



**IN THE HIGH COURT OF HIMACHAL PRADESH,
SHIMLA**

CWP No. 20174 of 2025

Date of decision: 24.12.2025

M/s Shivalik Containers Pvt. Ltd.

...Petitioner.

Versus

The Assistant Commissioner & Another.

...Respondents.

Coram

Hon'ble Mr. Justice Vivek Singh Thakur, Judge.

Hon'ble Mr. Justice Jiya Lal Bhardwaj, Judge.

Whether approved for reporting?¹

For the Petitioner.

**Mr.Vishal Mohan, Senior Advocate with
Mr.Parveen Sharma, Advocate.**

For the Respondents:

**Mr.Sushant Keprate, Additional Advocate
General, for the respondents.**

Vivek Singh Thakur, Judge (Oral)

Petitioner has approached this Court seeking following substantial relief:-

“a. That this Hon'ble Court may be pleased to issue a writ in the nature of certiorari and quash the show cause notice and order dated 04.01.2023 issued under Section 74 of the CGST Act, 2017 holding the same to be illegal and not sustainable in the eyes of law.”

2. Impugned order dated 4.1.2023 (Annexure P-4) has been issued under Section 74 of the CGST Act raising demand for

¹***Whether the reporters of the local papers may be allowed to see the Judgment?***

₹16,72,140/- for non-payment of tax by the supplier for which ITC has been claimed by present petitioner.

3. In response to the petition, learned Additional Advocate General has placed on record instructions received from Deputy Director (Legal) Commissioner of State Taxes and Excise alongwith communication of Assistant Commissioner of State Taxes and Excise (GST) to the Joint Commissioner of State Taxes and Excise (Legal) Headquarter Shimla, H.P., informing as under:-

"It is further intimated that to verify the claim of the appellant regarding filing of returns by their supplier M/s Shivalik Marketing, the GST BO Web portal has been referred and it is found that the due returns for the period Feb, 2020 to March, 2020 has been filed by the supplier along with interest and the ITC is now available to the recipient for the claim of the same."

4. Learned counsel for the petitioner submits that in view of above instructions petition deserves to be allowed and impugned order dated 4.1.2023 (Annexure P-4) deserves to be set aside. Whereas, learned Additional Advocate General submits that there is delay of more than 5 years in deposit of tax by the supplier and, therefore, notice has rightly been issued to the petitioner, which has been issued prior to deposit of tax by the supplier and further that in any case unless it is directed by the Court, concerned authority is not having jurisdiction or power to re-adjudicate the claim of the ITC which, for deposit of tax

alongwith interest by the supplier is available to the recipient, i.e. petitioner.

5. In view of above, we are of the opinion that appropriate directions are required to be issued to adjudicating authority, i.e. respondent No. 1-Assistant Commissioner, State Taxes and Excise, Nahan, District Sirmour, H.P., especially in view of instructions placed on record, wherein it has been stated that after deposit of tax by the supplier alongwith interest ITC is available to the recipient for the claim of the same.

6. Accordingly, impugned order dated 4.1.2023 (Annexure P-4) is set aside and respondent No. 1-Assistant Commissioner, State Taxes and Excise, Nahan, District Sirmour, H.P. is directed to re-open the issue and re-adjudicate the matter in reference in accordance with law and determine the liability, if any, of the petitioner or accept its claim as admissible under law. Needful be done on or before 31st January, 2026.

The petition stands disposed of alongwith pending application(s), if any, in aforesaid terms.

**(Vivek Singh Thakur),
Judge.**

**(Jiya Lal Bhardwaj),
Judge.**

24th December, 2025
(Keshav)