commercial Steel Limited*** *[(2022) 16 Supreme Court Cases 447*] are worth referring to, which are reproduced as under:-

> *"10. The existence of an alternative remedy is not an absolute bar to the maintainability of the writ petition under Article 226 of the Constitution. But a writ petition can be entertained in exceptional circumstances where there is:*
> *(a) A breach of fundamental rights;*
> *(b) A violation of the principles of natural justice;*
> *(c) An excess of jurisdiction; or*
> *(d) A challenge to the vires of the statute or delegated legislation.*
> *11. In the present case, none of the above exceptions was established. There was, in fact, no violation of the principles of natural justice since a notice was served on the person in charge of the conveyance. In this backdrop, it was not appropriate for the High Court to entertain a writ petition. The assessment of facts would have to be carried out by the appellate authority.*
> *12. For the above reasons, we allow the appeal and set aside the impugned order of the High Court. The writ*

*petition filed by the respondent shall stand dismissed. However, this shall not preclude the respondent from taking recourse to appropriate remedies which are available in terms of Section 107 of the CGST Act to pursue the grievance in regard to the action which has been adopted by the State in the present case."*

18. Apart from the above, in the matter of exercise of writ jurisdiction, particularly, when the prayer is for issuance of writ of *certiorari*, the Hon'ble Apex Court in the matter of ***Syed Yakoob Vs. K.S. Radhakrishnan & Ors.*** *[1962 SCC OnLine SC 24]* has observed that adequacy or sufficiency of evidence adduced on a particular issue as well as the factual inferences to be drawn therefrom, falls exclusively within the jurisdiction of the Tribunal and cannot be reopened or questioned before the Writ Court.

19. In the backdrop of the aforesaid legal position, if we consider the case of the petitioner, particularly, the principal challenge raised in the petition, it can be borne out of record that against the Order in Original, statutory remedy of appeal is provided under Section 107 of the Act.

20. Just because the petitioner has raised a challenge based on the contention that it has provided limited facilitative services and was not in the business of supply of end-to-end courier services, by itself, cannot be a ground to entertain the petition. As such, the contentions of petitioner are in the form of factual matrix and once such factual matrix is disputed by the Authorities, it takes the colour of involvement of disputed questions of facts, which can eventually be looked into in the appellate jurisdiction.

21. Even if it is urged by learned counsel for the petitioner that writ petition is maintainable as the principles of natural justice are not adhered to by the respondents while passing the impugned order as well as that the respondents have failed to deal with the primary defence of the petitioner that it has not provided any courier services, such issues, in our opinion and in the wake of aforesaid observations, can be gone into in the Appellate Jurisdiction and the same cannot be inferred to mean that there is a denial of opportunity of hearing to the petitioner.

22. A view expressed by the Adjudicating Authority in the impugned order is assailed by the petitioner as the petitioner's contentions referred above were not accepted by the Authority, which, by itself, cannot be termed as violation of the principles of natural justice. Such contentions, in any eventuality, cannot be accepted so as to infer and hold that the petition is maintainable as there is a violation of the principles of natural justice. The aforesaid observations can be substantiated from the reasons recorded by the respondent no.2 in the impugned order in original dated 12th December, 2025, issued on 17th December, 2025, particularly, from paras 18 and 19 which read thus:

> *"18. It is observed that the Noticee has admitted that the courier services referred to in the SCN were actually carried out by M/s Budget Courier Private Limited, who had been permitted by the Noticee to use their Authorized Courier License for customs clearance. Even if the Noticee's version is accepted, any activity carried out under a license stands legally attributed to the entity in whose name such license is registered. Merely asserting that the Noticee neither provided nor received courier services, despite having permitted the use of its*

*license, does not remove the transactions from the scope of "supply" under Section 7 of the CGST Act. The Noticee has further relied upon an "Agreement for Use of License" submitted during the personal hearing. Upon examination, it is observed that the document is printed on the letterhead of M/s Fardar Express India Pvt. Ltd., is not executed on stamp paper, bears no date, and is neither notarized nor supported by any verifiable identification of the signatories. These deficiencies raise serious doubts regarding the authenticity and evidentiary value of the said agreement.*

*19. Notwithstanding such submission, it remains undisputed that the courier services in question were executed using the ITAT/Authorized Courier License registered in the name of the Noticee. It is a well-settled principle that any activity undertaken using a business license, authorization, registration, or business identifier of a taxable person is presumed to be undertaken in the course or furtherance of that person's business unless cogent, independent evidence establishes otherwise. The Noticee has failed to discharge this burden. Their contention that no foreign currency receipts were obtained or that no invoices were raised on foreign clients does not absolve them of GST liability under reverse charge. Activities conducted using the Noticee's business identifiers including licenses and registrations fall squarely within the ambit of "business" under Section 7(1) of the CGST Act. Accordingly, the courier operations executed using the Noticee's ITAT license constitute business activities attributable to the Noticee, and the Noticee is therefore liable to discharge GST as proposed in the Show Cause Notice."*

23. The Hon'ble Apex Court delineates the distinction between lack of jurisdiction and error committed while exercising jurisdiction. It will be apposite to place reliance on the judgment of the Hon'ble Apex Court in the matter of ***Nusli Neville Wadia Vs. Ivory Properties & Ors***. *[(2020) 6 SCC 557]*. The relevant observations of the said judgment read thus:-

> *"37. There is a difference between the existence of jurisdiction and the exercise of jurisdiction. In case jurisdiction is exercised with material irregularity or with illegality, it would also constitute jurisdictional error. However, if a court has jurisdiction to entertain a suit but in exercise of jurisdiction, a mistake has been committed, though it would be a jurisdictional error, but not a lack of jurisdiction. It may be a jurisdictional error open for interference in appellate or revisional jurisdiction."*

24. Keeping the aforesaid distinction between lack of jurisdiction and error committed in exercise of jurisdiction, we are of the view that the present writ petition is not maintainable as the impugned order, in our opinion, at the most can be termed as error committed in exercise of jurisdiction.

25. In the aforesaid background, we deem it appropriate to dispose of the writ petition, thereby observing that the writ petition suffers from availability of statutory remedy of appeal and as such, is not maintainable.

26. That being so, we dispose of the writ petition with liberty to the petitioner to take recourse to statutory remedy of appeal.

27. We further observe that the time consumed in prosecuting the present petition be taken into consideration for the purpose of reckoning the limitation.

28. Pending application, if any, also stands disposed of.

29. A copy of this Judgment be uploaded on the website of this Court.

**NITIN WASUDEO SAMBRE**
**(JUDGE)**

**AJAY DIGPAUL**
**(JUDGE)**

**APRIL 17, 2026**/*ay/sk*



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