

Netgear Technologies India Pvt. Ltd. v. Commissioner CGST, Karol Bagh Division, GST Delhi North & Another

Validity of Show Cause Notice issued under Section 74 of the CGST Act, 2017 for recovery of refund already sanctioned pursuant to an Appellate Order and High Court direction, without alleging fraud, wilful misstatement or suppression of facts

Date of Order: March 17, 2025
Case Law No: GIB-DHC-2025-40
Source: GST INDIA Biz (www.gstindia.biz)

CASE DESCRIPTION / SUMMARY

Background

Netgear Technologies India Pvt. Ltd. had filed a refund application claiming export of services without payment of IGST for the tax period October 2017 to March 2018. The refund was initially rejected. On appeal, the Joint Commissioner (Appeals) allowed the appeal vide Order-in-Appeal (OIA) dated March 9, 2021, holding that the services rendered amounted to export of services and that the petitioner was not an intermediary. The Revenue neither challenged this OIA nor obtained any stay against it. The petitioner then filed a writ petition before the Delhi High Court seeking disbursement of refund in terms of the OIA. The High Court, in W.P.(C) No. 10461 of 2022 decided on May 18, 2023, directed the respondents to disburse the refund with applicable interest within four weeks. Pursuant to this, the refund of Rs. 26,88,280 along with interest of Rs. 5,04,439 was sanctioned vide order dated July 26, 2023. Thereafter, the Revenue — instead of pursuing the proper appellate remedy — issued a fresh Show Cause Notice (SCN) dated August 3, 2024 under [Section 74](#) of the CGST Act for the same tax period, alleging that the refund was erroneously sanctioned and seeking its recovery along with interest and penalty.

Court Observations (Verbatim)

On the nature of the SCN and absence of fraud allegations:

"The SCN carries no specific allegation of fraud, wilful misstatement or suppression against the petitioner. We are thus of the firm view that absent the same, the jurisdiction assumed by the

respondent under [section 74](#) is clearly erroneous and untenable."

On the requirement for invoking Section 74:

"It is pertinent to note that [section 74](#) uses the expression 'by reason of' and thus being indicative of the power conferred by that provision being liable to be invoked only if it be found that the assessee had indulged in acts constituting fraud, wilful misstatement or suppression of facts in order to evade tax."

On mechanical issuance of the SCN:

"In view of the absence of clear and specific reasoning in the impugned SCN and which could be read as justifying the invocation of [section 74](#), we find ourselves unable to sustain the impugned SCN for a tax period that had already been assessed by the GST authorities or to countenance the SCN as operating as a fetter on the grant of refund which was affirmed and recognised by the court in *Netgear Technologies India*."

On the real intent behind the SCN:

"We are constrained to observe that the SCN appears to have been issued solely to avoid the inevitable consequences which flow from our decision rendered inter partes in the earlier round of litigation. We are of the firm opinion that a claim for refund cannot be legally or justifiably stalled by the adoption of circuitous means as the present."

Cases Cited by the Court

1. *Netgear Technologies India Pvt. Ltd. v. Assistant Commissioner of GST, Delhi East Commissionerate* — 2023 SCC OnLine Del 8724 (W.P.(C) No. 10461 of 2022, May 18, 2023)
2. *Zones Corporate Solutions Pvt. Ltd. v. Commissioner of Central Goods and Services Tax Delhi East* — 2020-VIL-302-DEL
3. *Alex Tour and Travel Private Limited v. Assistant Commissioner, CGST, Division-Janakpuri* — (2024) 122 GSTR 81 (Delhi); 2023 SCC OnLine Del 2709
4. *Parity Infotech Solutions Pvt. Ltd. v. Government of NCT of Delhi* — (2023) 120 GSTR 30 (Delhi); (2023) 4 HCC (Del) 685
5. *HCL Infotech Ltd. v. Commissioner, Commercial Tax* — (2025) 141 GSTR 324 (All); 2024 SCC OnLine All 5769
6. *Raj Bahadur Narain Singh Sugar Mills Ltd. v. Union of India* — (1997) 6 SCC 81; (1996) 88 ELT 24 (SC)
7. *Collector of Central Excise v. H.M.M. Limited* — 1995 SCC OnLine SC 82; 1995 Supp (3) SCC 322; (1995) 76 ELT 497 (SC)

Final Verdict

The writ petition was allowed. The impugned SCN dated August 3, 2024 was quashed and set aside. The refund claim of the petitioner was directed to be attended to and disposed of forthwith, subject to any orders that may be passed on any appeal the respondents may institute against

© 2026 GST INDIA Biz. All rights reserved.