2026:DHC:8917-DB

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

% ***Judgment reserved on: 30.09.2026***

Judgment pronounced on: 09.10.2026

Judgment uploaded on: 09.10.2026

\# **CNR No. DLHC010779382025**

\+ W.P.(C) 15708/2025, CM APPL. 64316/2025

OM SHANKAR METAL (THROUGH ITS PROPRIETOR MR. SIDHANT SHARMA) .....Petitioner

Through: Mr. Nitin Gulati, Adv.

versus

ASSISTANT COMMISSIONER MOHAN CO OPERATIVE INDUSTRIAL ESTATE DIVISION DELHI EAST DELHI CBIC .....Respondent

Through: Mr. Arun Khatri, SSC along with Ms. Anoushka Bhalla, Adv.

CORAM:
HON'BLE MR. JUSTICE ANIL KSHETARPAL
HON'BLE MR. JUSTICE BHARAT PARASHAR

J U D G M E N T

ANIL KSHETARPAL, J.:

1. The present Petition has been filed under Article 226 of the Constitution, seeking issuance of an appropriate writ, quashing the ex-parte Order-in-Original dated 31.01.2025[1] and the consequent DRC-07 dated 02.02.2025 passed under Section 74 of the Central Goods and Services Tax Act, 2017[2].

2. Admittedly, the Petitioner has an efficacious alternative

[1] hereinafter referred to as Impugned Order
[2] hereinafter referred to as Act of 2017

statutory remedy of Appeal under Section 107 of the Act of 2017. However, the Petitioner wishes to press the present Petition, on account of non-receipt of any personal hearing by the Adjudicating Authority (AA), before passing of the Impugned Order.

A. FACTUAL BACKGROUND:

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

4. The Petitioner is a sole proprietorship concern engaged in the business of trading in metal and industrial commodities and is registered under the Act of 2017, bearing GSTIN 07EMGPS3605R1ZC. In the year 2023, the Petitioner was subjected to departmental audit under Section 65 of the Act of 2017 for the period from 01.07.2017 to 31.03.2023, pursuant to issuance of Form ADT-01 dated 17.12.2023. During the course of audit, the Petitioner furnished the requisite books of accounts, returns, reconciliations and supporting documents.

5. Whereafter, an Audit Memo dated 03.04.2024 was issued alleging, *inter alia*, irregular availment of Input Tax Credit (ITC), principally on account of suppliers whose registrations had subsequently been cancelled retrospectively and alleged delayed payments to suppliers beyond the period of 180 days. Subsequently, the said Audit Memo was revised on 04.06.2024, proposing a tax liability of Rs.69,44,262/-, besides applicable interest and penalty, with interest being computed at Rs.46,42,274/-.

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6. During the course of the proceedings, and prior to issuance of any formal show cause notice under Section 74 of the Act of 2017, the Petitioner deposited Rs.66,14,525/- towards tax, Rs.1,77,226/- towards interest and Rs.9,92,179/- towards penalty through Forms DRC-03. Thereafter, Form ADT-02 dated 18.06.2024 and Form DRC-01A dated 23.07.2024 were issued.

7. Subsequently, a Show Cause Notice (SCN) came to be issued against the Petitioner, proposing further tax/interest and penalty. The said proceedings culminated in passing of an ex-parte Impugned Order under Section 74 of the Act of 2017, followed by issuance of Form DRC-07 dated 02.02.2025. Aggrieved thereby, the Petitioner has approached this Court seeking our indulgence.

B. CONTENTION ON BEHALF OF THE PARTIES:

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

8.1 The principal submission of the Petitioner is that the Impugned Order as well as the consequential DRC-07 form is liable to set aside, inasmuch as the same was passed in violation of Section75(4) of the Act of 2017. It is argued that the Petitioner was not granted any opportunity of hearing before the passing of the Impugned Order and the Respondent has failed to place on record sufficient material to show that the service of subsequent personal hearing was effected upon the Petitioner.

8.2 In regard to the aforestated, the Petitioner on 18.11.2026, upon

a query posed by this Court, had placed on record multiple screenshots of earlier email communications received from the GST Department, dated 06.06.2019, 25.02.2020, 26.10.2021, 26.12.2021, 12.03.2024 and 23.09.2024. The said communications reflected the email address sidhant.nanu@gmail.com, and were relied upon by the Petitioner to demonstrate that the email address registered with and used for communication by the GST Department was sidhant.nanu@gmail.com, and not advocatedeepaksingh@yahoo.in, as contended by the Respondent.

8.3 With respect to the invocation of Section 74 of the Act of 2017, it has been argued that, in order to attract the aforesaid provision, the Petitioner is required to show facts leading to fraud, wilful misstatement or suppression. However, the Impugned Order as well as the Counter Affidavit placed on record, failed to identify any such fraud or suppression of fact, in absence of which the aforesaid provision cannot be extended to hold the Petitioner liable thereunder.

8.4 Insofar as levy of penalty equivalent to 100% of the tax is concerned, it is argued that the said imposition is contrary to Sections 74(5) to 74(7) of the Act of 2017, since the Petitioner prior to the issuance of SCN had already deposited, as also recorded under the Impugned Order, the entire tax of Rs. 66,14,525 along with a penalty of Rs.9,92,179 and interest of Rs.1,77,226.

8.5 It is further contended that the alleged interest on the ITC forming the first audit objection was neither quantified nor

demanded, and there is no finding that such ITC was wrongly utilised so as to attract Section 50(3) of the Act of 2017. As regards the Rule 37 interest, the Petitioner submits that the Impugned Order mechanically computed interest at 18% from the date of invoice till payment, without examining actual utilisation of credit or the amendment to Rule 37 with effect from 01.10.2022. These aspects, it is urged, required proper adjudication after affording an effective hearing.

8.6 Learned counsel also argued that the DRC-07 travels beyond the Impugned Order. Although the Impugned Order appropriates the amounts already deposited, the DRC-07 failed to give credit for the same and consequently overstated the demand by Rs.76,06,706. It is further urged that the Impugned Order bears a DIN generated under the CUSTOMS stream, though the proceedings are under the GST law, contrary to CBIC Circular No. 122/41/2019-GST dated 05.11.2019. However, the Respondent had failed to deal with this objection.

8.7 Lastly, while dealing with the maintainability of the present Petition, it has been argued that, since the same has been filed on account of violation of natural justice or lack of jurisdiction, the alternative remedy envisaged under Section 107 of the Act of 2017, does not act as a bar for the purpose of the present Petition.

9. *Per contra*, learned counsel representing the Respondent has made the following submissions:

9.1 It is contended that the SCN was duly issued to the Petitioner,

by uploading the same on the GST common Portal in accordance with the prescribed procedure. Moreover, prior to the adjudication of the SCN, the Petitioner was afforded adequate and reasonable opportunity of personal hearing, on 13.01.2025, 14.01.2025 and 15.01.2025.

9.2 According to the Respondents, the notices fixing the aforesaid dates were duly communicated at the registered address and email address of the Petitioner as reflected on the GST BO portal. Despite such communications, the Petitioner allegedly failed to appear or submit any further response before the Adjudicating Authority.

9.3 Insofar as imposition of 100% penalty is concerned, it is argued that Section 74(5) of the Act of 2017, permits a noticee to discharge the tax liability along with applicable interest and a penalty equivalent to 15% of the tax, subject to the conditions prescribed therein. According to the Respondents, since the Petitioner failed to discharge the applicable interest, the benefit contemplated under Section 74(5) was not available to it, and the Petitioner was consequently liable to penalty in terms of Section 74(1) of the Act of 1996.

C. ANALYSIS AND REASONING:

10. Having heard learned counsel for the parties and having perused the record, this Court is of the considered view that the present Petition does not warrant interference under Article 226 of the Constitution, and the Petitioner must be relegated to avail of the alternative remedy of Appeal under Section 107 of the Act of 2017,

for the reasons recorded hereinafter.

11. It is trite law that the mere availability of an alternative remedy does not oust the writ jurisdiction of this Court, particularly where there is a breach of natural justice. The principal grievance of the Petitioner being that the Impugned Order was passed ex-parte, without any opportunity of personal hearing, the present Petition is, thus, maintainable. However, maintainability is distinct from the exercise of jurisdiction, and this exception is to be invoked sparingly, and not where the grievance is factual in nature and capable of being examined by the Appellate Authority itself.

12. Insofar as the grievance of denial of personal hearing is concerned, it is the case of the Respondent that the notice of personal hearing dated 08.01.2025, fixing hearings on 13.01.2025, 14.01.2025 and 15.01.2025, was sent to the Petitioner at its registered address and e-mail address, as also recorded in Paragraph no.10 of the Impugned Order. Further, on 18.11.2025, it was submitted on behalf of the Respondent that all communications had been sent to the Petitioner at its e-mail address, i.e., advocatedeepaksingh@yahoo.in.

13. In its Counter Affidavit, the Respondent has stated that the SCN was uploaded on the GST common portal. However, no argument pertaining to uploading of the notice of personal hearing on the portal has been advanced. For the personal hearing, the Respondent merely claims that the same was sent to the Petitioner at its registered address and e-mail address.

14. The document relied upon by the Respondent to substantiate the

same does not contain either the e-mail communication or any postal receipt showing dispatch of the notice of personal hearing to the registered address. Instead, only a copy of the Respondent's own dispatch register has been placed on record, which, in the opinion of this Court, is not sufficient to establish service of the notice.

15. On the contrary, the Petitioner has disputed the very foundation of the Respondent's claim. It has placed on record various communications dated 06.06.2019, 25.02.2020, 26.12.2021, 26.10.2021, 23.09.2024, 12.03.2024, which, according to the Petitioner, show that its registered email address is *sidhant.nanu@gmail.com* and all GST-related updates were being received thereon. Further, on 18.11.2025, the Petitioner, who was present in person before this Court, also stated that he is not aware of any person named Advocate Deepak Singh.

16. Be that as it may, the Petitioner's denial of receipt and the Respondent's assertion of dispatch is essentially a question of fact, the determination of which would necessitate examination of the underlying record, including the registration particulars of the Petitioner and the history of amendments, if any, to its e-mail address on the portal. It is not a matter that ought to be adjudicated for the first time in the exercise of writ jurisdiction. This Court, therefore, is not calling upon the Respondent to produce any document to substantiate its factual assertions. However, the Respondent shall be at liberty to produce all such documents before the Appellate Authority, and the Petitioner shall be free to controvert the same, including by relying on the material placed on record before this Court.

17. Insofar as the imposition of penalty equivalent to 100% of the tax is concerned, a perusal of the Impugned Order reveals that it records the deposit of tax of Rs.66,14,525/-, penalty at 15% amounting to Rs.9,92,179/-, stated to have been voluntarily deposited before the SCN, and interest of Rs.1,77,226/-, all of which were verified and appropriated. Yet, penalty equivalent to the tax has been confirmed under Section 74(1) of the Act of 2017, on the sole observation that there is no proof of payment of the total interest amount.

18. The Impugned Order does not consider Sections 74(5) to 74(7) of the Act of 2017, does not quantify the interest payable on the tax so deposited nor records any finding on the interest actually paid against it, does not reconcile the appropriation of penalty at 15% with the imposition of penalty at 100% on the same tax, and records no specific finding of fraud, wilful misstatement or suppression of facts. However, an analysis of the same would require examination of the Relied Upon Documents (RUDs), namely, the Audit Memos, Forms ADT-02, DRC-01A and DRC-03, which would amount to adjudication of disputed questions of fact. That exercise can very well be undertaken by the Appellate Authority. The same applies to the other contentions of the Petitioner, relating to Rule 37, Form DRC-07 and the DIN.

D. CONCLUSION:

19. For the aforesaid reasons, this Court is not inclined to exercise its writ jurisdiction, thereby relegating the Petitioner to avail of the





alternative remedy of Appeal under Section 107 of the Act of 2017.

20. The Petitioner, if so advised, shall be at liberty to file an application under Section 14 of the Limitation Act, 1963 seeking exclusion of the period for which the present Petition has remained pending. The said application shall be considered by the Appellate Authority in accordance with law.

21. Needless to observe that the aforesaid observations are confined to the maintainability and the mode of disposal of the present Petition and shall not be construed as an expression of opinion on the merits of the case. It shall be open to the Appellate Authority to examine the Petitioner's objections, including the issue of service of the notice of personal hearing, independently and on their own merits.

22. With these observations, the present Petition, along with the pending application, is disposed of in the above terms.

ANIL KSHETARPAL, J.

BHARAT PARASHAR, J.

October 09, 2026
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