2026:DHC:9438-DB

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

% ***Judgment reserved on: 28.09.2026***

Judgment pronounced on: 27.10.2026

Judgment uploaded on: 27.10.2026

\# **CNR No. DLHC010219872025**

\+ W.P.(C) 5076/2025

M/S. SIKKA MOTORS PVT LTD .....Petitioner

Through: Mr. Siddarth Malhotra, Mr. Prerak Khurana and Ms. Ritika Goel, Advs.

versus

UNION OF INDIA & ANR. ....Respondents

Through: Mr. Raghuvendra Shukla, SPC along with Mr. Anil Devlal, GP, Mr. Sampan, Mr. Manu Shukla, Ms. Nandita and Mr. Asra Chandra Advs. for R-1.
Mr. Pranay Mohan Govil, SSC along with Mr. Devnit Chaudhuri and Ms. Tenzin Lhamo Bhutia, Advs. for R-2.

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. By way of the present Petition, the Petitioner seeks issuance of an appropriate writ for quashing of the Show Cause Notice ('SCN') dated 08.08.2024 and the consequential Order-in-Original ('OIO') dated 23.08.2024, on account of the SCN being time-barred in

contravention of the time stipulated under CBIC Notification No. 56/2023-central tax dated 28.12.2023[1] read with Section 73 of the Central Goods and Services Act, 2017[2].

A. BRIEF BACKGROUND:

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

3. The Petitioner being engaged in the business of Hyundai Car dealership, obtained registration under the provisions of the Act of 2017, bearing GSTIN 07AASCS5522N1ZO in the year 2017. Upon scrutiny of its GST Returns ('GSTR') for the Financial Year ('FY') 2019-20, the Respondents alleged that the Petitioner had availed ineligible Input Tax Credit ('ITC') amounting to Rs.10,57,392/- from suppliers whose registrations had been cancelled suo motu with retrospective effect, and Rs.5,57,720/- from suppliers who had not furnished their GSTR-3B returns for the relevant tax periods. The Respondents further alleged an outstanding late fee of Rs.1,03,100/- for delayed filing of GSTR-1 returns and non-payment of interest amounting to Rs.3,39,603/- on account of delayed payment of GST.

4. Following which, as set out in the Impugned OIO, *vide* ASMT-10 dated 29.02.2024, the Petitioner was conveyed about the aforestated discrepancies, with subsequently being afforded an opportunity of personal hearing on 12.07.2024, 22.07.2024 and 31.07.2024. Pursuant thereto, the Respondents issued the impugned

[1] hereinafter referred to as 'NN-56'
[2] hereinafter referred to as 'Act of 2017'

SCN, which was followed by the passing of the Impugned OIO. Aggrieved by the aforestated, the Petitioners have approached this Court seeking our indulgence on account of the impugned SCN being issued beyond the prescribed timeline.

B. SUBMISSIONS OF THE PARTIES:

5. Learned counsel representing the Petitioner has argued that even considering the extended limitation under NN-56, the SCN was required to be issued by 31.05.2024 under Section 73(2) of the Act of 2017. However, the same was made available to the Petitioner only on 08.08.2024, and is therefore time-barred.

6. *Per contra,* learned counsel representing the Respondents has argued that the impugned SCN dated 30.05.2024 was duly generated and uploaded on the AIO system in Form GST DRC-01. However, owing to a technical glitch during the migration from the AIO system to the GST BO portal, the notice could not be integrated with GSTN and was consequently re-uploaded on the BO portal on 08.08.2024, with an explanatory remark.

7. Reliance has also been placed on ASMT-10 communication and the subsequent personal hearing opportunities granted to argue that despite service of the aforestated, the Petitioner failed to furnish any response thereto.

8. Rebutting the aforesaid submission made on behalf of the Respondents, it has been argued by the Petitioner that, despite the technical glitch, no attempt was made to serve the impugned SCN





through any other mode.

C. ANALYSIS AND REASONING:

9. Heard learned counsel representing the parties and with their able assistance perused the paperbook on record.

10. Before dealing with the submissions so advanced we deem it appropriate to reproduce the relevant provisions of the Act of 2017, which shall form the basis of the present analysis. The relevant provisions are extracted hereunder:

> *"**61. Scrutiny of returns.—** (1) The proper officer may scrutinize the return and related particulars furnished by the registered person to verify the correctness of the return and inform him of the discrepancies noticed, if any, in such manner as may be prescribed and seek his explanation thereto.*
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> *(2) In case the explanation is found acceptable, the registered person shall be informed accordingly and no further action shall be taken in this regard.*
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> *(3) In case no satisfactory explanation is furnished within a period of thirty days of being informed by the proper officer or such further period as may be permitted by him or where the registered person, after accepting the discrepancies, fails to take the corrective measure in his return for the month in which the discrepancy is accepted, the proper officer may initiate appropriate action including those under section 65 or section 66 or section 67, or proceed to determine the tax and other dues under section 73 or section 74.*
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> ***73. Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for any reason other than fraud or any willful-misstatement or suppression of facts.—** (1) Where it appears to the proper officer that any tax has not been paid or short paid or erroneously refunded, or where input tax credit has been wrongly availed or utilised for any reason, other than the reason of fraud or any wilful-misstatement or suppression of facts to evade tax, he shall serve notice on the person chargeable with tax which has not been so paid or which has been so short paid or to whom the refund has erroneously been made, or who has wrongly availed or utilised input tax credit, requiring him to show cause as to why he should not pay the amount specified in the notice along with interest payable thereon under section 50 and a penalty leviable under*

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the provisions of this Act or the rules made thereunder.

(2) The proper officer shall issue the notice under sub-section (1) at least three months prior to the time limit specified in sub-section (10) for issuance of order.

(10) The proper officer shall issue the order under sub-section (9) within three years from the due date for furnishing of annual return for the financial year to which the tax not paid or short paid or input tax credit wrongly availed or utilised relates to or within three years from the date of erroneous refund.

168A. Power of Government to extend time limit in special circumstances.— *(1) Notwithstanding anything contained in this Act, the Government may, on the recommendations of the Council, by notification, extend the time limit specified in, or prescribed or notified under, this Act in respect of actions which cannot be completed or complied with due to force majeure.*

(2) The power to issue notification under sub-section (1) shall include the power to give retrospective effect to such notification from a date not earlier than the date of commencement of this Act.

Explanation.— For the purposes of this section, the expression ―force majeure‖ means a case of war, epidemic, flood, drought, fire, cyclone, earthquake or any other calamity caused by nature or otherwise affecting the implementation of any of the provisions of this Act.]

169. Service of notice in certain circumstances.— *(1) Any decision, order, summons, notice or other communication under this Act or the rules made thereunder shall be served by any one of the following methods, namely:—*

(a) by giving or tendering it directly or by a messenger including a courier to the addressee or the taxable person or to his manager or authorised representative or an advocate or a tax practitioner holding authority to appear in the proceedings on behalf of the taxable person or to a person regularly employed by him in connection with the business, or to any adult member of family residing with the taxable person; or

(b) by registered post or speed post or courier with acknowledgement due, to the person for whom it is intended or his authorised representative, if any, at his last known place of business or residence; or

(c) by sending a communication to his e-mail address provided at the time of registration or as amended from time to time; or

(d) by making it available on the common portal; or

(e) by publication in a newspaper circulating in the locality in which

the taxable person or the person to whom it is issued is last known to have resided, carried on business or personally worked for gain; or

(f) if none of the modes aforesaid is practicable, by affixing it in some conspicuous place at his last known place of business or residence and if such mode is not practicable for any reason, then by affixing a copy thereof on the notice board of the office of the concerned officer or authority who or which passed such decision or order or issued such summons or notice.

(2) Every decision, order, summons, notice or any communication shall be deemed to have been served on the date on which it is tendered or published or a copy thereof is affixed in the manner provided in sub-section (1).

(3) When such decision, order, summons, notice or any communication is sent by registered post or speed post, it shall be deemed to have been received by the addressee at the expiry of the period normally taken by such post in transit unless the contrary is proved."

11. Section 73 of the Act of 2017 governs determination of tax not paid or short paid, or erroneously refunded, or input tax credit wrongly availed or utilised, for reasons other than fraud, wilful misstatement or suppression of facts. While sub-section (2) stipulates the time limit for issuance of a SCN, sub-section (10) thereof, stipulates the outer time limit for passing of the adjudication order.

12. Further, Section 169 prescribes the modes of service of notices, including, *inter alia*, making the notice available on the common portal, sending it by registered post or speed post, and publication in a newspaper.

13. The scheme of Section 73 of the Act of 2017 is thus clear, wherein the limit for passing order under sub-section (10) is the outer boundary, and an SCN therein is to be issued at least three months before it as per sub-section (2). The period of three months is a minimum statutory limitation, intended to afford the noticee a

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meaningful opportunity to reply and be heard before the order is passed and is not merely a directory timeline.

14. *Vide* NN-56, the time limit under Section 73(10) for issuance of the order for the FY 2019-20 was extended up to 31.08.2024. It is not in dispute between the parties that, by virtue of the aforesaid notification, the outer limit for passing the order was 31.08.2024. Consequently, in terms of Section 73(2), the SCN was required to be issued on or before 31.05.2024.

15. It is an admitted position that the impugned SCN was made available to the Petitioner on the GST portal only on 08.08.2024 and beyond the statutory deadline of 31.05.2024 prescribed under Section 73(2) of the Act of 2017, read with NN-56. Accordingly, the impugned SCN is time-barred, and the consequential impugned OIO, founded thereon, cannot be sustained in law.

16. The principal defence of the Respondents that the impugned SCN was generated and uploaded on the AIO System within time, and it was re-uploaded on the BO portal on 08.08.2024 only on account of a technical glitch during migration, cannot be accepted for three reasons set out hereinafter.

17. *Firstly*, the DRC list page of the portal, as placed on record, shows an SCN dated 29.05.2024 in respect of the Petitioner for FY 2019-20, with the GSTN status as '*awaiting GSTN confirmation*'. The said entry also does not bear any Common Reference Number ('CRN') in respect thereto. The absence of a CRN and the pendency of GSTN confirmation indicate that the notice had not been integrated

with the common portal and was never communicated to the Petitioner.

18. A notice that remains on an internal system, unconfirmed and without a CRN, cannot be said to have been issued in the eyes of law, since issuance under Section 73(2) must be read together with the mode of service under Section 169 of the Act of 2017. An internal generation or upload, without the notice being made available to the noticee, does not satisfy the statutory requirement.

19. *Secondly*, notwithstanding the aforestated, the Respondents themselves have accepted that a technical glitch occurred on the portal, which led to the re-issuance of the SCN on 08.08.2024. Thus, re-issuance on 08.08.2024 is an acknowledgment that the earlier notice had not become effective. The date of the SCN is, therefore, 08.08.2024 and not any earlier date. The remark appended to the re-uploaded notice, or its date of generation, cannot confer retrospective effect on it, as no statutory provision empowers the proper officer to extend the limit under Section 73(2). The only mechanism for extension of time is a notification under Section 168A, and none such notification has been brought to the notice of this Court beyond NN-56.

20. *Thirdly*, the Court is in agreement with the Petitioner that, despite being aware of the technical glitch, the Respondents made no endeavour to have the SCN served by any other mode. Section 169(1) provides alternative modes of service, including service by registered or speed post and by email. Having failed to do so, the Respondents

cannot seek to take shelter behind a technical glitch of their own system, since the consequences of administrative lapses cannot be visited upon the taxpayer, nor can they enlarge a limitation that Parliament has fixed in mandatory terms.

21. The second contention of the Respondents that the Petitioner was issued ASMT-10 and was subsequently, granted personal hearings on 12.07.2024, 22.07.2024 and 31.07.2024, but failed to respond is also without merit. Scrutiny of GSTR under Section 61 of the Act of 2017 and the ensuing communications in Form ASMT-10 are preliminary steps, while the personal hearings are procedural formalities. They are not a substitute for the SCN, which is the foundational document that triggers the adjudication under Section 73 of the Act of 2017, which must set out the specific charge and the quantum of demand.

22. These procedural steps cannot act as a bypass to the mandatory statutory requirement of issuing the SCN within the prescribed time period. The Petitioner's alleged non-response to the ASMT-10 or non-participation in the hearings is thus wholly irrelevant to the question of limitation, which goes to the root of the Respondents' jurisdiction. The want of a response by the Petitioner does not relieve the Respondents of their obligation to adhere to the timeline, nor can it be construed as a waiver of the same.

23. It is trite that where a statute prescribes a time limit for the exercise of power, and the consequence of non-compliance is the loss of jurisdiction to proceed further, a proceeding commenced or

concluded beyond that period is without jurisdiction, and the breach cannot be cured by subsequent participation or by equitable considerations. It is also important to note that the limitation under a fiscal statute is a matter of statutory mandate, and not of convenience.

D. CONCLUSION:

24. In view of the aforegoing discussion, this Court holds that the Show Cause Notice dated 30.05.2024, as uploaded on 08.08.2024, was issued beyond the period stipulated under Section 73(2) of the Act of 2017 read with NN-56, and is therefore, barred by limitation. The Order in Original dated 23.08.2024, being consequential thereto, also does not sustain.

25. Accordingly, the Show Cause Notice along with the Order-in-Original are set aside and quashed.

26. Consequently, the present Petition is allowed in the aforesaid terms.

ANIL KSHETARPAL, J.

BHARAT PARASHAR, J.

OCTOBER 27, 2026
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