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

Date of Decision: 20th August, 2025

\+ **W.P.(C) 4374/2025 & CM APPL. 20152/2025**

RISHI ENTERPRISES THROUGH ITS PROPRIETOR RAJEEV KUMAR GOEL .....Petitioner

Through: Mr. Abhishek Garg & Mr. Yash Gaiha, Advs. (M: 9056299999)

versus

ADDITIONAL COMMISSIONER CENTRAL TAX DELHI NORTH & ANR. .....Respondents

Through: Mr. Aditya Singla, SSC, CBIC with Ms. Shreya Lamba, Mr. Ritwik Saha and Mr. Arya Suresh, Advs.

CORAM:
JUSTICE PRATHIBA M. SINGH
JUSTICE SHAIL JAIN

JUDGMENT

Prathiba M. Singh, J.

1. This hearing has been done through hybrid mode.

2. The present petition has been filed by the Petitioner- Rishi Enterprises under Articles 226 and 227 of the Constitution of India, *inter alia,* assailing the impugned order dated 11th February, 2025 (*hereinafter*, '*impugned order*'), which was passed pursuant to Show Cause Notice dated 05th August, 2024 (*hereinafter 'impugned SCN*').

Factual Background

3. The Petitioner is engaged in the business of trading and has been registered under the Central Goods and Services Tax Act, 2017 (*hereinafter 'the Act') vide* GSTIN 07AHTPG4076A1ZE. The impugned SCN was issued

to a total of 90 entities. The allegation against the noticees was that there was wrongful availment of Input Tax Credit (hereinafter '*ITC*') by all these entities.

4. The brief facts of the case are that an investigation was initially started against M/s Padmavat Industries based in Anand Parbat Industrial Area, Central Delhi, Delhi-110005. The said investigation was initiated on the basis of information received from Directorate of Analytics and Risk Management (hereinafter, *'DGRAM*'). The allegation against M/s Padmavat Industries was that it was not existing at its principal place of business.

5. One M/s DS Enterprises was, thereafter, identified as one of the recipients of goods from M/s Padmavat Industries. Further investigation at premises of M/s DS Enterprises also showed that the said firm was non-existent at the declared place of business and the enquiries made during the physical inspection further did not yield any satisfactory answers to the Respondent- Department (*hereinafter 'Department')*. At that stage, on 19th October, 2023 summons were issued to M/s DS Enterprises seeking various documents.

6. It is stated that none appeared before the Department on behalf of M/s DS Enterprises and no response was received. The Department, then, came to the conclusion that M/s DS Enterprises itself was a bogus and non-existing firm. The said firm is alleged to have obtained GST registration merely to avail of ITC illegally and to utilise the same without any receipt of the goods itself. The said entity was also passing on the inadmissible ITC without supply of goods to various tax payers.

7. Accordingly, the GST registration of M/s DS Enterprises was cancelled retrospectively with effect from 15th September, 2017. Thereafter various

documents, which were filed by M/s DS Enterprises for the period between September, 2017 to September, 2023 were then analysed by the Department. All the entities to whom M/s DS Enterprises had issued invoices were given notices, and the entire transaction totalled to a sum of ₹26.42/- crores.

8. Though there were a total of 229 recipients, only 89 recipients were under the jurisdiction of Delhi, Central Goods and Services Tax, North Commissionerate. Consequently, all the 89 recipients were issued notice. Summonses were issued to all these noticees; several of them participated in the proceedings, and finally, the impugned order was passed by the Adjudicating Authority.

9. As per the impugned order, penalties have been imposed on several of the noticees including the Petitioner - M/s Rishi Enterprises who is mentioned at serial no. 14 as Noticee no. 15 in the impugned order. The tax and penalty imposed on the Petitioner is to the tune of ₹51,87,858 (Tax of ₹25,93,929.00/- and Penalty of ₹25,93,929.00/-).

Submissions of the Parties

10. The submissions of Mr. Abhishek Garg, ld. Counsel for the Petitioner are captured below:

(i) There was no wilful suppression or fraud in this case, therefore the five years period of limitation under Section 74(10) of the Act could not have been invoked by the Department. Further, the period prescribed for issuance of SCN under Section 73(10) of the Act, 2017 is three years, which has already lapsed, and, therefore, the impugned SCN itself is time-barred.

(ii) Secondly, without prejudice, even if it is considered that the

impugned SCN was issued in time in terms of Section 74 of the Act, the impugned order has not been issued within the period of five years from the due date for the filing of the annual return. The said five-year period expired on 05th February, 2025 but the impugned order has been passed only on 11th February, 2025. The ld. Counsel for the Petitioner is conscious of the fact that the date of the signed order is 31st January, 2025 but because of the date on which it is being uploaded along with the DRC-07 on the portal, the same is barred by law. Reliance is placed upon, the decision of the Division Bench of this Court in ***W.P.(C) 10/2022*** titled as '***Suman Jeet Agarwal v. Income Tax Officer, Ward 61(1) and Others',*** where a similar provision under the Income Tax Act, 1961 has been interpreted by the Coordinate Bench of this Court. Ld. Counsel then relies upon one of the Allahabad High Court in ***HCL Infotech Ltd. v. Commissioner, Commercial Tax and Another 2024 SCC Online 5769*** (Paragraph 25) to argue that if the notice lacks the basic ingredients of Section 74 of the Act, the notice would not be sustainable.

(iii) The next submission is that though the impugned order is an appealable order, question of limitation being one that is jurisdictional in nature, the writ petition would be maintainable.

(iv) The decision in ***Joint Commissioner v. M/s Lakshmi Mobile Accessories, 2025: KER: 9253*** of the Kerala High Court is also relied upon to argue that a consolidated notice for the period 2017 to 2023 could not have been issued and a consolidated order also cannot be passed as in the case of GST, each financial year would

have to be dealt with separately and separate orders would have to be passed. In support of this submission ld. Counsel also relies upon order dated 14th October 2024 in ***W.P. (C) 14366/2024*** titled '***M/s Sree Ananta EXIM v. Union of India & Ors.'*** where this Court has observed as under:

> *"5. We however find ourselves unable to sustain the challenge bearing in mind the following facts. Sub-sections (9) and (10) of Section 74 of the Act are concerned with the determination of the amount of tax and the ultimate liability that may come to be raised. They are not concerned with the commencement of proceedings or the issuance of notice itself. In our considered opinion even though the notice may be for a consolidated period, the same would not relieve the respondents from independently assessing each financial period before quantifying a demand and passing a final order as contemplated under Section 74 of the Act. The respondents would statutorily be obliged to examine the facts as they obtain for each tax period and any explanation that the petitioner may choose to proffer. The right of the respondent to assess each tax period independently would not be effaced merely because a consolidated notice came to be issued."*

11. On these grounds, ld. Counsel for the Petitioner submits that impugned SCN and the impugned order are liable to be quashed.

12. A brief summary of all the grounds are as follows -

a) Firstly, that single SCN cannot be issued for multiple financial years.

b) Secondly, that neither the impugned order nor the DRC-07 have been issued within the period of limitation, and therefore the impugned order is liable to be quashed.

c) Thirdly, that the grounds for invoking Section 74 of the Act are not satisfied.

13. He has relied upon the following decisions as well.

- ***Akash Garg v. State of M. P., [W.P. No.16117/2020 decided on 19th November, 2020]***
- ***L&T Hydrocarbon Engineering Ltd. v. Union of India, [R/Special Civil Application No.11308 of 2019 decided on 3rd February, 2022]***

14. On the other hand, Mr. Aditya Singla, ld. Sr. Standing Counsel on behalf of the Respondent - Department has submitted that -

(i) On the issue of provision of consolidated SCN for multiple years, the judgment of this Court in ***Ambika Traders through proprietor Gaurav Gupta v. Additional Commissioner, Adjudication DGGSTI, CGST Delhi North (W.P.(C) 4853/2025 decided on 29th July, 2025)*** has held that, if the allegations of fraudulent availment of ITC is raised in an SCN, then the same can deal with multiple financial years.

(ii) Secondly, addressing the issue of belated uploading of DRC-07, he submits that this Court in its decision in ***Suresh Kumar v. Commissioner CGST Delhi North, [W.P.(C) 12199/2025, decided on 13th August, 2025]*** has held that the belated uploading of the DRC-07 would not, in itself, make the order barred by limitation.

(iii) Thirdly, reliance has also been placed on the fact that in this case, though the uploading of the impugned order happened subsequently on 11th February, 2025, an email was sent to the Petitioner on 4th February, 2025 on the registered email address of the Petitioner communicating the impugned order.

15. In response to this, Mr. Garg on behalf of the Petitioner submits that the order relates to 90 parties and the email which has been shown, does not show that it has been transmitted to all the parties. Secondly, the attachment is 17MB, which is beyond the normal storage that's compatible with an email on established platforms such as Google, Hotmail, Yahoo. He further submits that under Section 169(2) of the Act, *'deemed service'* only would be in case of service, which is under Section 169(1)(a), 169(1)(e) or 169(1)(f) of the Act in view of the terms ***'tendered'*** or ***'published'*** or ***'affixed'*** being used in said subsection. The Petitioner's contention is that no '*deemed service*' can be attributed where service is effected through the modes prescribed under the remaining sub-clauses.

Analysis and Findings

16. The Court has heard the parties.

17. At the outset, it is relevant to point out that the impugned order deals with a case where there were 90 noticees. The investigation was based on the information, which was received by the Department, consequent to which an investigation was initiated against M/s D S Enterprises. It was found that the firm did not exist in the Anand Parbat area, which was the registered address of the said firm. The said M/s D S Enterprises was issued a notice, and summons were also issued on 19th October, 2023. It is the Department's case that the firm was only incorporated for the purpose of obtaining GST registration and utilisation of ITC. The said firm had filed a GSTR1 form for the period from September, 2017 to September, 2023. All the invoices were retrieved by the IO, which showed that the ITC was passed on to 229 recipients to the tune of ₹26.42 crores (Approx.). Out of the said entities, who had

received the ITC, it is alleged that in respect of 89 firms, the invoices were goods-less invoices totalling to an amount of ₹11,61,03,114. As mentioned above the Petitioner is listed at serial no.14 as Noticee no.15 in the impugned order in this case.

18. Reply to the impugned SCN was filed by the Petitioner in which the stand taken was that all the e-way bills, e-voices and payments have been duly supported by the documents. However, it is relevant to note that the said reply does not mention what goods were which were sold or received. The invoices collected by the Department show *'D3 Round'* and '*Alloy Steel Round'* as the products which were being sold. These are four invoices, which, according to the Petitioner, are the invoices from M/s D S Enterprises.

19. Thereafter, the impugned order was passed on 31st January, 2025. As per Table A of the impugned order the transaction value with M/s D S Enterprises and the ITC availed of by the Petitioner is mentioned along with the GST registration number. As per the invoices, the total value of the goods, insofar as the Petitioner is concerned, is to the tune of ₹1,44,10,717/- and the ITC involved is to the tune of ₹25,93,929/-. The impugned order -

(i) confirms the demand of ITC along with interest,

(ii) imposes a penalty equivalent to the tax liability and

(iii) also imposes a penalty under Section 122 of the Act

against noticee no. 2 - 90, except 34, 75 and 76 i.e., against Petitioner- Rishi Enterprises as well.

20. It is against the said order that the present petition has been preferred. One of the primary contentions of the Petitioner is that the reply has not been considered. However, a perusal of paragraph 14 of the impugned order shows that three hearings were fixed. But it is the case of the Petitioner that no notice

for personal hearing was received. This would be a factual issue and at this stage, when such detailed investigation has taken place, the Petitioner has filed a reply and hearing notices are stated to have been issued, there is no reason to disbelieve the Department. Moreover, once the reply was filed by the Petitioner, a duty was cast upon it to be diligent and attend any hearings that may be fixed. Paragraph 14 of the impugned order reads as under:

> *"14. Records of Personal hearing*
>
> *Keeping in view the* principal[1] *of natural justice, the noticees in the impugned show cause notice were provided personal hearing on 20.11.2024, 16.12.2024 and 26.12.2024, however none appeared albeit a few whose submission have already been tabulated in the above table. Hence, the undersigned is left with no other alternative, but to decide the matter on the basis of facts available on records."*

The above paragraph would show that personal hearings, as mentioned above, were, in fact, given to the Petitioner on three occasions.

21. Coming to the issue raised by ld. Counsel for the Petitioner on the aspect of multiple orders years being covered in a single SCN, the issue is squarely covered by the decision in ***Ambika Traders (supra)*** where this Court has observed as under:

> *"43. Insofar as the issue of consolidated notice for various financial years is concerned, a perusal of Section 74 of the CGST Act would itself show that at least insofar as fraudulently availed or utilized ITC is concerned, the language used in Section 74(3) of the CGST Act and Section 74(4) of the CGST Act is "for any period" and "for such periods" respectively. This contemplates that a notice can be issued for a period which could be more than one financial year. Similar is the language even in Section*

[1] Principle*

73 of the CGST Act. The relevant provisions read as under:

*"**73. Determination of tax [, pertaining to the period up to Financial Year 2023-24,] not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for any reason other than fraud or any wilful-misstatement or suppression of facts.—***

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*(3) Where a notice has been issued **for any period** under sub-section (1), the proper officer may serve a statement, containing the details of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised **for such periods** other than those covered under sub-section (1), on the person chargeable with tax.*

(4) The service of such statement shall be deemed to be service of notice on such person under sub-section (1), subject to the condition that the grounds relied upon for such tax periods other than those covered under sub-section (1) are the same as are mentioned in the earlier notice.

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74. Determination of tax [, pertaining to the period up to Financial Year 2023-24,] not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised by reason of fraud or any wilful-misstatement or suppression of facts.—

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*(3) Where a notice has been issued **for any period** under sub-section (1), the proper officer may serve a statement, containing the details of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised **for such periods** other than those covered under sub-section (1), on the person chargeable with tax.*

(4) The service of statement under sub-section (3) shall be deemed to be service of notice under sub-section (1) of section 73, subject to the condition that the grounds relied upon in the said statement, except

the ground of fraud, or any wilful-misstatement or suppression of facts to evade tax, for periods other than those covered under sub-section (1) are the same as are mentioned in the earlier notice."

44. Some of the other provisions of the CGST Act, which are relevant, include Section 2(106) of the CGST Act, which defines "tax period" as under:

"2.[…] (106) "tax period" means the period for which the return is required to be furnished"

45. Thus, Sections 74(3), 74(4), 73(3) and 73(4) of the CGST Act use the term "for any period" and "for such periods". This would be in contrast with the language used in Sections 73(10) and 74(10) of the CGST Act where the term "financial year" is used. The said provisions read as under:

*"73.[…] (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"*

*"74.[…] 10) The proper officer shall issue the order under sub-section (9) within a period of five 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 five years from the date of erroneous refund."*

The Legislature is thus, conscious of the fact that insofar as wrongfully availed ITC is concerned, the notice can relate to a period and need not to be for a specific financial year.

46. The nature of ITC is such that fraudulent utilization and availment of the same cannot be established on most occasions without connecting

transactions over different financial years. The purchase could be shown in one financial year and the supply may be shown in the next financial year. It is only when either are found to be fabricated or the firms are found to be fake that the maze of transactions can be analysed and established as being fraudulent or bogus.

47. A solitary availment or utilization of ITC in one financial year may actually not be capable of by itself establishing the pattern of fraudulent availment or utilization. It is only when the series of transactions are analysed, investigated, and enquired into, and a consistent pattern is established, that the fraudulent availment and utilization of ITC may be revealed. The language in the abovementioned provisions i.e., the word `period' or `periods' as against `financial year' or `assessment year' are therefore, significant.

48. The ITC mechanism is one of the salient features of the GST regime which was introduced to encourage genuine businesses. In the words of Shri Pranab Mukherjee, the then Hon'ble President of India, who addressed the Nation at the launch of the GST on 1st July, 2017, ITC was highlighted as one of the core features integral to the framework of the GST regime. The relevant extract of the said speech of the Hon'ble President is set out below:

> *"I am told that a key feature of the system is that buyers will get credit for tax paid on inputs only when the seller has actually paid taxes to the government. This creates a strong incentive for buyers* ***to deal with honest and compliant sellers who pay their dues promptly****."*

49. It is seen that the said feature of ITC has been misused by large number of unscrupulous dealers, businesses who have in fact utilized or availed of ITC through non-existent supplies/purchases, fake firms and non-existent entities. The ultimate beneficiary of the ITC in the most cases may not even be the persons in whose name the GST registration is obtained. Businesses, individuals, and entities have charged commissions for

passing on ITC. In several cases, it has also been noticed that the persons in whose name the GST registration stands are in fact domestic helps, drivers, employees, etc., of businessmen who are engaged on salary and who may not even be aware that their identities are being misused.

50. In fact, Parliamentary questions have been raised on such fraudulent availment of ITC. In one such Parliamentary question, it was revealed as under:

> *"The press release issued by Ministry of Finance on 07.01.2024 (Annexure 1) brought out that 29,273 bogus firms involved in suspected Input Tax Credit (ITC) evasion of Rs 44,015 crore were detected in a sustained drive against non-existent tax payers by GST formations across the country since May 2023. An amount of Rs. 44,015 Crore (Rs.15240 Crore (State) + Rs. 28775 Crore (Centre)) of fake ITC has been detected."*

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54. ***The present case appears to be one such case where a substantial amount of ITC is alleged to have been availed/utilized running into more than Rs.83 Crores. The Petitioner is alleged to be one of the main entities/persons involved in the said activity. The transactions are between the years 2017 to 2021. A consolidated notice is, therefore, not merely permissible but, in fact, required in such cases in order to establish the illegal modality adopted by such businesses and entities. The language of the provision itself does not prevent issuance of SCN or order for multiple years in a consolidated manner.***

55. Even in the order which has been impugned before this Court, the details of the amounts for each year are set out clearly in the content of the order itself and is, therefore, clearly decipherable. Thus, it cannot be held that the issuance of consolidated notice or order violates the language of the provisions. Especially, in the case of fraudulent availment of ITC or utilization of ITC such consolidated notice and order would not just be in

fact, be required to show the wilful misstatement or suppression or the fraudulent availment/utilization."

22. Even in the present case, there are a maze of transactions, which may be spreading over various financial years and, therefore, owing to the statutory language and the view already taken by this Court in the above decision, it cannot be held that a SCN or an order passed under Section 74 of the Act relating to fraudulent availment of ITC cannot relate to multiple financial years.

23. Coming to the issue of limitation, it is relevant to note that the Petitioner assails the impugned order on the ground of limitation on two sub-grounds namely:

(i) The impugned order along with DRC-07 was uploaded on the portal only on 11th February, 2025 which was beyond the period of limitation.

(ii) The email communication of the impugned order cannot constitute valid '*service*' as the Petitioner allegedly had not received it and even otherwise email as a mode of communication would not fall into the scope of '*deemed service*' under Section 169(2) of the Act.

24. A perusal of Section 74(10) of the Act would show that the order issued under Subsection 74(9) has to be issued within a period of 5 years from the due date of filing of annual returns. The said provision reads as under:

> *"**74. Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised by reason of fraud or any wilful-misstatement or suppression of facts.**—*
> *(1).....*
>
> *xxxxx*
>
> *(10) The proper officer shall **issue the order** under sub-section (9**) within a period of five 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 five years from the date of erroneous refund."

It is relevant to note that the above section only requires the order to be issued within a period of 5 years.

25. Rule 142 of the CGST Rules relied upon by the parties shall also be relevant which reads as under:

"142. Notice and order for demand of amounts payable under the Act.-
(1) …….
xxxxxx

*(5) A **summary of the order issued** under section 52 or section 62 or section 63 or section 64 or section 73 or section 74 or section 75 or section 76 or section 122 or section 123 or section 124 or section 125 or section 127 or section 129 or section 130 shall be uploaded **electronically** in FORM GST DRC-07, specifying therein the amount of tax, interest and penalty payable by the person chargeable with tax."*

It is also essential to note that the summary order in FORM DRC-07 is required to be uploaded electronically.

26. That being said, the question that has to be adjudicated, is what would constitute ***'issue the order'*** in the present case because the impugned order appears to have been -

(i) signed on 31st January, 2025,

(ii) sent to the Petitioner *via* email on 4th February, 2025 and

(iii) uploaded along with DRC-07 on the portal on 11th February, 2025.

27. A perusal of Section 74(10) of the Act reveals that it merely requires the ***order*** and not the ***DRC-07*** to be mandatorily issued within the period of limitation. In fact, Rule 142 of the CGST Rules, as pointed out above, makes it

clear that DRC-07 is merely a summary of the ***order issued***. After the issuance of the order, DRC-07 is to be uploaded electronically. Thus, the order is issued first and, thereafter, the DRC-07 which is the summary, is to be uploaded. The amount, which would be liable to be paid or demanded in any particular order, is already contained in the order itself. For example, in the present case, the same is contained in paragraph 2 of the impugned order, which reads as under:

> "***2) In respect of Noticee No.2 to 90 (except Noticee No. 34,75 & 76):***
>
> *(i) I confirm the demand and order to recover the 'Input Tax Credit' (ITC) amount(s) from Noticee No. 2 to 90 (except Noticee No. 34, 75 & 76),* ***as mentioned against their names, Column (6) of Table-A****, wrongly availed and utilized by them, is disallowed under the provisions of Section 74(1) of CGST Act, 2017 read with the DGST Act, 2017 and IGST Act, 2017, by invoking the extended period of limitation;*
> *(ii) I also confirm the demand of Interest, at applicable rates, from Noticee No. 2 to 90 (except Noticee No.34, 75 & 76) against the amount of demand, as mentioned against their respective names, in Column (6) of Table-A, under Section 50 of CGST Act, 2017 read with the DGST Act, 2017 and IGST Act, 20l7;*
> *(iii) I also impose Penalty, equivalent to tax liability, upon Noticee No. 2 to 90 (except Noticee No. 34,75 & 76) as mentioned in Column (6) of Table-A, under Section 74(1) of CGST Act, 2017 read with the DGST Act, 2017 and IGST Act, 2017;*
> *(iv) I refrain from imposing Penalty under Section 122(1) (vii) & (xvii), Section 122(2)(b) and Section 122(3) (a) & (d) of the CGST Act, 2017 and the DGST Act, 2017 and IGST Act, 201 7, upon Noticee No. 2 to 90 (except Noticee No. 34,75 & 76).*

Sr.No.	*Noticee No.*	*GSTIN*	*Trade Name*	*Taxable Value*	*ITC Involved*
1	*Notice No.2*	*07AACPC3626L1ZW*	*Nanak Enterprises*	*7,03,82,426*	*1,26,68,837*
**********					
14	***Noticee No.15***	***07AHTPG4076A1ZE***	***Rishi Enterprises***	***1,44,10,717***	***25,93,929***

28. The Petitioner is Noticee no.15 in this case. The amount is specifically calculated in Chart A as extracted above. Thus, upon the impugned order being issued to the Petitioner *via* email, the amount that is demanded is clearly decipherable from the order itself.

29. Further, this issue has also been considered by this Court in ***Suresh Kumar (supra)*** wherein it has been held clearly that especially in the case of hundreds of noticees, a reasonable period may be taken by the Department to actually generate the DRC-07 in order to clearly specify the demand against each of the noticees, so that there is no ambiguity whatsoever. However, there is no doubt that the DRC-07 ought to ideally accompany the order or should be uploaded within a reasonable time, as without the DRC-07, no appeal can be filed and no demand can be enforced. Relevant portion of the decision in ***Suresh Kumar (supra)*** is set out below:

> *"13. When there are 650 noticees, obviously, the generation of DRC-07 for each of the noticees could take some reasonable time so long as the order has been communicated through e-mail or post or other modes as contained in Section 169 of the CGST Act. Accordingly, the delay in uploading Form DRC-07 or the order on the portal would not make the order barred by limitation.*
>
> *14. Prima-facie this Court is of the opinion that e-mail dated 4th February, 2025 is sufficient mode of service. However, the impugned order being an appealable order, the Petitioner is permitted to challenge the same by an appeal under Section 107 of the CGST Act. In the said*

appeal, the Petitioner is also permitted to raise the issue of limitation.

15. Let the appeals challenging the impugned orders be filed by 30th September, 2025 along with the requisite pre-deposit. If the same are filed by the said date, they shall not be dismissed on the ground of limitation and shall be adjudicated on merits."

30. The decision of the Telangana High Court, which has been placed before this Court, in ***Sahithi Marketers v. Superintendent of Central Tax, (2025) 29 Centax 129 (Telangana)*** also deals with a similar situation where there is delay in uploading of the DRC-07, which the Court held would not be liable to be raised as a ground for filing of writ petition. In the said decision, the ld. Division Bench of the Telangana High Court has pithily captured this very position in the following words:

" 3. The petitioner takes exception to the summary of the order in Form GST DRC-07, dated 03.05.2024, and the Order-in Original (O.I.O.) dated 24.04.2024 (Ex.P.2).

4. ***Learned counsel for the petitioner raised three fold submissions. Firstly, it is submitted that GST DRC-07, dated 03.05.2024, is barred by time. The time was extended by Notification No.56 of 2023 upto 30.04.2024 and DRC-07 is passed thereafter****. The second argument is that under the Goods and Services Tax Act, 2017 (for short "the GST Act"), there is no provision to pass the O.I.O. dated 24.04.2024. Thirdly, it is argued that DRC-07 dated 03.05.2024 does not have any physical or digital signature.*

5. ***Learned Senior Standing Counsel for CBIC pointed out that the order dated 24.04.2024 does contain physical signature and it is passed on 24.04.2024 which is well within the time. The limitation was extended upto 30.04.2024. DRC-07, dated 03.05.2024, is only a summary of the O.I.O. and whether or not it is signed will not cause any prejudice to the petitioner****. He further submits that O.I.O. is passed in consonance with Section*

73 of the GST Act. By placing reliance on the judgment of the Apex Court in ***CCT v. GLAXO SMITH KLINE CONSUMER HEALTH CARE LIMITED*** *, it is submitted that the petitioner could have preferred an appeal within ninety (90) days extendable by thirty (30) days under the GST Act. The petitioner has not filed the petition within aforesaid time. This point is considered by the Apex Court to the aforesaid case and in view of principles laid down therein this petition may not be entertained.*

6. We have heard the parties at length.

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8. Admittedly, the petitioner had a remedy of appeal under the GST Act and did not avail such remedy. This petition is not filed within the statutory time limit prescribed under the GST Act. Thus, in view of the judgment of the Apex Court in GLAXO SMITH KLINE CONSUMER HEALTH CARE LIMITED (supra), we find substance in the argument of learned Senior Standing Counsel for CBIC that this petition is not liable to be entertained. Otherwise, it will be against the scheme and intention of the statutory provision. ***The O.I.O. dated 24.04.2024 contained physical signature and it is issued within the limitation period which was extended upto 30.04.2024. DRC-07 is only a 'summary of order' and even if it did not contain any signature, it will not cause any prejudice to the petitioner.***"

31. Coming to the second sub-ground on which the impugned order is being assailed, i.e., mode of service, Section 169 of the Act, provides for various options/modes for service of any decision, summons or order which reads as under:

*"**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."

32. A perusal of the above provision would show that the service can be effected either -

(i) through physical tendering, or

(ii) by registered post or speed post or courier with acknowledgment due, or

(iii) by a communication to the email address, or

(iv) uploading on the common portal, or

(v) by publication in a newspaper or by affixation.

It is not in dispute that service can be effected by any one of the above modes under Section 169 of Act. However, ld. Counsel for the Petitioner raises an interesting issue under Section 169(2) that *'deemed service'* only would be in case of service, which is under Section 169(1)(a), 169(1)(e) or 169(1)(f) of the Act in view of the terms ***'tendered'*** or ***'published'*** or ***'affixed'*** being used in said subsection. The Petitioner's contention is that no '*deemed service*' can be attributed where service is effected through the modes prescribed under the remaining sub-clauses.

33. Insofar as this argument is concerned, the Court has no doubt as to the fact that 'limitation' and 'service' are interlinked with each other. Therefore, the term issuance of an order has to be interpreted in the context of Section 169 of the Act and Rule 142 of the CGST Rules. Under the scheme of Section 169 of the Act the usual modes of service are stipulated and some modes of service are also construed as *'deemed service'* under Section 169(2). The usual modes of service could be physical service, registered post, speed post, courier, email, uploading on the common portal, affixation etc., In the case of some modes of service, the service is deemed to have been effected. However, it cannot be argued or held that only when the service is done by any of the deemed service modes, that the order would stand ***issued***. The issuance of the order in any of the stipulated modes of service would constitute ***service***. There is a difference

between issuance of an order and deemed service under Section 169(2) of the Act. Issuance of the order is what is required under Section 74(10) of the Act and service through a mode which would constitute ***deemed service*** of the order is not mandated. Therefore, communicating an order by email would be sufficient service in terms of Section 169 of Act for constituting issuance of an order. Rule 142 is also clear in the initial portion where it uses the expression, ***summary of the order issued*** under Section 74 of the Act.

34. Coming to the last and final issue of whether there is sufficient ground to invoke the extended period of limitation under Section 74 of the Act, there cannot be any doubt that Section 74 is to be invoked in circumstances where there is an allegation of fraud, wilful misstatement or suppression. In the present case, the impugned order as well as the impugned SCN itself reveal that the investigation was commenced sometime in October 2023 when the information was received from the investigation wing. Immediately, thereafter, M/s Padmavat Industries and M/s D S Enterprises have been investigated, and it has been found, as per the Department, that there is a fraudulent availment and passing on of ITC.

35. It is relevant to point out that, though the total number of recipients in the case of M/s D S Enterprises is 229, it is only in the case of 89 firms that the jurisdiction has been exercised by the Department. If, *prima facie*, in the process of investigating 89 entities and their documents, instances of fraudulent availment are revealed, then the extended period of limitation would obviously apply.

36. In ***L&T (supra)*** which has been relied upon by the Petitioner**,** the Court was considering a case where there was only an issue of law to be decided and no factual averment was to be considered. Paragraph 72 of the said judgment

is relevant and is extracted herein below:

> *"72. Thus, in the case on hand, the facts are not in dispute. A pure question of law is to be decided on the very averments made by the Respondent in the show cause notice. Therefore, in our view the present writ application could be said to be maintained."*

Unlike in the case of ***L&T (supra)***, in the present case, there are various factual issues would have to be considered and analysed, which in writ jurisdiction cannot be gone into. Accordingly, this Court, upon a consideration of the overall conspectus of the matter, is satisfied that the provisions of Section 74 of the Act are applicable to the present case.

37. In this factual and legal background, this Court is not inclined to entertain the present writ petition. The Petitioner is, however, permitted to file the appeal under Section 107 of the Act before the Appellate Authority by 30th September, 2025 along with the requisite pre-deposit. If the same is filed within the stipulated period, the Appellate Authority shall not dismiss it on the grounds of limitation and adjudicate it on its own merits.

38. The petition is dismissed in the above terms. Pending applications, if any, are also disposed on in the above terms.

PRATHIBA M. SINGH
JUDGE

SHAIL JAIN
JUDGE

AUGUST 20, 2025/*dk/Ar.*
(corrected & released on 26th August, 2025)