



2026:DHC:1223-DB



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

Date of decision: 12th February, 2026

+ W.P.(C) 1988/2026

SREI EQUIPMENT FINANCE LIMITED
THROUGH ITS AUTHORISED REPRESENTATIVE
HAVING ITS OFFICE AT D2, FIFTH FLOOR, SOUTHERN
PARK,
SAKET, NEW DELHI-110017 **.....PETITIONER**

Through: Mr. Anirban Bhattacharya, Ms.
Priyanka Bhatt and Mr. Rajeev
Chowdhary

Versus

**1. OFFICE OF THE ASSISTANT COMMISSIONER,
CENTRAL GOODS & SERVICES TAX AND CENTRAL
EXCISE DIVISION
MALVIYA NAGAR, COMMISSIONERATE
2B, 4th FLOOR, EIL BUILDING,
BHIKAJI CAMA PLACE, NEW DELHI-110066**

.....RESPONDENT NO. 1

**2. OFFICE OF THE PRINCIPAL COMMISSIONER
CENTRAL GOODS AND SERVICE TAX
CGST DELHI, SOUTH COMMISSIONERATE,
PLOT NO. – 2B, 3rd FLOOR,
EIL ANNEXE BUILDING,
BHIKAJI CAMA PLACE, NEW DELHI-110066**

.....RESPONDENT NO. 2

Through: Ms. Monica Benjamin SSC
with Ms. Nancy Jain Advocate
for respondents.

CORAM:

**HON'BLE MR. JUSTICE NITIN WASUDEO SAMBRE
HON'BLE MR. JUSTICE AJAY DIGPAUL**



JUDGMENT (ORAL)

NITIN WASUDEO SAMBRE, J.

1. Impugned in the present petition is the order dated 23th December, 2025 passed by the Assistant Commissioner, GST South Commissionerate, operative part of which reads thus:-

“1. I hereby invoke the extended period of limitation so provided under proviso to Section 74(1) of the CGST Act, 2017 read with Section 20 of the IGST Act, 2017 for excess/wrongly availment of ITC.

2. I confirm the demand of ineligible ITC of Rs.67,50,000/- (IGST – Rs.67,50,000/-) (Rupees Sixty Seven Lakh Fifty Thousand only) under Section 74(1) of CGST Act, 2017 read with section 20 of the IGST Act, 2017 and corresponding provisions of SGST Act. Further, I ordered to appropriate Rs. 653400/- from the above demand as the taxpayer has deposited the same vide DRC-03 dated 30.09.2020 as discussed in the Para 15.7 above.

3. I confirm the demand of applicable interest on the amount of Rs.67,50,000/as mentioned at para (2) above, under Section 50 of CGST Act, 2017 read with Section 20 of IGST Act, 2017 and corresponding provisions of SGST Act, 2017. Further, I ordered to appropriate Rs. 210715/- from the above applicable interest as the taxpayer has deposited the same vide DRC-03 dated 30.09.2020 as discussed in in the Para 15. 7 above.

4. I impose a penalty of Rs. 67,50,000/- (IGST – Rs.67,50,000/-) under Section 74(1) of CGST Act, 2017 read with section 20 of the IGST Act, 2017 and corresponding provisions of SGST Act;”

2. The said order was preceded by a Summon issued under Section



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70 of the *Central Goods and Services Tax Act, 2017* (hereinafter referred to as the “*CGST Act*”) on 25th August, 2020. In response to the said summons, a reply was submitted on 1st September, 2020.

3. The present petitioner was arrayed as a respondent before the National Company Law Tribunal, Kolkata Bench, Kolkata, in C.P.(IB) No. 294/2021, which was under Section 227 read with clause (zk) of sub-section (2) of Section 239 of the *Insolvency and Bankruptcy Code, 2016* (hereinafter referred to as the “*IBC*”).

4. In the said proceedings, an order was initially passed on 8th October, 2021 declaring a moratorium, which is informed to have been approved on 11th August 2023.

5. After the aforesaid order, a Show Cause Notice dated 24th June, 2025 was issued to the petitioner in the form of demand for the reasons mentioned in the said Show Cause Notice, which was based on an investigation.

6. Paragraph 11 of the said Show Cause Notice summarizes the liability and responsibility of the petitioner which is reproduced as under:-

“11. From the investigation conducted so far, it transpires the followings:

i. M/s. AGTSPL, GSTIN:37MKCA7278H1Z7, is engaged in issuance of invoice or bills without underlying supply of goods or rendering of service, in violation of the provision of the CGST Act, 2017 and rules made thereunder, leading to wrongful availment and utilization of ITC passed on by M/s. AGTSPL. M/s. SREI Equipment Finance Pvt Ltd (GSTIN; 07MKCS3431L1Z4) is one such recipients of M/ s. AGTSPL



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that has availed input tax credit on the basis of invoices without any underlying supply of goods and services or both issued by M/s. AGTSPL.

ii. GSTR-2A data data of the Noticee revealed that they have received Input Tax Credit amounting to Rs. 53,46,000/- on the basis of invoices issued by M/s. AGTSPL without rendering services as detailed in Table-II above.

iii. Self disclosed information provided by the Noticee revealed that they have availed Input Tax Credit amounting to Rs. 67,50,000/- during period F.Y. 2018-19 on the basis of invoices issued by M/ s. AGTSPL as detailed in Tabler. The Noticee has also failed to provide valid documentary evidence such as payment proof, service contracts to support claims of ITC received from M/s. AGTSPL.

iv. Therefore, ineligible input tax credit on Rs. 67,50,000/- availed by the Noticee is liable to be demanded along with applicable interest and penalty under Section 74(1) of CGST Act, 2017.”

7. The said Show Cause Notice was duly responded to by the petitioner *vide* reply dated 23rd July, 2025.

8. Amongst others, the grounds raised in paragraph 2 of the reply reads thus:-

“SEFL, being an NBFC, is regulated by the Reserve Bank of India. SEFL was taken to the National Company Law Tribunal, Kolkata Bench for undergoing Corporate Insolvency Resolution Process (here-in-after referred to as ‘CIRP’) under the insolvency and Bankruptcy Code, 2016 (IBC) by the Reserve Bank of India.

The Reserve Bank of India, vide notification dated 04.10.2021, superseded the Board of SEFL and appointed an Administrator to oversee its affairs.

By an Order dated 08.10.2021, the National Company Law



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*Tribunal, Kolkata Bench admitted the application under Section 227 read with Section 239(2)(zk) of the IBC and admitted the SEFL to CIRP and appointed an Administrator to oversee the affairs of the Company. A copy of the Order dated 08.10.2021 passed by the National Company Law Tribunal Kolkata Bench in C.P.(IB) No.294 of 2021 (Reserve Bank of India Vs. SREI Equipment Finance Ltd.) is enclosed and marked as **Annexure-2** to this reply petition.”*

9. As such, it is the contention of the learned counsel for the petitioner that once the moratorium is approved, the option left with the respondents is to submit their claim before the Resolution Professional and the proceedings which led to the passing of the impugned order are, in such an eventuality, required to be kept in abeyance.

10. Learned counsel for the respondents submits that there was no sufficient notice with regard to the proceedings initiated under the IBC, as the public notice was issued only at Kolkata, and there is no reason to believe that the respondent-authority at Delhi would have had sufficient knowledge of the same. She would urge that, in such an eventuality, the position of law must be appreciated and an inference may be drawn that the Resolution Plan cannot be said to be binding upon the respondents.

11. We have considered the aforesaid submissions.

12. As regards the reply dated 23rd July 2025 submitted in response to the Show Cause Notice dated 24th June 2025, a specific ground has been raised qua the declaration of the moratorium and the maintainability of the proceedings against the petitioner, in view of the statutory protection provided under the provisions of the IBC.



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13. The least that was expected of the respondents was to deal with the said issue in its order impugned.. A specific ground was raised in defence by the present petitioner regarding the very maintainability of the Show Cause Notice, that too on the basis of statutory protection. The respondent, in our opinion, was duty-bound to deal with the same and the failure to do so, amounts to a denial of the opportunity of hearing.

14. In such an eventuality, not only the objection raised by the respondents that the petitioner has an alternate remedy and that, as such, the writ petition is not maintainable, is liable to be overruled, but we also have to hold that the impugned order suffers from non-application of mind.

15. That being so, we deem it appropriate to quash and set-aside the impugned order dated 23rd December, 2025 passed by the respondents.

16. We permit the petitioner to appear before the respondent-authority on 16th March, 2026 with its written notes of arguments, if any, along with documents.

17. We expect the respondents to grant an opportunity of hearing to the petitioner and deal with all the contentions raised by the petitioner including the one raised in the present petition, which led to the order of remand.

18. Let the decision be taken expeditiously and communicated to the petitioner.

19. The petition, as such, stands allowed in above terms.



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20. Pending application, if any, also stands disposed of accordingly.
21. Needless to clarify that it shall be open for the petitioner to take recourse to such remedy as shall be advisable in accordance with law in case if the order is adverse to its interest.
22. A copy of this Judgment be uploaded on the website of this Court.

**NITIN WASUDEO SAMBRE
(JUDGE)**

**AJAY DIGPAUL
(JUDGE)**

FEBRUARY 12, 2026/ay/sk