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

Date of decision: 10th October, 2025

\+ **W.P.(C) 15527/2025 & CM APPL. 63490/2025**

M/S IMS MERCANTILES LTD .....Petitioner

Through: Mr. Bimal Jain, Mr. Anurag Jain and Ms. Ishika Agarwal, Advs.

versus

UNION OF INDIA & ANR. .....Respondents

Through: Mr. Aditya Singla, SSC CBIC with Mr. Ritwik Saha, Ms. Arya Sruesh& Mr. Sahil Parashar, Advs.
Ms. Anushree Narain, SSC with Mr. Naman Choula, Adv.

CORAM:
JUSTICE PRATHIBA M. SINGH
JUSTICE SHAIL JAIN

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through hybrid mode.

CM APPL. 63491/2025(exemption)
CM APPL. 63492/2025 (exemption)

2. Allowed subject to all just exceptions. Accordingly, the applications are disposed of.

W.P.(C) 15527/2025 & CM APPL. 63490/2025

3. The present petition has been filed by the Petitioner under Article 226 and 227 of the Constitution of India, *inter alia*, challenging the impugned rectification order dated 24th July, 2025 passed by the Additional Commissioner, Central Tax (Delhi West) *(hereinafter, 'impugned order')*.

4. The brief facts of the case are that the Petitioner-firm engaged in the wholesale and retail business of Lithium Ion and other batteries. The GST Department, upon gathering certain intelligence about alleged tax evasion, had conducted a search at the premises of the Petitioner, on 12th March, 2021.

5. Subsequently, a Show Cause Notice dated 3rd August, 2024 *(hereinafter, 'SCN')* was issued to the Petitioner alleging evasion of GST by way of misdeclaration of duty slab for HSN Code 8507 i.e., 18% instead of 28%, and short payment of GST. The SCN was duly replied by the Petitioner *vide* reply dated 18th September, 2024.

6. Order-in Original dated 10th January, 2025 was passed by the Additional Commissioner, Central Tax (Delhi West), against the Petitioner, confirming the demand *(hereinafter, 'OIO')*.

7. Aggrieved by the OIO, the Petitioner had filed a rectification application under Section 161 of the Central Goods and Services Tax Act, 2017, before the Additional Commissioner, Central Tax (Delhi West).

8. Since the rectification application was pending for long, before the aforesaid authority, and the limitation period for filing the appeal was expiring, Petitioner had filed ***W.P. (C) No. 4785 / 2025***.

9. Vide ***W.P. (C) No. 4785 / 2025***, the Petitioner challenged the SCN and OIO. In the said writ petition, it was clearly captured that the primary issue raised by the Petitioner was whether, in respect of combo packs consisting of electronic chargers with rechargeable batteries, the GST rate payable would be 18 % or 28 %.

10. Further, the grievance of the Petitioner was that the subject product only constitutes 3 % of its turnover, however, the differential tax has been

imposed on the total turnover.

11. In ***W.P. (C) No. 4785 / 2025***, *vide* order dated 16th April, 2025, after hearing the matter, the Court had directed as under:

> *"6. The Court has queried the Petitioner's Counsel as to where is the breakup of the turnover of the remaining products which unfortunately are not on record. However the ld. Counsel for the Petitioner informs the Court that a rectification application has been filed by the Petitioner before the Respondent No.2-Additional Commissioner, Central GST, Delhi West seeking rectification of the impugned order which includes certain documents to this effect.*
> *7. The Court has perused the said application and the attached annexures placed on record. Even in the said application, certain figures are provided but there is no clarity as to what are the other products the Petitioner firm deals with and the actual GST being paid on them.* ***Considering the fact that the rectification application is still pending before Respondent No.2, let the Petitioner be given a personal hearing before the concerned official so that the submissions can be heard on the same and an appropriate order in accordance with law can be passed.***
> ***8. The stand of the Petitioner that the said product constitutes only 3 % of the total turnover shall be taken into consideration while passing an order on the rectification application, after the same is duly verified.***
> *9. The Petitioner shall be given notice of personal hearing at the following contact details:*
> *e-mail :Bimaljain@922taxcorp.in*
> *Mob. : 9810609563,*
> *e-mail :service@922taxcorp.in*
> *Mob. : 9811566920*
> *10. If the Petitioner wishes to file any documents, the Petitioner may do so and after the hearing is*

concluded, the order shall be passed within a period of one month."

12. In terms of the above order, the Court had directed a personal hearing to be given to the Petitioner, and a reasoned order to be passed after considering all the contentions of the Petitioner. The impugned order has now been passed by the Additional Commissioner, Central Tax (Delhi West), confirming the demands and also imposing penalties.

13. Aggrieved by the impugned order, the Petitioner has filed the present writ petition.

14. Mr. Bimal Jain, ld. Counsel for the Petitioner, has taken the Court through the impugned order, which would show that the manner in which the demand has been raised is that the total turnover of the Petitioner has been captured and the turnover of the combo sales has also been captured, on B2B and B2C basis.

15. Further, it is submitted that invoices and certain other documents of the Petitioner were also filed. However, the Adjudicating Authority has held that in so far as, B2C sales are concerned, no invoices were filed. After having held so, the Adjudicating Authority has taken the total turnover in each of the financial years, as the amount on which the tax would be liable to be paid.

16. Ld. Counsel for the Petitioner submits that even if the Adjudicating Authority had found that tax was liable to be paid due to the discrepancy in the HSN Code, and the classification used by the Petitioner, GST cannot be demanded on the total turnover.

17. Mr. Aditya Singla, ld. SCC for the Respondent, submits that the Adjudicating Authority has concluded that the Petitioner deliberately

indulged in tax evasion, by itself paying tax at 18% on certain combo packs, and at 28% on other combo packs. Thus, the Petitioner deserves to be relegated to the appellate remedy.

18. The Court has considered the matter. The impugned order records the turnover details of each of the financial years as under:

*" **10.3.1 Financial Year 2017-18:-***

(i) During the financial year 2017-18, the details of the taxable value are as below:-

S. No.	*Turnover Details*	*Taxable Turnover*
1	*Total Turnover as per GSTR-9C*	*47,19,52,186*
2	*Turnover of combo sales (B2B) as per the noticee*	*85,16,521*
3	*Turnover of combo sales (B2C) as per the noticee*	*48,95,916*

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10.3.2 Financial Year 2018-19: -

(i) During the financial year 2018-19, the details of the taxable value are as below; -

S. No.	*Turnover Details*	*Taxable Turnover*
1	*Total Turnover as per GSTR-9C*	*636585959*
2	*Turnover of combo sales (B2B) as per the noticee*	*18,816,279.33*
3	*Turnover of combo sales (B2C) as per the noticee*	*3,938,201.27*

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10.3.3 Financial Year 2019-20: -

(i) During the financial year 2019-20, the details of the taxable value are as below; -

S. No.	*Turnover Details*	*Taxable Turnover*
1	*Total Turnover as per GSTR-9C*	*777080865*
2	*Turnover of combo sales (B2B) as*	*1,83,60,955*

	per the noticee	
3	*Turnover of combo sales (B2C) as per the noticee*	*46,96,729*

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10.3.4 Financial Year 2020-21: -

(i) During the financial year 2020-21, the details of the taxable value are as below; -

S. No.	*Turnover Details*	*Taxable Turnover*
1	*Total Turnover as per GSTR-9C*	*99,38,34,206*
2	*Turnover of combo sales (B2B) as per the noticee*	*2,40,44,135*
3	*Turnover of combo sales (B2C) as per the noticee*	*1,08,14,934*

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10.3.5 Financial Year 2021-22: -

(i) During the financial year 2021-22, the details of the taxable value are as below; -

S. No.	*Turnover Details*	*Taxable Turnover*
1	*Total Turnover as per GSTR-9C*	*1,25,33,05,237*
2	*Turnover of combo sales (B2B) as per the noticee*	*3,12,23,273*
3	*Turnover of combo sales (B2C) as per the noticee*	*42,82,846.66*

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10.3.6 Financial Year 2022-23: -

(i) During the financial year 2022-23, the details of the taxable value are as below; -

S. No.	*Turnover Details*	*Taxable Turnover*
1	*Total Turnover as per GSTR-9C*	*1,33,04,57,779*
2	*Turnover of combo sales (B2B) as per the noticee*	*3,60,67,398*
3	*Turnover of combo sales (B2C) as per the noticee*	*1,01,86,960*

19. In terms of above, the finding given by the Adjudicating Authority is

that the Petitioner has classified the combo sales under two separate HSN Codes *i.e.*, 8507 or 8504. In respect of some invoices the Petitioner discharged the tax liability at 18 %, but in respect of other invoices the Petitioner discharged the tax liability at 28 %, which according to the Adjudicating Authority constitutes misclassification and under-declaration.

20. The findings of the Adjudicating Authority, to this effect, is as under :

> *"(iv) This inconsistent application of tax rates on the same HSN code indicates that the noticee, on various occasions, paid tax at the lower rate of 18% instead of 28%, thereby leading to short payment of tax.* ***Such conduct reflects a deliberate misclassification and under-declaration of the applicable rate with an apparent intent to evade tax.*** *Hence, the claim of the noticee is not corroborated by the data submitted by them and lacks credibility."*

21. Similar findings have been rendered for other financial years as well.

22. Finally, the penalties imposed by the Adjudicating Authority areas under:

> ***"Order***
>
> *M/s IMS Mercantiles Private Limited (GSTIN: O7AABCIIS82D12Y), 7, 704, RING ROAD MALL, SECTOR-3, ROHINI, North West Delhi, Delhi, 110085* ***(Noticee):-***
>
> *I. I confirm the* ***demand & Recovery of Short-paid GST tax amounting to Rs. 50,51,96,165/- (Rupees Fifty Crore Fifty-One Lakh Ninety-Six Thousand One Hundred & Sixty-Five only) from the FY 2017-18 to 2022-23 under Section-74(1) of CGST & DGST Act, 2017 read with section 89 & section 90 of CGST & DGST Act, 2017 and also read with Section-20 of IGST Act, 2017. I further order to appropriate the amount of Rs. 10,00,000/-(Rupees Ten Lakh only) already deposited voluntarily vide DRC-O3 dated***

12.03.2021 subject to the verification of DRC-03.

II. I confirm the demand of Interest on the amount confirmed in Point No.(I) above, under section-50 of CGST & DGST Act, 2017 read with Section-20 of IGST Act, 2017. I order to recover the same from Noticee.

III.I impose a Penalty of Rs. 50,51,96,165/- (Rupees Fifty Crore Fifty-One Lakh Ninety-Six Thousand One Hundred & Sixty-Five only)under Section-74(1) of CGST & DGST Act, 2017 read with section 89 & section 90 of CGST & DGST Act, 2017 and also read with Section- 20 of IGST Act, 2017. I order to recover the same from Noticee.

IV. I Impose a Penalty of Rs. 50,51,96,165/- (Rupees Fifty Crore Fifty-One Lakh Ninety-Six Thousand One Hundred & Sixty-Five only) on the Noticee under Section 122(1)(x) of CGST & DGST Act, 2017 read with Section-20 of IGST Act, 2017 for falsifies their financial records and filed wrong return by misclassifying their goods i.e. Electric Accumulator/ batteries (rechargeable Ni-MH & Ni-Cd batteries) by payment of 18% GST instead of Payment of GST @28%. I order to recover the same from Noticee.

V. ***I impose a Penalty of Rs. 50,51,96,165/- (Rupees Fifty Crore Fifty- One Lakh Ninety-Six Thousand One Hundred & Sixty-Five only) on the Noticee under Section 122(1)(xvi) of CGST & DGST Act, 2017 read with Section-20 of IGST Act, 2017 for failing to keep proper true records or books of account as they are misclassifying their goods as Combo Pack instead of Separate Charger & Electric Accumulator/ batteries (rechargeable Ni-MH & Ni-Cd batteries). They willfully stated their goods in combo instead of separate records evade the Tax by***

misclassifying their goods i.e. by payment of 18% GST instead of Payment of GST @28%.

VI. ***I impose a Penalty of Rs, 50,51,96,165/- (Rupees Fifty Crore Fifty-One Lakh Ninety-Six Thousand One Hundred & Sixty-Five only) on the Noticee under Section 122 (1)(xvii) of CGST & DGST Act, 2017 read with Section-20 of IGST Act, 2017 for non-furnishing the information or documents in response to letter & Summons issued by the department as discussed supra.***

VII. I refrain to impose any penalty under Section 122(2)(b) of CGST & DGST Act, 2017 read with Section-20 of IGST Act, 2017 in view of the Provisions of Section-75(13) of CGST & DGST Act, 2017 read with Section-20 of IGST Act, 2017.

VIII. I refrain to impose any penalty under Section-122(3)(d) of CGST & DGST Act, 2017 read with Section-20 of IGST Act, 2017 as discussed supra.

IX. I impose a Penalty of Rs. 25000/-(CGST) + Rs. 25,000/-(DGST) on the Noticee under Section-125 of CGST & DGST Act, 2017 read with Section-20 of IGST Act, 2017 for various act & omissions of the Noticee as discussed in above supra."

23. A perusal of the impugned order would show that the demand and recovery of short paid GST has been calculated on the basis of the total turnover. Penalty of Rs. 50.51/-crores has been imposed under Section 74(1) of the of Central Goods and Services Tax Act, 2017 and Delhi Goods and Services Tax Act, 2017 *(hereinafter, 'CGST Act') (hereinafter, 'DGST Act')*.

24. Further, the same amount of penalty has also been imposed under Section 122(1)(x), 122 (1)(xvi) & 122 (1)(xvii) of the CGST and DGST Act.

25. Finally, a penalty of Rs. 50,000/- has been imposed under Section 125 of the CGST and DGST Act.

26. Thus, the total demand raised against the Petitioner, is to the tune of more than Rs.250/- crores.

27. The Court finds a fundamental flaw in the approach of the Adjudicating Authority that, though the actual sales of the entire combo packs, on both B2B and B2C sales was available with the Adjudicating Authority, the GST is being demanded on the total turnover.

28. The impugned order is an appealable order. The tax evasion, if any, is in respect of B2B and B2C sales. There is no reasoning given by the Adjudicating Authority,as to why GST is being sought to be levied on the total turnover.

29. Be that as it may, it may require a factual analysis, which this Court does not intent to undertake in a writ petition.

30. In these facts, however, the Court is of the opinion that the Petitioner is liable to be relegated to the appellate remedy. However, the pre-deposit shall be calculated, and made in respect of the amounts falling under B2B and B2C of each of the financial years.

31. Accordingly, the Petitioner is granted time till 30th November, 2025 to file its appeal, along with the requisite pre-deposit calculated on the basis of B2B and B2C sales, as directed above.

32. If the appeal is filed by the Petitioner within the stipulated time, it shall be adjudicated on merits and shall not be treated as barred by limitation.

33. The Commissioner (Appeals) shall afford a personal hearing and hear the appeal, and pass a reasoned order in accordance with law.

34. This order is being passed in facts and circumstances, which are unique to the present case. The observations of this Court, in the present petition, would not have any binding effect on the final adjudication of the appeal.

35. Accordingly, the present writ petition is disposed of in above terms. All pending applications are also disposed of.

PRATHIBA M. SINGH
JUDGE

SHAIL JAIN
JUDGE

OCTOBER 10, 2025/hk/kp/sm