IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 1214 OF 2025

DHR Holding India Private Limited)
3rd Floor, B Wing, Art Guild House,)
Lal Bahadur Shastri Marg,)
Near Phoenix Market City)
Kurla West, Mumbai 400 070.).....Petitioner

Versus

1. Union of India)
through The Joint Secretary,)
Department of Revenue,)
Ministry of Finance,)
Room No.46, North Block,)
New Delhi – 110 001.)
)

2. State of Maharashtra)
through the Government Pleader)
PWD Building, High Court,)
Mumbai – 400 032.)
)

3. Commissioner of CGST & Central Excise)
Mumbai East Commissionerate,)
9th Floor, Lotus Info Centre, Near Parel Station)
Parel (East), Mumbai 400 012.)
)

4. Joint Commissioner of CGST & Central Excise)
Mumbai East Commissionerate,)
9th floor, Lotus Info Centre, Near Parel Station)
Parel (East), Mumbai 400 012.).....Respondents

.....

Mr. Parth Parikh i/b Economic Laws Practice, for the Petitioner.

Ms.Maya Majumdar a/w Ms. Niyati Mankad, for the Respondent Nos.1, 3 and 4.

Smt. Jyoti Chavan, Addl.G.P a/w Mr. Himanshu Takke, A.G.P for the

RUPALI RAJESH WAKODIKAR Digitally signed by RUPALI RAJESH WAKODIKAR Date: 2026.11.05 10:53:12 +0530

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Respondent – State.

.....

CORAM : M. S. KARNIK &
SANDESH D. PATIL, JJ.

DATE : 30th OCTOBER, 2026

JUDGMENT [PER SANDESH D. PATIL, J.] :-

1. By the present petition, the petitioner is challenging the Order-in-Original dated 31/12/2024 (Exhibit "A" to the petition).

2. The case of the petitioner is that the petitioner is engaged in the business of facilitating the sale of medical equipment by the overseas suppliers to buyers in India and providing marketing, distribution, and support services to the group companies located outside India.

3. The petitioner had paid an amount of Rs. 7,65,03,407/- under the heading ‘CGST’ and ‘SGST’ on the amount received from the foreign group companies towards replacement of parts from inventory under warranty support services supplied to the foreign group companies under the sale commission agreement. Inspite of the fact that the petitioner had paid the aforesaid amount of 7,65,03,407/-, yet a show-cause notice was issued by respondent No.

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4 on 16/07/2024 under Section 74 of the Central Goods and Service Tax Act, 2017 (**'CGST Act'** for short) for recovery of the GST under the head 'IGST' on the same transaction for the same period. On 31/12/2024, the respondent No.4 passed order thereby confirming the demand of ass per the show-cause notice. It is this order which is challenged by the petitioner in the present petition.

4. Heard the learned counsel appearing for the respective parties. Perused the documents on record.

5. The learned Counsel appearing for the petitioner argued that the demand of 'IGST' is without jurisdiction. He submitted that, undisputedly, petitioner had discharged the entire GST of Rs. 7,65,03,407/- under the head 'CGST' and 'SGST' on the amount recovered from his clients. Although the said amount was paid under the head 'CGST' and 'SGST', the respondent No.4 has sent the notice under Section 74 of the CGST Act for the same transaction for the same period under the heading 'IGST'. He submitted that under the scheme of GST Act, a supply could either be intra-State supply under the head 'CGST' and 'SGST' or could be an inter-State supply which is subject to GST under the head 'IGST'. He submitted that in

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both the cases, GST at the same rate is applicable on the same taxable value. He submitted that the amount of GST payable in either case remains the same.

6. Learned Counsel further submitted that since he has already paid an amount of Rs. 7,65,03,407/-, there are no revenue implications, inasmuch as, the IGST, if collected, would have been apportioned equally between Center and State. He invited our attention to Section 17 of the IGST Act.

7. He submitted that the Kerala High Court in the matter of ***Saji S. vs. Commissioner, State GST***[1] has taken a view that the GST department could internally transfer the SGST to the IGST account instead of initiating recovery proceedings against the assessee who had paid the entire tax amount. He submitted that, in any case, passing of order under Section 74 of the CGST Act is *ex-facie* illegal, inasmuch as, there was an absence of element of fraud or suppression. He stated that thus there is a fundamental jurisdictional error committed by the petitioner.

8. The learned Counsel appearing for the revenue, Ms. Maya

1 {(2018) 19 GSTL 385 Ker}

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Mazumdar, on the other hand, stated that the argument of the petitioner that discharge of 'CGST' and 'SGST' absolves it of 'IGST' liability is denied as it is fundamentally an unsustainable proposition. She submitted that 'CGST,' 'SGST', and 'IGST' are credited to distinct sovereign accounts. She contended that department is not under any legal obligation to adjust 'CGST' and 'SGST' paid against 'IGST' demand.

9. Learned Counsel for the revenue further stated that since the petitioner systematically misclassified inter-State supplies as intra-State supplies and improperly claimed zero rating on non-export transactions in its statutory returns (GSTR-1 and GSTR-3B), it was suppression as contemplated under Explanation 2 to Section 74. She stated that even otherwise, there is an alternate remedy available and hence the petitioner has to resort to the same.

10. Heard the learned Counsel appearing for the parties. Perused the documents on record.

11. At the outset, it is made clear that the petitioner has discharged GST of Rs. 7,65,03,407/- under the head 'CGST' and 'SGST.' The

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respondents have not denied this fact. Their only contention is that the petitioner should have deposited the GST Amount under the head 'IGST'. The only contentious issue is whether such payment would amount to payment made to the government for disbursement of the GST and whether, merely because the said payment of GST was made under wrong heading in itself was sufficient to invoke Section 74 of the CGST Act to recover the amount under the heading 'IGST' and to impose penalty upon the petitioner.

12. It is pertinent to note that in the affidavit which is filed by the revenue, the factum of deposit of the amount of Rs,7,65,03,407/- in the 'CGST' and 'SGST' heading is not denied by the respondents - revenue.

13. The learned Counsel for the Revenue stated that the petitioner should have applied for refund of the said amount of Rs.7,65,03,407/- and ought to have paid the same to the respondent under the heading 'IGST'. She submitted that the respondents were not duty-bound to adjust the same. For this purpose, it is necessary to refer to Section 77 of the CGST Act, which reads as under:

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> *"**Section 77:** Tax wrongfully collected and paid to Central Government or State Government:*
>
> *(1) A registered person who has paid the Central tax and State tax or, as the case may be, the central tax and the Union territory tax on a transaction considered by him to be an intra-State supply, but which is subsequently held to be an inter-State supply, shall be refunded the amount of taxes so paid in such manner and subject to such conditions as may be prescribed.*
>
> *(2) A registered person who has paid integrated tax on a transaction considered by him to be an inter-State supply, but which is subsequently held to be an intra-State supply, shall not be required to pay any interest on the amount of central tax and State tax or, as the case may be, the central tax and the Union territory tax payable."*

14. It will also be imperative to consider the provisions of Section 19 of the IGST Act, which reads as under:

> *"**Section 19.** Tax wrongfully collected and paid to Central Government or State Government. -*
>
> *(1) A registered person who has paid integrated tax on a supply considered by him to be an inter-State supply, but which is subsequently held to be an intra-State supply, shall be granted refund of the amount of integrated tax so paid in such manner and subject to such conditions as may be prescribed.*
>
> *(2) A registered person who has paid central tax and State tax or Union territory tax, as the case may be, on a transaction considered by him to be an intra-State supply,*

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> *but which is subsequently held to be an inter-State supply, shall not be required to pay any interest on the amount of integrated tax payable."*

15. Further, Rule 4(1) of the GST Refund Rules is also necessary to be considered in this context, Rule (4) of the GST Refund Rules reads as under:

> *"**4.** 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."*

16. Taking into consideration the aforesaid provisions of law, the respondents could have transferred the amount under the head 'CGST' and 'SGST' to the head 'IGST'. In no event, it can be said that this is a case where Section 74 of the CGST Act could be invoked.

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17. The Kerala High Court in the case of ***Saji S.(supra)*** had occasion to consider the same issue. The Single Judge of the Kerala High Court had held that if such an amount was paid under wrong heading, the respondent officials should have allowed the petitioner's request to get the amount transferred from the head 'SGST' to the head 'IGST'.

18. As far as the issue of issuance of notice under Section 74 of the CGST Act is concerned, the Hon'ble Supreme Court in the matter of ***Tata Steel Limited vs. Union of India***[2] has held as under:

> *"11. At the outset we have to notice that the proceedings under section 73/74 can be initiated only on the satisfaction of the assessing officer. Even if observations/objections are made on audit, the assessing officer should enter his satisfaction before a notice is issued. In so far as a notice under section 74, the satisfaction should be not only of mismatch of ITC and short payment of tax having occurred, as is alleged in this case, the Officer should be satisfied that either fraud/wilful misrepresentation/suppression had led to such mismatch or short payment of tax.*
>
> *14. It is not mere lip service to the provisions that is intended when an extended limitation period is provided for recovering an excess benefit availed, short payment or excess refund, from the assessee, especially when the*

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> *allegation is of fraud/wilful misrepresentation/suppression. The foundational facts which led to the inference arrived at of fraud/wilful misrepresentation/suppression should be evident from the notice itself. The mere employment of such words will not indicate an application of mind, upon which alone the satisfaction can be arrived at. The words are not to be mechanically recited in the notice to enable recovery outside the normal limitation provided under the statute."*
>
> *(emphasis supplied by us)*

19. This is not a case where there was a deliberate attempt to evade tax. In such circumstances, invoking Section 74 of the CGST Act was uncalled for. In these premises, we are inclined to set aside the Order-in-Original No. ME/JC/VR/255/GST/2024-25.

20. Before parting with the judgment, we must note that we have only decided about the adjustment of the GST paid under wrong heading and that we have not decided upon the quantum of the 'IGST' payable. The department is free to take such appropriate proceedings as are required or initiate such action as is prescribed in law for the purpose of recovering any amount over and above Rs.7,65,03,407/-, if it is due and payable by the petitioner.

21. In light of the aforesaid observations, we dispose of the petition

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by passing the following order:

ORDER

(i) The impugned Order-in-Original No. ME/JC/VR/255/GST/2024-25 is quashed and set aside.

(ii) The petitioner shall file a application along with proof of payment of Rs.7,65,03,407/- for transfer of the amount of Rs.7,65,03,407/- of GST paid by the petitioner under the head 'CGST' and 'SGST' to the head 'IGST' within a period of three weeks from today. So far as amount of Rs.11,36,447/- is concerned it is open for the petitioner to prefer an appeal before the competent forum.

(iii) As and when the said application is preferred, the respondent shall forthwith transfer the said GST amount from the head 'CGST' and 'SGST' to the head 'IGST'.

22. Petition is disposed of accordingly.

(SANDESH D. PATIL, J.) **(M. S. KARNIK, J.)**

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