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

Date of Decision: 3rd December, 2025

Uploaded on: 9th December, 2025

\+ **W.P.(C) 5370/2025**

STANLEE (INDIA) ENTERPRISES PVT. LTD. .....Petitioner

Through: Mr. Virag Tiwari and Mr. Himank Ahuja, Advs.

versus

THE COMMISSIONER OF CGST, DELHI NORTH .....Respondent

Through: Mr. Atul Tripathi, Adv.

CORAM:
JUSTICE PRATHIBA M. SINGH
JUSTICE RENU BHATNAGAR

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through hybrid mode.

2. The present petition has been filed, *inter alia,* challenging the refund rejection order dated 3rd February, 2025 passed by the Respondent Department. The Petitioner had applied for refunds of the following amounts of IGST which was deposited by the Petitioner:

(i) August 2024 : 9,91,007.39/- along with interest;

(ii) September 2024: 19,87,614.73/- along with interest;

(iii) October 2024: 9,94,739/- along with interest.

3. When the respective applications were filed for refund in terms of the shipping bills which were uploaded on the ICEGATE portal *qua* exports, the same were rejected by the Respondent Department by issuing an RFD-08 notice for rejection of the application for refund. In the said RFD-08, the plea taken by the Respondent Department is that in comparison between GSTR 2A and 3B for the Financial Year 2019-20, excess Input Tax Credit

(hereinafter "*ITC*") has been availed.

4. This notice was replied to by the Petitioner on 11th November, 2025 who took the stand that the subject shipping bills were duly verified by the proper officer through ICEGATE and the refunds did not relate to the period for which excess availment of ITC is now being claimed by the Department. Moreover, no Show Cause Notice (hereinafter "*SCN*") has been issued in respect of the said excessive availment of ITC for FY 2019-20 either under Section 73 or 74 of the Central Goods and Services Tax Act, 2017 (hereinafter "*CGST Act*"). Therefore, the rejection of the refund is not valid as per the Petitioner.

5. It is also the case of the Petitioner that a personal hearing was attended by the Petitioner's representative, however, since the concerned officer of the Respondent Department was on election duty, no effective hearing was granted. Finally, the impugned orders have been passed rejecting the refunds.

6. The further submission of the ld. Counsel for the Petitioner is that in respect of Financial Year 2019-20, if there was any ITC which was wrongly availed, the Respondent Department was free to take action in accordance with law. However, the refunds for the three months in 2024 cannot be withheld on the ground of excess ITC having been availed, that too in a completely different Financial Year.

7. Finally, it is also submitted that the Respondent Department had conducted an audit of the Petitioner from 1st April, 2018 to 31st March, 2024 in which certain demands were raised for different Financial Years and the said demands have already been paid. No demand was raised in respect of the Financial Year 2019-20. Under such circumstances, the holding back of

the refunds is completely unjustified.

8. Mr. Atul Tripathi, ld. SSC for the Respondent Department, on the other hand submits that though no SCN has been issued under Section 73 or 74 of the CGST Act, in the impugned order for rejection of application for refund, the reasoning has been given in respect of excess availment of ITC. In view thereof, the submission is that the refund has been rightly rejected.

9. The Court has considered the matter. The scheme under the CGST Act is that if there is any excess availment of ITC, the Department ought to issue a notice under Section 73 or 74 of the CGST Act. In the present case, the excess ITC alleged by the Respondent Department upon comparison of GSTR 2A and 3B is a sum of Rs. 6,04,117.56/-. In respect of this alleged excess ITC or any other alleged excess ITCs in these months, the admitted position is that no notice under Section 73 and 74 of the CGST Act has been issued by the Respondent Department. The said sections are relevant and are extracted hereunder:

> *"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.—*
>
> *(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 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***.

(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.

(5) The person chargeable with tax may, before service of notice under sub-section (1) or, as the case may be, the statement under sub-section (3), pay the amount of tax along with interest payable thereon under section 50 on the basis of his own ascertainment of such tax or the tax as ascertained by the proper officer and inform the proper officer in writing of such payment.

(6) The proper officer, on receipt of such information, shall not serve any notice under sub-section (1) or, as the case may be, the statement

under sub-section (3), in respect of the tax so paid or any penalty payable under the provisions of this Act or the rules made thereunder.

*(7**) Where the proper officer is of the opinion that the amount paid under sub-section (5) falls short of the amount actually payable, he shall proceed to issue the notice as provided for in sub-section (1) in respect of such amount which falls short of the amount actually payable**.*

(8) Where any person chargeable with tax under sub-section (1) or sub-section (3) pays the said tax along with interest payable under section 50 within thirty days of issue of show cause notice, no penalty shall be payable and all proceedings in respect of the said notice shall be deemed to be concluded.

(9) The proper officer shall, after considering the representation, if any, made by person chargeable with tax, determine the amount of tax, interest and a penalty equivalent to ten per cent. of tax or ten thousand rupees, whichever is higher, due from such person and issue an 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.

(11) Notwithstanding anything contained in sub-section (6) or sub-section (8), penalty under sub-section (9) shall be payable where any amount of self-assessed tax or any amount collected as tax has not been paid within a period of thirty days from the due date of payment of such tax.

(12) The provisions of this section shall be applicable for determination of tax pertaining to the period up to Financial Year 2023-24.

***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**.-*

*(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 by 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 equivalent to the tax specified in the notice.***

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

*(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.

(5) The person chargeable with tax may, before service of notice under sub-section (1), pay the amount of tax along with interest payable under section 50 and a penalty equivalent to fifteen per cent. of such tax on the basis of his own ascertainment of such tax or the tax as ascertained by the proper officer and inform the proper officer in writing of such payment.

(6) The proper officer, on receipt of such information, shall not serve any notice under sub-section (1), in respect of the tax so paid or any penalty payable under the provisions of this Act or the rules made thereunder.

(7) Where the proper officer is of the opinion that the amount paid under sub-section (5) falls short of the amount actually payable, he shall proceed to issue the notice as provided for in sub-section (1) in respect of such amount which falls short of the amount actually payable.

(8) Where any person chargeable with tax under sub-section (1) pays the said tax along with interest payable under section 50 and a penalty equivalent to twenty-five per cent. of such tax within thirty days of issue of the notice, all proceedings in respect of the

said notice shall be deemed to be concluded.

(9) The proper officer shall, after considering the representation, if any, made by the person chargeable with tax, determine the amount of tax, interest and penalty due from such person and issue an order.

(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.

(11) Where any person served with an order issued under sub-section (9) pays the tax along with interest payable thereon under section 50 and a penalty equivalent to fifty per cent. of such tax within thirty days of communication of the order, all proceedings in respect of the said notice shall be deemed to be concluded.

(12) The provisions of this section shall be applicable for determination of tax pertaining to the period up to Financial Year 2023-24."

10. In addition, it would also be relevant to consider Rule 92(3) of the Central Goods and Services Tax Rules, 2017, which reads as under:

"92. Order sanctioning refund.-(1)Where, upon examination of the application, the proper officer is satisfied that a refund under sub-section (5) of section 54 is due and payable to the applicant, he shall make an order in FORM GST RFD-06 sanctioning the amount of refund to which the applicant is entitled, mentioning therein the amount,

if any, refunded to him on a provisional basis under sub-section (6) of section 54, amount adjusted against any outstanding demand under the Act or under any existing law and the balance amount refundable:

Provided that in cases where the amount of refund is completely adjusted against any outstanding demand under the Act or under any existing law, an order giving details of the adjustment shall be issued in Part A of FORM GST RFD-07.

[...]

(3) ***Where the proper officer is satisfied, for reasons to be recorded in writing, that the whole or any part of the amount claimed as refund is not admissible or is not payable to the applicant, he shall issue a notice in FORM GST RFD-08 to the applicant, requiring him to furnish a reply in FORM GST RFD-09 within a period of fifteen days of the receipt of such notice and after considering the reply, make an order in FORM GST RFD-06 sanctioning the amount of refund in whole or part, or rejecting the said refund claim and the said order shall be made available to the applicant electronically and the provisions of sub-rule (1) shall, mutatis mutandis, apply to the extent refund is allowed****:*

Provided that no application for refund shall be rejected without giving the applicant an opportunity of being heard.

[...]"

11. It is clear from the above provisions that it is for the Department to initiate proceedings in accordance with law in respect of any excess ITC

availed. A notice under Rule 92(3) of the Central Goods and Services Tax Rules, 2017 cannot be used in this manner to stop refunds when there is no discrepancy in the refund being claimed. For excess ITC, the procedure in accordance with law would have to be followed by the Respondent Department. This is clear from the decision of the Supreme Court in ***Armour Security (India) Ltd. v. Commr. (CGST), (2025) 145 GSTR 385,*** wherein the while considering as to what constitutes 'initiation of any proceedings' under Section 6(2)(b) of the GST Act, it was held as under:

> ***"66.*** *A show-cause notice is a document served on a noticee, requiring them to explain why a particular action should not be initiated against them.* ***Under the GST regime, issuance of a show-cause notice is a mandatory pre-condition for raising a demand. It forms the bedrock for proceedings related to the recovery of tax, interest, and penalty. The notice ensures adherence to the principles of natural justice by granting the assessee an opportunity to present their case before any adverse action is taken. In essence, it serves as both a procedural safeguard and a legal necessity, marking the commencement of quasi-judicial adjudication under the Act****.*
>
> ***67.*** ***A show-cause notice sets the law in motion concerning the liability under the statute, containing charges that a specific person is called upon to answer****. In other words, it sets out the alleged violations of legal provisions and requires the assessee to explain why the duty should not be recovered from them. Thus, a show-cause notice cannot be vague, nor can any allegations be made without evidence being commensurate with the gravity of the charges levelled against the noticee.*
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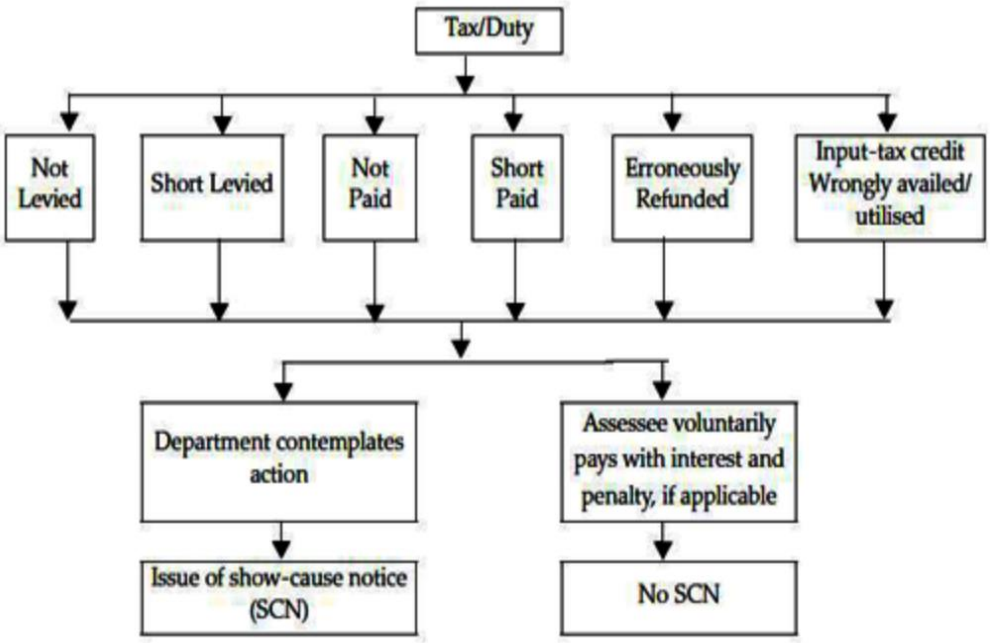
> ***68.*** ***It sets forth the framework for the proceedings***

proposed to be undertaken and provides the noticee with an opportunity to submit their explanation before the adjudicating authority. It outlines the background for the initiation of such proceedings, whether arising from an audit of accounts by the internal audit wing, scrutiny of returns, or intelligence gathered by officers of the Audit and Intelligence Commissionerate*. It is further mandated that the authority issuing the notice must meticulously set out all relevant legal provisions under which the alleged contraventions are framed. The materials obtained through summons and relied upon for issuing the show-cause notice must be appended and disclosed to the assessee. In essence, a show-cause notice enumerates the charges levelled against the notice.*

69. *An assessee may be held liable to pay tax along with interest pursuant to an audit, scrutiny, or investigation. This liability can be discharged either through self-assessment or by way of assessment conducted by the Department.* ***The Act contemplates the issuance of a show-cause notice under sections 73, 74, and 76 respectively, wherein the assessee is afforded one or more opportunities to pay the demanded tax amount. Upon such payment, all proceedings in respect of the said notice stand concluded****.*

70. *Once a show-cause notice is issued under a specific provision and the reply submitted in response is duly considered by the adjudicating authority, the liability is then determined through the issuance of an order of adjudication, commonly referred to as an "order-in-original".*



71. *The above flowchart, prepared and published by the Comptroller and Auditor General of India in Report No. 1 of 2021 (Indirect Taxes— Goods and Services Tax, Central Excise and Service Tax), illustrates that* ***in cases involving determination of tax not levied, or short levied, or not paid, or short paid, or erroneously refunded, or input-tax credit wrongly availed or utilized, the assessee can discharge the liability by voluntarily paying tax along with interest and, where applicable, penalty; failing which, the Department contemplates an action. At this stage, the Department initiates action aimed towards ascertaining the tax liability and issuing a show- cause notice accordingly.***

73. *The statutory framework of the CGST Act does not admit of any interpretation of the phrase "initiation of proceedings" under section 6(2)(b) other than one which ties it to the issuance of a show-cause notice.* ***An action qualifies as "proceedings" only when it is undertaken with the object of attaining a determinate outcome. In the present context, the issuance of a show-cause***

notice partakes the character of proceedings, as it is inherently required to culminate in a definitive determination; there must exist a point of finality or conclusion thereto.

74. ***Proceedings, by their very nature, cannot be said to be initiated in the absence of certainty, nor can they culminate without adherence to the principles of natural justice. A show-cause notice marks the commencement of a process that culminates in an order passed by the adjudicating authority****. The legislative intent to prevent the subjugation of a taxpayer to parallel proceedings and to avoid contradictory orders can only be realized only when the Department is clear about the subject-matter it seeks to pursue, a certainty that arises only at the stage of issuance of the show-cause notice."*

12. Thus, there can be no doubt as to the position under the CGST Act that where the Department is of the view that the assessee has availed of excess ITC, the Department will have to issue a Show Cause Notice to initiate the proceedings for recovery and penalty under the CGST Act. In the absence of the Show Cause Notice under Section 73 or 74 of the CGST Act, 2017, the Department cannot seek to proceed against the assessee for recovery, especially, in proceedings which were pending in respect of returns.

13. Further, the audit report for the period 1st April, 2018 to 31st March, 2024 has also been perused and it would show that for certain periods in 2020-21, 2022-23 and 2023-24 certain demands relating to ITC have already been raised and the same have in fact been deposited by the Petitioner as well. In the entire audit report, there is no whisper of any wrongfully claimed ITC for the Financial Year 2019-20.

14. Under these circumstances, this Court is of the opinion that there is no justifiable cause for non-grant of the refunds. Accordingly, the impugned order is set aside.

15. Accordingly, the total IGST refund of Rs.39,73,360.73/- is directed to be paid to the Petitioner along with the applicable statutory interest in accordance with law within a period of two months.

16. This petition is disposed of in these terms. Pending applications, if any, are also disposed of.

17. List on 16th March, 2026 for compliance.

PRATHIBA M. SINGH
JUDGE

RENU BHATNAGAR
JUDGE

DECEMBER 3, 2025*/kp/msh*