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

Date of Decision: 12th September, 2025

+ **W.P.(C) 14127/2025, CM APPL. 57995/2025**

MS CHETAK MOTORS PVT LTD AND ORSPetitioners

Through: Mr. Yogendra Aldak, Mr. Kunal Kapoor and Mr. Yatharth Tripathi, Advs.

versus

ADDITIONAL COMMISSIONER (ANTI-EVASION) CGST, DELHI SOUTH COMMISSIONERATE & ANR.Respondents

Through: Mr. Aditya Singla SSC CBIC, Ms. Arya Suresh Nair, Adv.

CORAM:

JUSTICE PRATHIBA M. SINGH
JUSTICE SHAIL JAIN

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through hybrid mode.

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2. Allowed subject to all just exceptions. Accordingly, the application is disposed of.

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3. The present petition has been filed by the Petitioner under Article 226 of the Constitution of India, *inter alia*, challenging the Show Cause Notice (hereinafter, 'SCN') dated 24th June, 2025 under Section 74 of the Central Goods and Service Tax Act, 2017 (hereinafter, 'CGST Act').

4. The stand of the Petitioner as per the submissions made by Mr.



Yogendra Aldak, ld. Counsel for the Petitioner, is that Section 74 of the CGST Act cannot be invoked in this case as there is no fraud or wilful mis-statement or suppression of facts. Secondly, the authorities are proceeding on a pre-conceived notion and thirdly, that the Relied Upon Documents (hereinafter, 'RUDs') which are relied upon by the GST Department are not supplied to the Petitioner.

5. Insofar as the first ground is concerned, the Court has considered the matter and a perusal of paragraph 5 of the SCN would show that there are specific reasons given by the authority as to why Section 74 of the CGST Act is being invoked. Paragraph 5 of the SCN reads as under:

"5. Noticee has not paid GST liability on the issue for period 2021-22 on the grounds that audit of their company till the period 2020-21 has already been completed by CGST department; that they have already submitted all their records to the audit team and based on that audit was concluded and FORM GST ADT-02 Audit Report No. 188/2022-23 dated 21.09.2022 was issued. Whereas the contention of the noticee is not tenable. Grounds for Invoking Provisions of Section 74 of the CGST Act, 2017:

i. Whereas, the law has placed trust on the registered person by allowing self-assessments in the availment of ITC and payment of their GST liabilities. In the extension of trust-based regime the private records maintained by the registered person during normal business purposes have been made acceptable. This concept operates on the basis of honesty on the part of the registered person. Therefore, the governing statutory provisions create an absolute liability placed on the registered person when there is a breach of trust.

ii. Whereas, it appears that the noticee has wilfully not paid



the tax and availed ineligible/excess ITC in their GSTR-3B and did not reverse the same as explained in the foregoing paras. The non-reversal of ineligible ITC availed in the aforesaid manner was never voluntarily divulged by the noticee in their GSTR-3B as mandated under Rule 42 & 43 of the CGST Act, 2017, but the same were detected/unearthed by the Anti-Evasion Branch, CGST Delhi South during investigation at the time of the inspection proceedings and by investigation of their records/documents etc which otherwise, would not have come to the notice of the department.

iii. Whereas, the facts unearthed during the investigation were not ascertainable from their GST returns, as had the department not initiated instant investigation the same would not have come to the notice to the department. Thus, it appears that noticee has suppressed the vital facts and contravened various statutory provisions as discussed in this notice.

iv. Whereas, during the course of investigation, from the voluntary statement tendered under section 70 of the CGST Act, 2017 by Shri Mukesh Haritash (Director) admitted that the said noticee has to reverse Input Tax Credit attributable to the exempted supplies as per section 17(2) of the CGST Act, 2017 and Rule 42/43 of the CGST Rules, 2017. They also stated they would calculate the quantum of such Input Tax Credit and would reverse the same. Therefore, it appeared that the noticee was aware of their liability for ITC reversal under Section 17(2) of the CGST Act, 2017, read with Rule 42 & 43 of the CGST Rules, 2017, on account of non-compliance of the said provision on their part. Thus, the noticee has been deliberately and intentionally suppressing the facts and not paying appropriate tax with intention to evade payment of GST.

v. In view of the above, it appears that they have wilfully suppressed liabilities of reversal of ineligible ITC



attributable to effecting exempted supplies. The said non-disclosures of the material facts in their GST returns appear to be wilful and intentional because noticee have failed to explain the reason of non-disclosure during investigation. Even after admitting the liability of ITC reversal, in terms of above referred provision, arised on account of non-compliance of the said provision on their part, the noticee has not reversed the ITC and trying to litigate the matter without divulging their contention/reservation/view on the matter. Therefore, it appears the noticee may place fictitious records/ incorrect explanation at the time of adjudication, where there is little scope of verification of concocted/ false information/ explanations submitted by the noticee. Thus, it appears that the noticee have acted upon a meticulously designed but nefarious plan and thereby indulged himself with mensrea, in the evasion of GST liabilities in the aforesaid manner. Therefore, provisions of Section 74 of the CGST Act, 2017 appears to be invokable in the instant matter. Further, due to aforesaid wilful omission and commission, the noticee also appear to be liable for penalty under Section 74 and Section 122 of the CGST, 2017.”

6. At this stage, therefore, insofar as invocation of Section 74 of the CGST Act is concerned, the Court is not inclined to entertain the present writ petition on that ground.

7. Insofar as the second ground is concerned, the allegation is that the authority may proceed on a pre-conceived notion. Such an allegation would not be tenable as the same could be raised in all matters. This Court has seen a large number of orders and to make a blanket and sweeping submission that the Authority has a pre-conceived notion would not be correct. The Adjudicating Authority is expected to deal with the matter fairly and in an unbiased manner. Accordingly, the Adjudicating Authority, it would be



sufficient to observe that after obtaining a reply from the Petitioner and after giving a personal hearing, shall decide the matter in a fair manner so that the adjudication is not tainted or tilted in any manner.

8. Insofar as the issue of RUDs are concerned, the submission is that the hearing is fixed on Monday *i.e.* 15th September, 2025 and the RUDs are still not provided to the Petitioner.

9. Considering this submission which is made, let the RUDs be supplied to the Petitioner by 30th September 2025. Moreover, let the response be filed by the Petitioner by 15th October, 2025.

10. Thereafter, a personal hearing notice shall be given to the Petitioner on the following email address and phone number:

Email Address: yogendra.aldak@lakshmisri.com

11. The Adjudicating Authority shall accordingly hear the Petitioner and pass a reasoned order in this matter, in accordance with law. Grounds in respect of invocation of Section 74 of the CGST Act not being made out may also be raised, if so advised, in the process of adjudication.

12. The petition is disposed in these terms. All rights and remedies as also the contentions are left open.

**PRATHIBA M. SINGH
JUDGE**

**SHAIL JAIN
JUDGE**

SEPTEMBER 12, 2025/kp/ck