2026:DHC:8551-DB

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

% ***Judgment reserved on: 18.09.2026***

Judgment pronounced on: 01.10.2026

Judgment uploaded on: 01.10.2026

\# **CNR No. DLHC010774032024**

\+ W.P.(C) 15557/2024

MS DEVI ELECTRONICS PVT LTD .....Petitioner

Through: Mr. Sunil Dalal Sr. Adv. along with Mr. Faraz Anees, Mr. Kartik Vashisht, Mr. Abhimanyu Singh Tomar, Mr. Ajay Kumar and Mr. Yash, Advs.

versus

COMMISSIONER CGST DELHI SOUTH AND ORS .....Respondents

Through: Mr. Raj Kumar, CGSC.
Mr. Aditya Singla, SSC.

CORAM:
HON'BLE MR. JUSTICE ANIL KSHETARPAL
HON'BLE MS. JUSTICE SHAIL JAIN

J U D G M E N T

ANIL KSHETARPAL, J.

1. In substance, the present Petition has been filed seeking issuance of writ in the nature *mandamus*, to direct the Respondent No.2 to implement the Order-in-Appeal ('OIA') dated 19.06.2024 and expeditiously grant the Petitioner a refund of an amount of Rs.3,15,30,605/- along with applicable interest. In addition, thereto, the Petitioner also seeks quashing of the Order dated 24.09.2024[1]

[1] hereinafter referred to as 'Impugned Order'

passed under Section 54(11) of the Central Goods and Services Tax, 2017[2] and consequentially sanction all five refund claims totalling upto Rs.3,15,30,605/-.

2. The principal and limited question which has fallen for consideration of this Court is whether the Respondent No.1 has rightly invoked Section 54(11) of the Act of 2017 for withholding the amount of refund claimed by the Petitioner.

A. BRIEF FACTUAL BACKGROUND:

3. In order to appreciate the present controversy, the facts in brief are required to be noticed.

4. The Petitioner, engaged in the business of exporting microphones, telephone sets, smartphones, monitors, projectors, automatic data processing machines and related parts and accessories was registered under GSTIN 07AAACD0720F2ZB. During the period from November 2023 to January 2024, the Petitioner exported goods on payment of IGST, and consequently, filed five (05) refund applications seeking refund of Rs.1,35,69,527.58/-, Rs.43,11,670.36/, Rs.34,92,046.08/, Rs.67,97,817/- and Rs.33,59,544.01/- aggregating to Rs.3,15,30,605.03/-.

5. The aforesaid refund applications were processed by the Respondent No.2, Show Cause Notices ('SCNs') rejecting the refund also came to be issues in respect of the claims so made, alleging, inter alia, that the refund applications had been filed without the requisite supporting documents. The Petitioner submitted detailed replies to the

[2] hereinafter referred to as 'Act of 2017'

said notices along with the relevant documents. However, the Respondent No.2, by way of the Orders-in-Originals ('OIO') dated 01.03.2024, 27.03.2024, 22.04.2024, 25.04.2024 and 07.06.2024 rejected the refund applications, *inter alia*, primarily on the ground of non-submission of complete documents.

6. Aggrieved by the OIOs, the Petitioner approached the Appellate Authority, reiterating that the refund applications had been filed along with the requisite documents and placing on record, *inter alia*, screenshots from the GST Portal evidencing the documents submitted at the time of filing the respective refund applications. Consequently, the Appellate Authority by way of the OIA dated 19.06.2024, allowed all five appeals, and held, *inter alia*, that the Respondent No.2 had erred in rejecting the refund claims without duly appreciating the submissions of the Petitioner and the facts of the case.

7. Thereafter, the Competent Authority reviewed the aforesaid OIA and *vide* Review Order dated 23.06.2024, opined that the said Order was liable to be challenged before the GSTAT under Section 112(3) of the Act of 2017 r/w Rule 111(1) of the CGST Rules, 2017. The Review Order recorded that an appeal would be filed before the Goods and Services Tax Appellate Tribunal (GSTAT) upon the Tribunal becoming functional. In the meantime, pursuant to the OIA dated 19.06.2024, the Petitioner filed a consolidated refund claim *vide* ARN No. AA070624070785W dated 25.06.2024, seeking refund of Rs.3,15,30,605.03/-.

8. Since the aforesaid refund claim was required to be considered in the backdrop of the review proceedings, the Respondent No.1

proceeded to examine the claim under Section 54(11) of the Act of 2017. In terms of the said provision, the Petitioner was afforded an opportunity of personal hearing *vide* letters dated 27.08.2024 and 03.09.2024, with hearings scheduled on 30.08.2024, 05.09.2024 and 09.09.2024.

9. Thereafter, the Respondent No.1 passed the Impugned Order under Section 54(11) of the CGST Act, 2017, whereby the refund arising from the aforesaid OIA dated 19.06.2024 was withheld. Aggrieved thereby, the Petitioner has approached this Court seeking our indulgence.

SUBMISSIONS OF THE PARTIES:

10. Learned counsel representing the Petitioner has made the following submissions:

10.1 In substance, the case of the Petitioner is that the refund sanctioned by the OIA could not have been withheld under Section 54(11) of the Act of 2017, since on the date of its passing, no appeal against the OIA or the Impugned Order was pending before the GSTAT, nor was any other proceeding pending against the Impugned Order.

10.2 It is argued that the mere possibility or contemplation of filing an appeal under Section 112 of the Act of 2017 could not, according to the Petitioner, constitute a pending proceeding so as to justify withholding of the refund. In this regard, it has also been argued that an appeal before the GSTAT only came to be filed on 10.04.2026. Reliance in this regard is placed on ***Mandy***

Enterprises v. Deputy Commissioner[3] and A***lex Tour Tavel v. Asst. Commissioner CGST***[4].

10.3 It is further contended that an investigation or inquiry cannot, by itself, be equated with a proceeding pending under the Act of 2017 for the purposes of Section 54(11). In this regard, reliance is placed on ***Liberty Oil Mills v. Union of India***[5], ***G.K. Trading Company v. Union of India***[6] and ***Srico Projects (P.) Ltd. v. Telangana State Authority for Advance Ruling***[7].

10.4 It is submitted that, in any event, since there was no order of any competent court staying the operation or implementation of the OIA granting the refund, the Respondents could not, in the absence of a judicial stay, withhold the refund lawfully arising from the OIA.

10.5 The Petitioner also disputes the reliance placed by the Department on the alleged pendency of investigation. It is his case that the SCN dated 24.08.2026, issued by the Additional Commissioner (AE), CGST, Delhi South Commissionerate, was not in existence either when the OIA granting the refund was passed or when the Impugned Order was passed. Accordingly, it could not have constituted a proceeding pending on the relevant date for the purposes of Section 54(11).

10.6 Further, it is argued that the said SCN remains

[3] (2024) 22 Centax 534 (Del.)
[4] W.P.(C) No.5722/2023
[5] MANU/SC/0029/1984
[6] 2021 (51) G.S.T.L. 288 (All.)
[7] [2022] 142 taxmann.com 5 (Telangana)

unadjudicated and cannot, according to the Petitioner, be placed on the same footing as the quasi-judicial OIA passed in their favour or be relied upon to defeat or indefinitely keep in abeyance the rights flowing from that order.

10.7 The Petitioner further contends that the Impugned Order was passed by the Commissioner in an administrative capacity and as such is not an adjudication order. In support, it is submitted that the Act of 2017 draws a distinction between the expressions *Commissioner* and *Adjudicating Authority*. Section 2(4) defines Adjudicating Authority, while Section 2(24) defines "Commissioner", and the two expressions are used distinctly in the statutory scheme.

10.8 Reference is made, *inter alia*, to Section 56 and Section 107(2) of the Act of 2017, which, according to the Petitioner, demonstrates that the Commissioner and the Adjudicating Authority perform distinct statutory functions. Accordingly, the two expressions, cannot be treated as interchangeable, particularly in view of the settled principle that a taxing statute must be strictly construed.

10.9 On that basis, the Petitioner also contends that the Impugned Order has been passed by the Commissioner in his administrative capacity and cannot be treated as an order of the Adjudicating Authority. Consequently, Section 107 of the Act of 2017, does not provide an alternative remedy against the Impugned Order.

10.10 In addition, it is also the case of the Petitioner that the Respondents' reliance on the GSTAT appeal acknowledgement, does not, by itself, establish that a duly instituted appeal was pending and it is unclear whether the appeal was genuinely pursued or merely filed as a formality.

10.11 In substance, the Petitioner's case is that the refund sanctioned by the OIA could not have been withheld under Section 54(11) on the basis of a contemplated or subsequently instituted appeal, an investigation which did not constitute a pending proceeding on the relevant date, or an unadjudicated SCN. In the absence of a judicial stay and there being no statutory appellate remedy against the Impugned Order itself, the Petitioner contends that the withholding of the refund was legally unsustainable.

11. *Per contra*, learned counsel representing the Respondents has made the following submissions:

11.1 At the outset, it has been argued that the present Petition is not maintainable, inasmuch as the OIA dated 19.06.2024 has been reviewed by the Competent Authority and a decision has already been taken to challenge the same before the GSTAT. Accordingly, it is contended that the Petitioner ought to pursue the statutory appellate remedy.

11.2 It is argued that Section 54(11) of the Act of 2017 expressly empowers the Commissioner to withhold a refund where the order giving rise to such refund is the subject matter of

an appeal or further proceedings, or where any other proceedings under the Act of 1017 are pending. Provided that the Commissioner forms an opinion that grant of the refund is likely to adversely affect the revenue on account of malfeasance or fraud. According to the Respondents, both statutory conditions stand satisfied in the present case.

11.3 In this regard, it is submitted that the OIA giving rise to the refund claims was reviewed by the Competent Authority, which directed that the OIA be challenged before the GSTAT. Therefore, the OIA is subject to further proceedings, and the refund arising therefrom could validly be withheld under Section 54(11) of the Act of 2017. Such pendency of statutory proceedings, including the proposed appeal, is contended to be relevant for the purposes of Section 54(11).

11.4 In furtherance to the aforestated, it has been argued that an investigation by the Anti-Evasion Wing, CGST, Delhi South Commissionerate (AEW, Delhi), was ongoing in respect of the Petitioner and its suppliers. The investigation included verification of suppliers, physical verification of their premises, verification of vehicle details, issuance of summons to transporters and other persons, and recording of statements. Learned counsel particularly relies upon the physical verification report concerning M/s Ziavlo India Pvt. Ltd., which according to him, indicated that the supplier was not functioning from its registered premises.

11.5 On the basis of the aforesaid investigation and the

material available on record, the Commissioner formed an opinion that grant of the refund was likely to adversely affect the revenue on account of alleged malfeasance or fraud. Therefore, the Respondents contend that the second statutory requirement under Section 54(11) was also satisfied, thereby withholding the refund by order dated 23.09.2024/24.09.2024.

11.6 The Respondents contend that Section 54(11) of the Act of 2017 confers a specific statutory power upon the Commissioner, which can be exercised notwithstanding the absence of a separate judicial order staying the OIA. Consequently, according to the Respondents, the withholding of the refund cannot be treated merely as non-compliance with the OIA.

11.7 Lastly, distinguishing the judgments in ***Mandy Enterprises*** *(Supra)* and ***Alex Tour and Travel Pvt. Ltd.****(Supra)* relied upon by the Petitioner, it has been argued that the same are distinguishable. Since, the said judgments did not concern withholding of refund pursuant to a specific order passed under Section 54(11) of the CGST Act. The Respondents accordingly contend that those decisions do not govern the present case.

C. ANALYSIS AND DISCUSSION:

12. Heard learned counsel representing the parties and with their able assistance perused the paperbook.





13. Before proceeding to deal with the rival contentions, it is necessary to notice the text and scope of Section 54(11) of the Act of 2017, which reads as follows:

> *"**54. Refund of tax.—***
>
> *(11) Where an order giving rise to a refund is the subject matter of an appeal or further proceedings or where any other proceedings under this Act is pending and the Commissioner is of the opinion that grant of such refund is likely to adversely affect the revenue in the said appeal or other proceedings on account of malfeasance or fraud committed, he may, after giving the taxable person an opportunity of being heard, withhold the refund till such time as he may determine."*

14. A plain reading of the provision discloses that the said provision is founded on two distinct, cumulative ingredients: *first*, the Order giving rise to the refund must be the subject matter of (a) an appeal, or (b) further proceedings, or (c) any other proceedings under the Act of 2017 which are pending. *Second*, the Commissioner must independently form an opinion, after affording an opportunity of hearing, that the grant of refund at that stage is likely to adversely affect the revenue on account of malfeasance or fraud.

15. Notably, the width of the expression '*any other proceedings under this Act is pending*' is deliberate. It is not confined to a formally instituted appeal; it takes within its fold any proceeding, of whatever nature, arising under the Act of 2017, that has a bearing on the correctness or finality of the order from which the refund flows. Thus, Section 54(11) is a self-contained, statutorily engrafted safeguard for protection of revenue, operating independently of, and not contingent upon, any separate stay granted by a court or tribunal.

16. Learned counsel representing the Petitioner has relied upon

Mandy Enterprises *(Supra)* and ***Alex Tour Travel*** *(Supra)*, both of which lay down the salutary principle that the Revenue cannot withhold a refund sanctioned by the Appellate Authority merely on the strength of a proposed or contemplated appeal, unaccompanied by any stay. In ***Alex Tour & Travel*** *(Supra)*, this Court held that the mere decision of the Revenue to file an appeal, without more, cannot place a valid appellate order in abeyance. The same principle was reiterated in ***Mandy Enterprises*** *(Supra)* and in ***Truth Fashion*** *(Supra)*, wherein it was clarified that the mere decision to prefer or institute an appeal would not qualify Section 54(11) of the Act of 2017.

17. However, these decisions turned on the singular fact that the Revenue's case rested only on the first limb of Section 54(11) of the Act of 2017, a proposed appeal, with no independent material of malfeasance or fraud placed before the Court to justify the Commissioner's opinion under the second limb. It is this distinction having found it the present case, which distinguishes the present case to that dealt with hereinabove.

18. Undisputedly, a case concerning the Petitioner was received by AEW, Delhi from the Okhla Division on 26.03.2024, ***i.e.***, nearly three months prior to the OIA dated 19.06.2024 and nearly six months prior to the Impugned Order dated 24.09.2024. This is borne out by the contemporaneous record and is subsequently reflected in the SCN dated 21.08.2026, which traces the investigation from the receipt of adverse verification reports, through physical verification of suppliers, verification of suppliers, verification of transportation, examination of the goods purportedly exported, and recording of statements under

Section 70 of the Act of 2017, culminating in the quantification of allegedly inadmissible ITC of Rs. 6,53,08,612/-.

19. The SCN records the following verification reports, each of which pre-dates or coincides with the passing of the Impugned Order:

> "*5.1 A letter dated 24.12.2024 was received from the State Tax Office. Kanpur (RUD-1), wherein it was informed that M/s Kanpur Mobiles (GSTIN: 09AARFK|496PIZA), appearing at Serial No. I of the above-mentioned Table, was found to be a bogus/non-genuine entity. As per the said communication, the said entity was found to be engaged in availing and passing on fraudulent and inadmissible Input Tax Credit (ITC) without actual receipt/supply of goods. The said information indicates that the transactions reported by the Noticee with the said supplier require detailed verification.*
>
> *5.3 M/s Ziavlo India Private Limited (GSTIN: 07AACCZ07+2RIZT). appearing at Serial No. 12 of the above table and falling under the jurisdiction of CGST Delhi South Commissionerate. was found to be non-existent during the physical verification conducted at its registered principal place of business situated at Plot No. 133, Shop No. 3, Greater Kailash-l, Lala Lajpat Rai Marg. Pinky Beauty Salon, Zamrudpur. Delhi-110048. During the visit. the owner of the premises was enquired about the said firm. and he stated that the premises had never been rented or otherwise provided to M/s Ziavlo India Private Limited. He further informed that officers of DGGI, Surat Zonal Unit. had also visited the said premises for verification of the companies. The premises owner also provided a copy of the Panchnaina dated 15.07.2023 prepared by the DGGI officers in this regard (RL'D-3). Accordingly, a letter dated 15.07.2024 was addressed to the Surat Zonal Linit, informing them about the statement of the premises owner and requesting the status of the investigation being conducted by thein in respect of Mis Ziaslo India Private Limited. In response, the Surat Zonal Unit informed that the inquiry against Ms Sohan Industry and 10 other entities. including M/s Ziavlo India Private Limited, had been transferred to DGGI, Hgrs., New Delhi. as the said entities were being investigated in connection with cases involving a similar modus operandi relating to fraudulent availment and passing on of Input Tax Credit (ITC).*
>
> *5.5 During the processing of the refund claims. the Divisional Office*

received a Verification Report dated 07.02.2024 from the State GST. Kanpur (RUD-6), wherein it was reported that M/s Almec Trading (GSTIN: 09KXJPS6728 |ZS) was found to be non-existent at its registered Principal Place of Business (POB). The repon further indicated that the suppliers of M/s Almec Trading had allegedly obtained GST registration for the purpose of passing on fake bogus Input Tax Credit (ITC) through circular trading. It was also reported that such allegedly bogus ITC was further passed on by M/s Almec Trading to M/s Devi Electronics Pvt. Ltd. and, accordingly. blocking of the ITC availed by the Noticee was recommended. Further, the Divisional Office also received a physical verification report from the State GST Office, Ward-6, Faridabad (East) (RUD-7), wherein it was reported that M/s Balaji Mobile Hub (GSTIN: 06EFLPM8246C229) was found non-existent at its registered Principal Place of Business. These reports raised serious doubts regarding the genuineness of the supplies and the corresponding ITC passed on to the Noticee.

6.3 ***From the above investigation and verification, it is observed that the actual movement of goods corresponding to the supplies reported by the Noticee could not be established. The vehicle owners whose vehicles were shown in the relevant e-way bills, in their statements recorded under Section 70 of the CGST Act 2017, denied having transported the goods from the concerned suppliers to the Notice. Some of them also stated that they had no knowledge of the Noticee or the suppliers mentioned in the e-way bills. Further, some summonses issued to vehicle owners were returned back. These facts, taken together, indicate that the vehicles mentioned in the e-way bills were not established to have transported the goods. Accordingly. the genuineness of the reported supplies and the corresponding availment of ITC by the Noticee is doubtful.***

7. ***Whereas, during the course of investigation. a letter dated 15.05.2025 (RUD-13) was issued to the Noticee requiring it to furnish relevant documents in support of the exports. including shipping bills, tax invoices, packing lists, details of IMEl numbers of the mobile phones exported and purchase invoices corresponding to the said shipping bills. In response, the Noticee, vide its letter dated 30.05.2025 (RUD-14), furnished details of 3,697 mobile phones, stated to be iPhones. along with the relevant IMEl numbers. In order to independently verify the genuineness and supply chain of the mobile phones claimed to have been exported by the Noticee, the IMEl details were examined and relevant information was sought from M/s Apple India Private Limited. In response, M/s Apple India***

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Private Limited provided details in respect of 3.623 mobile phones. On examination of the information so provided, it was observed that all the said mobile phones had been sold by Mi Apple India Private Limited in B2B transactions to nine different companies. Further, out of the said nine companies. information in respect of seven companies has been received and examined. The details received from these companies indicate that M/s Devi Electronics (the Noticee) does not appear anywhere in the supply chain of the said mobile phones, which were claimed by the Noticee to have been purchased and subsequently exported.*"*

20. Put summarily, the record establishes that, prior to the passing of the Impugned Order, ***(i)*** six suppliers of the Petitioner were found non-existent or non-operational at their registered principal places of business by the jurisdictional GST authorities; ***(ii)*** independent verification of the relevant e-way bills with the concerned transporters elicited categorical denial of movement of the goods; and ***(iii)*** the manufacturer's sales records did not reflect the Petitioner in the supply chain of the mobile phones stated to have been exported.

21. Notably, these are not matters that surfaced for the first time in 2026; they already formed part of the investigation which, on the Petitioner's own showing, had commenced with the reference dated 26.03.2024. Thus, the SCN was the culmination of an investigation already underway when the Impugned Order was passed.

22. It is also necessary to notice that the Commissioner, while passing the Impugned Order itself, did not act on a mere apprehension; he examined, in some detail, the tier-wise (L1, L2 and L3) supply chain of the Petitioner's suppliers and their status on the GST portal. The relevant findings read as under:

"13.6 Further in respect of M/S ALMEC TRADING (GSTIN:

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09KXJPS6728DIZS), L-1 supplier verification of M/s Almee Trading (GSTIN- 09KXJPS6728D1ZS was carried out by Deputy Commissioner (SIB) SGST, Sector-D, Kanpur wherein vide letter 31e/ RI. 47 ReT 79/Kanpur dated 20.09.2023 has informed that the Physical verification of the principle place of business 543, Faithful Ganj Cantt, Kanpur Nagar, Kanpur Nagar, Uttar Pradesh, 208004 of M/s Almec Trading was conducted en 20.09.2023 and no business activities was found and also no stock was found in the said premises. Also the GSTN portal is still reflecting the GST registration status of M/s Almec Trading as 'Cancelled suo moto? Accordingly, the unit was found to be non-existent at their registered address.

13.7 Moreover, the other major L1 supplier and 12 level suppliers i.e. Mis ZIAVLO INDIA PRIVATE LIMITED (07AACCZ0742RIZT), M's AMULOR TRADEX PRIVATE LIMITED (07AAUCA480B1ZK) & M/s Swastik International Co (07EGNPA0570A1ZX) are being reflecting as 'Cancelled suo moto' on the GST portal. Therefore, it can be inferred that only fake/bogus ITC have been passed to M/s Devi Electronics Private Limited by their suppliers without actual supply of goods.

13.9 From the perusal of the above facts, fraud and malfeasance on the part of the taxpayer is clearly evident as that L1, L2 and I.3 suppliers of the taxpayer were found to be missing during physical verification. Further, it is evident from the panchnama dated 13.07.2023 and physical verification report dated 08.05.2024 and also from the testimony of the owner of the premises, that no such firm by the name of M/s Ziavlo India Private Limited (GSTIN: 07AACCZ0142R1ZT) ever functioned on that premises. Further, all othe major Ll, L2 and L3 suppliers of the taxpayer ie. M/s ZIAVLO INDIA PRIFATE LIMITED (07AACCZ0742R1Z1), M/s AMULOR TRADEX PRIVATE LIMITED (07AAUCA5480B1ZK) & M/s Swastik International Co (07EGNPA0570AIZX) are being reflecting as Cancelled suo moto on the GST portal. Further, all these major suppliers including Mis KANPUR MOBILES (GST: 09AARFK1496PIZA), were have been found to be non-functional. Hence, it cannot be ascertained as to whether any underlying supply of goods has taken place in terms of Section 7 of CGST Act, 2017."

23. Having recorded the above, the Commissioner proceeded to examine the requirements of Section 16(2) of the Act of 2017,

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reproducing the provision in extenso, and concluded:

> *13.10 Whereas, Section 16(2) of the CGST Act, 2017 provides the four conditions 10 availment of the ITC which are re-produced below:-*
>
> > *Section 16 (2)*
> >
> > *(2). Notwithstanding anything contained in this section, no registered person shall*
> >
> > *be entitled to the credit of any input tax in respect of any supply of goods or services or both to him unless,—*
> >
> > *(a). he is in possession of a tax invoice or debit nate issued by a supplier registered under this Act, or such other tax paying documents as may be prescribed:;*
> >
> > *(b). he has received the goods or services or both.*
> >
> > *Explanation—For the purposes of this clause, it shall be deemed that the registered person has received the goods where the goods are delivered by the supplier 1o a recipient or any other person on the direction of such registered person, whether acting as an agent or otherwise, before or during movement of goods, either by way of transfer of documents of title to goods or otherwise;*
> >
> > *(c). subject to the provisions of section 41, the tax charged in respect of such supply has been actually paid to the Government, cither in cash or through wiilisation of input tax credit admissible in respect of the said supply; and*
> >
> > *(d.) he has furnished the return under section 39:*
> >
> > *Provided that where the goods against an invoice are received in lots or instalments, the registered person shall be entitled to take credit upon receipt of the last lot or instalment:*
> >
> > *Provided further that where a recipient fails to pay to the supplier of goods or services or both, other than the supplies on which tax is payable on reverse charge basis, the amount towards the value of supply along with tax payable thereon within a period of one hundred and eighty days from the date of issue of invoice by the supplier, an amount equal to the input tax credit availed by the recipient shall be added to his output tax liability, along with interest thereon, in such manner as may be prescribed:*
> >
> > *Provided also that the recipient shall be entitled to avail of the credit of input tax on payment made by him of the amount towards the value of supply of goods or services or both along with 1ax payable thereon.*
>
> *13.11 From the plain reading of the sub-clause (b) of Section 16(2), it is evident that mere issuance of tax invoice is not sufficient for availment of ITC, all the conditions as mentioned under Section 16(2)*





also needs to satisfied by the taxpayer to be eligible for availment of ITC.

13.12 In the instant case, the taxpayer M/s Devi Electronics Private Limited has shown purchases from non-existent suppliers. It is on record that when the enquiry was initiated against some of the suppliers, the suppliers were either found missing or non-existent.

13.13 Moreover, no proof to substantiate the actual transaction and physical movement of goods in the form of vehicle number, payment of freight charges, acknowledgment of taking delivery of goods have been furnished by the taxpayer. Therefore it clearly manifests that the said suppliers have taken GST registration only for passing on fake/bogus ITC to their recipients through circular trading among themselves.

13.14 The refund claim filed by the taxpayer on the strength of non-existing, non-functional and non-operational fictitious/fake firms/ companies does not support the genuineness of the supplies and bonafide of their actions, and granting refund to the taxpayer based on orders dated 19.06.2024 of the Appellate Authority at this juncture does not seem to be just and proper in view of the elements of fraud and malfeasance brought out in detail herein above.

24. Therefore, the Impugned Order was not founded on a solitary transaction or an isolated supplier. It proceeded upon a cumulative examination of the supply chain, including suppliers at the L1, L2 and L3 levels, several of whom were reflected on the GST portal as cancelled *suo moto*, together with physical verification reports, the panchnama recorded by DGGI, Surat, and the statement of the premises owner denying any tenancy in favour of the alleged supplier. These circumstances were relevant to the requirement under Section 16(2)(b) of the Act of 2017, that the recipient must have actually received the goods or services. Thus, the Commissioner upon finding that the requirements hereinabove were not met, rightly passed the Impugned Order.

Examination of the Petitioner's contentions

25. Turning to the specific contentions urged on behalf of the

Petitioner, it was argued that on the date of the Impugned Order, no appeal against the OIA or the Impugned Order was pending before the GSTAT, the appeal having been filed only on 10.04.2026, and that mere contemplation of an appeal could not satisfy the first limb of Section 54(11). The contention, even if accepted, does not conclude the matter, since the Impugned Order was not founded upon the first limb alone.

26. The second limb of Section 54(11), namely, the pendency of any other proceedings coupled with the Commissioner's opinion of fraud or malfeasance, was invoked on the basis of the AEW investigation which had commenced by 26.03.2024. Thus, even in the absence of a pending appeal on 24.09.2024, an investigation concerning the Petitioner was admittedly underway. The Commissioner formed his opinion in the context of invoices allegedly issued by non-existent suppliers, without corresponding movement or receipt of goods, and the consequent availment of ITC for payment of IGST on the exports for which refund was claimed.

27. The Petitioner next contended that the SCN dated 21.08.2026 could not constitute a pending proceeding on 24.09.2024, as it had not then been issued. The contention overlooks the distinction between the pendency of an investigation and the subsequent issuance of an SCN. The material relied upon by the Commissioner shows that the investigation was already in progress when the Impugned Order was passed. The SCN subsequently crystallised the allegations arising from that investigation. Paragraph No.13.8 of the Impugned Order itself records that the AEW investigation was "still under process" as

on 24.09.2024.

28. The Petitioner further contended that the Impugned Order, having been passed by the Commissioner in an administrative capacity, was not an order of an "Adjudicating Authority" and was therefore not appealable under Section 107 of the Act of 2017. This contention does not require extended consideration. Section 54(11) expressly confers the power to withhold refund upon the "Commissioner". The power is distinct from the adjudicatory mechanism under Sections 73 and 74 of the Act of 2017 and the appellate remedy under Section 107 of the Act of 2017. The absence of an appeal under Section 107 does not exclude judicial review under Article 226 of the Constitution.

29. At this stage, it must be highlighted that it is an admitted position that an appeal against the Impugned Order already stands filed before the GSTAT. As such, this Court does not consider it appropriate or necessary, in writ jurisdiction, to adjudicate upon disputed questions concerning the genuineness of the suppliers, actual movement of goods, or the correctness of the findings in the Impugned Order and the SCN.

30. The Petitioner shall be at liberty to raise all such contentions, including those concerning Section 54(11) of the Act of 2017, before the GSTAT, which shall consider them uninfluenced by any observation made herein.

D. CONCLUSION:

31. For the foregoing reasons, the challenge to the Impugned Order

cannot be sustained. The material on record discloses that an Anti-Evasion investigation was already pending when the Impugned Order was passed and that the Commissioner had formed the requisite opinion of fraud or malfeasance on the basis of contemporaneous material.

32. Accordingly, the present Petition is dismissed, with liberty to the Petitioner to agitate all further issues before the GSTAT.

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