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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of decision: 19th May, 2025
+ **W.P.(C) 6723/2025 and CM APPL. Nos. 30536-37/2025**

SHASHI KUMAR CHOUDHARYPetitioner
Through: Mr. Vinay Sahrawat, Advocate

versus

DEPUTY DIRECTOR DIRECTORATE GENERAL OF GST
INTELLIGENCE DELHI ZONAL UNIT & ANR.Respondents
Through: Mr. Dipak Raj and Mr. Subham
Kumar, Advocates for Mr. Anurag
Ojha, SSC for R-1 and 2.

CORAM:
JUSTICE PRATHIBA M. SINGH
JUSTICE RAJNEESH KUMAR GUPTA

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through hybrid mode.

CM APPL. No.30536/2025 (Exemption)

2. Allowed, subject to all just exceptions. Application is disposed of.

W.P.(C) 6723/2025 and CM APPL. No. 30537/2025

3. This is a petition has been filed by the Petitioner under Article 226 of the Constitution of India challenging the impugned communication/order dated 6th May, 2025 by which the total tax and penalty was determined as Rs.2,99,23,614/-.

4. The background of this case is that there was seizure of a consignment of areca nuts in Delhi being brought from Assam by the Directorate General of GST Intelligence (hereinafter 'DGGI') on 30th April, 2024. Sometime on 1st May, 2025 a search was conducted. The total quantum of 7101 sacks of



areca nuts weighing 70 kgs each i.e., a total of 4,97,070 Kgs (497.07 tonne) was seized for being traded without proper documentation. The statements of the proprietor *etc.* were also recorded. The Petitioner then wrote a letter dated 2nd May, 2025 acceding to deposit the requisite tax amount and penalty in exchange of provisional release in the following terms:

“ To

*Dated:02.05.2025 The Senior Intelligence Officer, .
Directorate General of GST Intelligence,
DGGI,
Delhi Zonal Unit,
Dwarka,
Delhi, India*

*Ref: Search Conducted on 30.04.2025 and Panchanama
and Seizure Memo in INS - 02 dated 01.05.2025.*

AND

*In the matter of SK Enterprises holding GSTIN -
07ACNPC6284D1ZM*

*Sub: Prayer for disposal of Case and release of goods.
Sir,*

*With reference to the above subject matter, I, Shashi Kumar Choudhary, Proprietor of M/s S K Enterprises, having its office premises at B.3/235, 1st FLOOR, SECTOR 6, ROHINI, DELHI-110085, holding GSTIN - 07 ACNPC6284D1ZM, in response to the search conducted on 30.04.2025 at our godown premises situated at Gate No. 17, Near Palm Greens, Khasra No. 212 and 213, GT Kamal Road, Bakoli, Delhi - 110036 and seizure in INS - 02, I hereby request your honour to kindly dispose the case and release the goods which have been seized at our godown premises as mentioned above as per Seizure Memo (INS.02) from Table - C, Serial No. 1, 2, 3 and 4 of Arecanuts; 1092 bags + 829 bags, 3300 bags and 1880 bags. **I am ready to deposit the amount of Tax and Penalty in accordance with GST Act and Rules framed thereunder and pass the***



necessary order/orders in the sake of Justice.

Thanking you,
Yours faithfully,

Shashi Kumar Choudhary,
Proprietor,
M/s S K Enterprises
GSTIN-07ACNPC6284DIZM”

5. In response to this communication, wherein the Petitioner sought disposal of the case and release of the goods and quantification of the tax and penalty, the impugned communication dated 6th May, 2025 was issued. The impugned communication is also extracted below:

“F.No. DGGI/INT/MISC/113/2025-GrH Dated:

06.05.2025

To

M is S . K . Enterprises.
GSTIN: 07ACNPC6284DIZM.
Address: 1st Floor. B-3/235, Sector- 6,
Rohini. Delhi. North \Vest Delhi, Delhi. 110085

Dear taxpayer,
Sub-Request for disposal of Case and release of goods-
reg.

Kind attention is invited to your letter dated 02.05.2025 on the above cited subject.

2. In this regard, you are directed to deposit duty along with penalty and submit DRC-03 for release of seized goods within 3 days of receipt of this letter: (All figures arc in Rs.)



Goods	Quantity of goods (in Kg)	Rate per Kg as per invoice no. as per invoice number dated 06.02.2025 (in Rs.)	Taxable Value (in Rs.)	Rate of tax (in %)	Tax	Penalty under section 130 read with section 122 of CGST Act, 2017 read with rule 141 of CGST Rules, 2017. (100%)	Penalty under section 74 of CGST Act, 2017. (15%)	Total tax along with penalty
Areca nuts	Total bags* weight of bag (7101*70)							
	497070	560	278359200	5	13917960	13917960	2087694	29923614

6. Submission of the Id. Counsel for the Petitioner, today, is that the tax has been imposed as per rate per kilogram in terms of the invoice which was produced. However, the penalty was imposed under Section 130 read with Section 122 and as also under Section 74 of the Central Goods and Services Tax Act, 2017 (hereinafter 'CGST Act, 2017'). This, according to the Id. Counsel for the Petitioner, would be untenable under law.

7. He submits that an imposition of penalty and taxes under Section 73 and 74 of CGST Act, 2017 presupposes issuance of a Show Cause Notice and in the absence thereof, no such demand can be raised.

8. On the other hand, Id. Counsel for the Respondent submits that the impugned communication dated 6th May, 2025 is not in the nature of an Order-in-Original passed upon duly hearing the parties and adjudicating the extent of tax, penalty etc., Instead, it is merely a response to the Petitioner's communication dated 2nd May, 2025, wherein the Petitioner had sought a computation of the applicable tax and penalty. It is further submitted that in the event the Petitioner is not inclined to seek release of the goods upon deposit of the said tax and penalty, the Respondent GST Department shall proceed in accordance with law by issuing a proper Show Cause Notice.

9. The Court has considered the matter. Clearly, the search itself took place on 1st May, 2025 in the godowns of the Petitioner in Delhi and the letter



dated 2nd May, 2025 was written by the Petitioner where a clear undertaking was given that the Petitioner was willing to deposit the tax and penalty in response to which the computation was done. The Petitioner appears to have had a change of mind and now does not wish to deposit the amount.

10. Under such circumstances, it is clarified that the impugned communication dated 6th May, 2025 would only be treated as a response to the letter dated 2nd May, 2025 and not an adjudication order.

11. The Petitioner at this stage prays for provisional release of the goods subject to furnishing a bank guarantee. This Court is not inclined to consider the said prayer in this writ petition as the same can be raised with the concerned authorities as well.

12. Let the GST Department proceed to issue a Show Cause Notice in accordance with law. If the Petitioner moves an application for provisional release the same be considered by the concerned Adjudicating Authority as well.

13. The petition is disposed of. Pending applications, if any, are also disposed of.

PRATHIBA M. SINGH
JUDGE

RAJNEESH KUMAR GUPTA
JUDGE

MAY 19, 2025/SV/Ar.