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

*Date of Decision: 22<sup>nd</sup> April, 2025*

+ **W.P.(C) 5046/2025 & CM APPL. 23151/2025**

MAGICON IMPEX PVT. LTD.

.....Petitioner

Through: Mr. Rajesh Mahna, Mr. Ramanand Roy, Ms. Silky Wadhwa, Ms. Ridhi Mahna, Advocates

versus

COMMISSIONER OF CENTRAL GOODS AND SERVICE TAX & ORS.

.....Respondent

Through: Mr. Anurag Ojha, Sr. SC with Mr. Shubham Kumar and Mr. Dipak Raj, Advocates for R-1 to R-3

**CORAM:**

**JUSTICE PRATHIBA M. SINGH**

**JUSTICE RAJNEESH KUMAR GUPTA**

**Prathiba M. Singh, J. (Oral)**

1. This hearing has been done through hybrid mode.
2. The present petition has been filed under Articles 226 & 227 of the Constitution of India challenging the impugned order dated 7<sup>th</sup> January, 2025 passed by the Respondent No. 2 - Assistant Commissioner of Central Goods and Service Tax under Section 74 of the Central Goods and Services Act, 2017 (hereinafter “CGST Act”).
3. Vide the impugned order various demands have been raised against the Petitioner and penalty has been imposed. The said demand is in respect of late fee and wrongful availment of input tax or short payment of tax.
4. The case of the Petitioner is that it is engaged in the business of export and import of mobile phones and other similar electronic products. The



Petitioner had filed a refund claim some time in 2019 and the same was rejected as being time barred as per Section 54(1) of the CGST Act. The Petitioner at that stage had filed the ***Writ Petition 6556/2020*** titled ***Megicon Impex Pvt Ltd vs. Commissioner Of Central Goods And Services Tax Delhi West & Ors.*** seeking processing of the refund. In the said petition, order dated 6<sup>th</sup> February, 2023 was passed directing processing of refund in the following terms:

*“5. It is apparent that the said notification was issued in view of the order passed by the Hon’ble Supreme Court in **Suo Motu Writ Petition (Civil) No. 3 of 2020: In Re: Cognizance For Extension of Limitation.***

*6. In view of the above, the impugned orders cannot be sustained as the benefit of the relaxation in the period of limitation has not been accorded to the petitioner.*

*7. The respondents are directed to forthwith process the petitioner’s application for refund in accordance with law.*

*8. The petition is disposed of in the above terms.”*

5. It is the submission of Mr. Mahna, Id. Counsel for the Petitioner that subsequent to the above order, various audit memos were issued against the Petitioner, calling upon it to make payments. The money demanded in the said audit memos was deposited by the Petitioner on 11<sup>th</sup> January, 2024, however, a revised audit memo was again issued along with various other summons. The Petitioner was also issued a Demand-cum-Show Cause Notice on 1<sup>st</sup> August, 2024 which was again challenged by the Petitioner in ***W.P.(C) 11522/2024*** titled ***Magicon Impex Pvt Ltd vs. Commissioner Of Central Goods And Services Tax.*** In the said writ petition, the following order was



passed on 21st August, 2024:

*“2. The petitioner is, essentially, aggrieved by the Show Cause Notice dated 01.08.2024 (hereafter the impugned SCN) issued by the adjudicating authority under Section 74 of the Central Goods and Services Tax Act, 2017 (hereafter the CGST Act) and the Delhi Goods and Services Tax Act, 2017 (hereafter the DGST Act) read with Section 20 of the Integrated Goods and Services Tax Act, 2017 (hereafter the IGST Act).*

*3. The impugned SCN has been issued purportedly pursuant to the finding of the audit conducted under Section 65 of the CGST Act/DGST Act. The petitioner claims that it filed an application for refund of tax for the months of October, 2017; January, 2018; and February, 2018. On 19.12.2019 the petitioner’s case was referred to Anti-Evasion Wing to examine and investigate the petition’s refund. Thereafter on 27.04.2021, respondent no.3 issued a notice to the petitioner for conducting the audit for the financial years 2017-18 to 2019-20.*

*4. In terms of the additional notice dated 22.04.2022, the audit period was extended to cover the financial year 2020-21 as well.*

*5. It is the petitioner’s case that pursuant to the said notice, an audit was conducted under Section 65 of the CGST Act/the DGST Act much beyond the period as stipulated under Section 65(4) of the CGST Act /the DGST Act. The petitioner states that it continued to receive the audit memos from time to time indicating that the petitioner was liable to pay certain amounts plus tax and the petitioner has duly discharged the same.*

*6. The petitioner also objected to the audit memos (dated 11.04.2024 and 03.07.2024) as the same were time barred.*



7. *The petitioner's grievance regarding the multiple audit memo appears to be justified. In terms of Section 65(6) of the CGST Act /the DGST Act, the proper officer is required to inform the registered person about the findings of the audit, his rights and obligations and the reasons for such findings. The CGST Act / DGST Act does not provide for issuance of the multiple audit memos determining the liability of a tax payer.*

8. *In the present case, we find that the audit memos not only indicated the findings of the auditors, but also called upon the petitioner to pay the tax as determined, along with the interest and penalties as applicable.*

9. *Mr Ojha, the learned counsel appearing on behalf of the respondents has been unable to point out any statutory provision or rule, which contemplates issuance of such demand letters during the course of an audit.*

10. *Having stated the above, we are unable to accept that the impugned SCN is liable to be quashed for the said reason. Although, the impugned SCN may be premised on the findings of the audit report, the same is within the statutory framework. Any irregularities in issuing the audit memos does not impinge the validity of the impugned SCN.*

11. *In view of the above, we are unable to accept that the impugned SCN is liable to be set aside at the threshold stage. The petition is, accordingly, disposed of.*

12. *It is clarified that the petitioner would not be precluded from advancing such contention as advised in response to the impugned SCN. The adjudicating authority shall consider the reply of the petitioner to the impugned SCN, if filed, within a period of three weeks*



*from date and may pass any order as consider appropriate. It is clarified that all the rights and contentions of both the parties are reserved.*

*13. The petition stands disposed of in the aforesaid terms. Pending applications also stand disposed of.”*

6. The said Show Cause Notice then got adjudicated by the impugned order dated 7<sup>th</sup> January, 2025.

7. Mr. Mahna submits that the Petitioner had also challenged the audit memos in ***W.P. (C) 2963/2024*** wherein vide order dated 20<sup>th</sup> March, 2024, the remedies of the Petitioner was reserved. However, the Court notices that in the recent order of 21<sup>st</sup> August, 2024 in ***W.P.(C) 11522/2024*** pertaining to this very Show Cause Notice, the Court has disposed of the petition by permitting the Adjudicating Authority to pass the order after considering the reply of the Petitioner.

8. In the impugned order dated 7<sup>th</sup> January, 2025, the reply and the written submissions of the Petitioner have been considered. A perusal of the adjudication order would show that there is a detailed adjudication of various factual issues.

9. In view of the above, at this stage, a writ petition would not be entertainable. The Petitioner ought to avail of the appellate remedy under Section 107 of the CGST Act in accordance with law.

10. The Petitioner’s Counsel submits that the Petitioner is not in a financial condition to make the pre-deposit. Waiver is sought. The said prayer shall be made before the Appellate Authority.

11. If the appeal is filed within the next 30 days, the same shall not be dismissed on the ground of limitation.



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12. The present petition is disposed of in above terms. Pending applications, if any, are also disposed of.

**PRATHIBA M. SINGH**  
**JUDGE**

**RAJNEESH KUMAR GUPTA**  
**JUDGE**

**APRIL 22, 2025**  
**gs/ms**