2026:DHC:9319-DB

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

% ***Date of Decision: 13.10.2026***

CNR No. DLHC010163642025

\+ W.P.(C) 3867/2025, CM APPL. 17974/2025

M/S. BLUE STAR INTERNATIONAL PVT. LTD. & ORS.

.....Petitioners

Through: Ms. Anjali Jha Manish, Mr. Priyadarshi Manish, Mr. Saurav Kumar, Advs.

versus

UNION OF INDIA & ORS. .....Respondents

Through: Mr. Arun Khatri, Sr. Standing Counsel with Mr. Shauray Bal, Adv.

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

J U D G M E N T (ORAL)

ANIL KSHETARPAL, J.:

1. Through the present Writ Petition, the Petitioners *inter alia* pray for the following substantive reliefs:

> *"(a) Issue a writ, order or direction in the nature of certiorari to set-aside the Order-In-Original No.72/RK/ADC/CGST/DSC/2024-25 dated 03.02.2025 passed by the Additional Commissioner. CGST Delhi South Commissionerate, Bhikaji Cama Place, New Delhi: and/or*
>
> *(b) Issue a writ, order or direction and read down the provision of Section 155 of the CGST Act, 2017 in respect of the facts and circumstances of the case; and/or*
>
> *(c) Issue a writ, order or direction and read down the provision of Section 122(1A) of the CGST Act. 2017 that the provision are prospective in nature; and/or"*

2. It is pertinent to note here that the Petitioners have an efficacious alternative remedy of appeal against the Order dated 03.02.2025 (hereinafter referred to as 'Impugned Order'), which is also not disputed by the learned counsel representing the Petitioners.

3. Learned counsel representing the Petitioners submits that the issue with regard to temporal application of Section 122(1A) of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as 'CGST Act') stands covered by the judgment dated 29.09.2026 passed by this Court in W.P.(C) 13883/2026, captioned ***Parag Garg v. Commissioner, Adjudication, CGST, Delhi West & Anr.,*** and connected matters. He, however, presses the prayer for reading down Section 155 of the CGST Act in view of the Department's failure to return certain seized records. He further submits that the demand reflected in Form GST DRC-07 exceeds the amount specified in the Show Cause Notice ('SCN') and confirmed by the Impugned Order, contrary to Section 75(7) of the CGST Act.

4. Petitioner No.1 is engaged in the export of readymade garments and footwear. Petitioner Nos.2 and 3 are its directors. The proceedings arose from an investigation during which searches were conducted at the office and residential premises on 17.11.2020. The Department alleged that Petitioner No.1 had availed and utilised input tax credit ('ITC') on the strength of invoices issued by non-existent suppliers, without receiving the goods covered by those invoices.

5. By the Impugned Order, the Adjudicating Authority confirmed recovery of ₹12,88,99,060/- from Petitioner No.1, together with





applicable interest and an equal penalty under Section 74(9) of the CGST Act. It also imposed upon each director a penalty of ₹12,88,99,060/- under Section 122(1A) and ₹25,000 under Section 122(3) of the CGST Act. It is a common order passed against a large number of Noticees.

6. Counter-Affidavit as well as the Rejoinder thereto have been filed by the learned counsel representing the parties.

7. On 12.10.2026, the arguments in the present case were heard. However, on the request of learned counsel representing the Respondents, further hearing of the case was postponed in order to facilitate the learned counsel representing the Respondents to take complete instructions before assisting the Court.

8. Today, learned counsel for the Respondents has produced a communication dated 13.10.2026 issued by the Legal Branch, CGST, Delhi South, informing that the office is taking necessary steps to rectify the error in Form GST DRC-07. The Respondents also acknowledge in their counter-affidavit that multiple summaries had been generated owing to a technical glitch in the GST portal.

9. Now, the last issue is with respect to Section 155 of the CGST Act, which reads as under:

> ***Section 155. Burden of proof.-***
>
> *Where any person claims that he is eligible for input tax credit under this Act, the burden of proving such claim shall lie on such person.*

10. The Petitioners contend that certain records taken into custody by the Department have not been returned and that their absence has





prevented Petitioner No.1 from establishing its eligibility for ITC. They rely upon the order dated 23.03.2023 passed in CONT.CAS(C) 204/2023 and connected matters, which records the Department's statement that the file pertaining to documents seized under the *panchnama* dated 17.09.2019 was untraceable. They further submit that the documents subsequently reconstructed and furnished during adjudication were not duly considered.

11. On the other hand, the Respondents submit that the available documents have been supplied to the Petitioners and that the unavailability of certain records does not relieve Petitioner No.1 of the burden prescribed by Section 155 of the CGST Act. According to them, the objections concerning the documentary evidence and its appreciation can be examined by the Appellate Authority.

12. This Court has considered the submissions advanced by the learned counsel representing the parties.

13. Section 155 places the burden of establishing eligibility for ITC upon the person claiming it. The grievance concerning the unavailable records can be examined without reading down that provision. The statutory allocation of the burden and the effect of the absence of particular documents are distinct questions. The order dated 23.03.2023 records both the Department's inability to furnish the documents pertaining to the untraceable file and the completion of the exercise regarding cloning and supply of electronic data. It is therefore necessary to examine which records remain unavailable, their relevance to the disputed transactions, the prejudice occasioned by

their absence, and whether the material supplied or reconstructed was duly considered. These questions require examination of the record and can appropriately be addressed in appeal. The Department's recorded inability to furnish the seized documents must form part of that consideration when assessing whether the statutory burden has been discharged.

14. In these circumstances, this Court is not inclined to entertain the challenge to the Impugned Order in exercise of its writ jurisdiction. The Petitioners are relegated to the statutory remedy of appeal under Section 107 of the CGST Act. The challenge to the penalties under Section 122(1A) shall be examined in accordance with ***Parag Garg*** *(supra)*. All other objections concerning the demand, interest, penalties and appreciation of evidence are left open for consideration by the Appellate Authority.

15. In view of the stand taken by the Respondents, the Respondents shall rectify the erroneous repetition of the demand in the Forms GST DRC-07 within fifteen days from the date of this judgment. The corrected summaries shall faithfully reflect the demand confirmed by the Impugned Order, and the necessary consequential corrections shall be made on the common portal and communicated to the Petitioners. For the purpose of availing the appellate remedy, any statutory pre-deposit shall be determined in accordance with the applicable provisions on the basis of the demand actually confirmed by the Impugned Order, without giving effect to the erroneous repetition in the summaries.

16. It shall be open to the Petitioners to raise all their objections before the Appellate Authority. They shall also be at liberty to file an application under Section 14 of the Limitation Act, 1963 seeking exclusion of the period during which the present Writ Petition remained pending. Any such application shall be considered by the Appellate Authority in accordance with law. Nothing stated herein shall be construed as an expression of opinion on the merits of the disputed transactions or the Petitioners' entitlement to ITC.

17. With these observations, the present Writ Petition, along with the pending application, is disposed of.

ANIL KSHETARPAL, J.

BHARAT PARASHAR, J.

OCTOBER 13, 2026
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