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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**  
*Date of Decision: 10<sup>th</sup> July, 2025*

+ **W.P.(C) 2926/2025 & CM APPL. 13885/2025**  
**SONU MONU TELECOM PVT. LTD. THROUGH ITS DIRECTOR**  
**JITENDER GARG & ANR.** .....Petitioners  
Through: Mr. Rajesh Jain, Mr. Virag Tiwari, Mr.  
Ramashish, Mr. Rishabh Jain and Ms.  
Tanya Saraswat, Advocates.  
versus  
**THE UNION OF INDIA REVENUE SECRETARY, MINISTRY OF**  
**FINANCE, & ANR.** .....Respondents  
Through: Ms. Tanvi Nigam, SPC for R-1/UOI  
with Ms. Lubhanshi Tanwar,  
Advocates.  
Mr. Atul Tripathi, SSC for R-2.

**CORAM:**  
**JUSTICE PRATHIBA M. SINGH**  
**JUSTICE RAJNEESH KUMAR GUPTA**

**JUDGMENT**

**Prathiba M. Singh, J.**

1. This hearing has been done through hybrid mode.

**CM APPL. 35656/2025 (for modification of order dated 18<sup>th</sup> March, 2025)**

2. This is an application filed under Section 151 CPC seeking modification of the order dated 18<sup>th</sup> March, 2025. The present petition primarily prayed for -

(i) setting aside order dated 4th February, 2025 bearing Order No. 198/ADC/D.N./Bhavan Meena/2024-25 (*hereinafter 'impugned*



order') wherein the composite Show Cause Notice dated 22nd July, 2024 (*hereinafter* 'SCN') was adjudicated against the Petitioners; and  
(ii) challenged the *vires* of **Notification No. 06/2020 - Central Tax** dated 03rd February, 2020 (*hereinafter* 'impugned notification').

3. However, this Court after considering the fact that the impugned order was an appealable order under Section 107 of the Central Goods and Services Tax Act, 2017 (*hereinafter* 'the Act'), *vide* the said order dated 18th March, 2025 had directed the Petitioner to approach the concerned Appellate Authority and had issued notice in the matter only to the extent of the challenge to the impugned notification.

4. However, the present application prays that the adjudication of the *vires* of the impugned notification ought to be done comprehensively along with the merits of the matter as well.

5. Mr. Rajesh Jain, Id. Counsel appearing for the Petitioners submits that there were various objections raised to the impugned order apart from the clubbing/consolidation of SCN for various financial years. It is contended that the reply of the Petitioner has also not been considered by the Adjudicating Authority in the impugned order and the power to consider the reply only vests with the proper officer under Section 74(9) of the Act. He, therefore, submits that the Appellate Authority, even upon being approached by the Petitioner, would not be empowered to consider the reply filed by the Petitioner before the Adjudicating Authority.

6. Elaborating upon the above contention, Mr. Jain further submits that the Appellate Authority can only consider as to what the Adjudicating Authority has decided but cannot freshly consider the reply of the Petitioner.



7. Heard on the modification application. A perusal of the application would show that the order dated 18<sup>th</sup> March, 2025 was challenged by the Petitioner before the Supreme Court and *vide* order dated 5<sup>th</sup> May, 2025, the SLP was dismissed as withdrawn with no liberty being sought to approach this Court.

8. Apart from that, insofar as the objections being raised by the Petitioner are concerned, i.e., that the DRC-07 mentions only 2017-18, this appears clearly to be only a technical glitch. The SCN was a composite SCN, wherein the computation for all the financial years 2017-18, 2018-19 and 2019-20 was clearly specified. The said computation is set out below :

Noti cee No.	GSTIN Trade Name M/s				Tax/Cess (in Rs.)	Interest & Penalty
1	07AZCS1447F1ZY Sonu Monu Telecom Private Limited	2017-18, 2018- 2019, 2019- 2020, 2020-2021	CGST Act, 2017/DGS T Act, 2017 and IGST Act, 2017	D e l h i	1,33,66,09,898	As Applicable
2	07AAACZ8225H1Z6 10i Commerce Services Private Limited				4,94,69,363	As Applicable
3	07CHVPS2162K1ZM Bani Enterprices				2,71,63,400	As Applicable
4	07BFVPK8095N1Z9 Onesto Marketing				2,01,94,571	As Applicable
5	07AGCPK2795A1ZN Hemang Electornic				16,90,000	As Applicable

9. The detailed order which has been passed by the Adjudicating Authority clearly shows that ineligible ITC has been claimed for multiple financial years. Further it also clearly enumerates the amount of tax payable in respect of each financial year in the following manner:



(c) Tax and other dues:

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Financial Year: 2017-2018

Sl.No.	HSN	Turnover	Rate of Tax	Taxperiod				Place of Supply (POS)	Act	Tax/Cess (₹)	Interest (₹)	Penalty (₹)	Fee (₹)	Others (₹)	Total (₹)
				From	To	Month	Year								
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16
1	8517	0		JUL	2017	MAR	2018		CGST	144321250	0	148017320	0	0	292338570
2	8517	0		JUL	2017	MAR	2018		SGST	144321250	0	148017320	0	0	292338570

Financial Year: 2018-2019

Sl.No.	HSN	Turnover	Rate of Tax	Taxperiod				Place of Supply (POS)	Act	Tax/Cess (₹)	Interest (₹)	Penalty (₹)	Fee (₹)	Others (₹)	Total (₹)
				From	To	Month	Year								
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16
1	8517	0		APR	2018	MAR	2019		CGST	315649573	0	338409316	0	0	654058889
2	8517	0		APR	2018	MAR	2019		SGST	315649573	0	338409316	0	0	654058889

Financial Year: 2019-2020

Sl.No.	HSN	Turnover	Rate of Tax	Taxperiod				Place of Supply (POS)	Act	Tax/Cess (₹)	Interest (₹)	Penalty (₹)	Fee (₹)	Others (₹)	Total (₹)
				From	To	Month	Year								
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16
1	8517	0		APR	2019	MAR	2020		CGST	208334125	0	215614624	0	0	423948749
2	8517	0		APR	2019	MAR	2020		SGST	208334125	0	215614624	0	0	423948749

Total Amount (For all Financial Years)

Tax Period	Act	Tax/Cess	Interest	Penalty	Cess	Fees	Others	Total
2017-18	CGST	144321250	0	148017320	0	0	0	292338570

2017-18	IGST	0	0	0	0	0	0	0
2017-18	SGST	144321250	0	148017320	0	0	0	292338570
2017-18	CESS	0	0	0	0	0	0	0
2018-19	CGST	315649573	0	338409316	0	0	0	654058889
2018-19	IGST	0	0	0	0	0	0	0
2018-19	SGST	315649573	0	338409316	0	0	0	654058889
2018-19	CESS	0	0	0	0	0	0	0
2019-20	CGST	208334125	0	215614624	0	0	0	423948749
2019-20	IGST	0	0	0	0	0	0	0
2019-20	SGST	208334125	0	215614624	0	0	0	423948749
2019-20	CESS	0	0	0	0	0	0	0
Total (Act wise)	CGST	668304948	0	702041260	0	0	0	1370346208
	IGST	0	0	0	0	0	0	0
	SGST	668304948	0	702041260	0	0	0	1370346208
	CESS	0	0	0	0	0	0	0
Total		1336609896	0	1404082520	0	0	0	2740692416

Therefore the said objection is clearly untenable.

10. Insofar as the argument relating to consideration of the reply is concerned, Mr. Jain, Id. Counsel has referred to Section 2(4), 5(4), 74(9) and 107(11) of the Act. All these provisions are set out below :



***“2. Definitions.- In this Act, unless the context otherwise requires, –***

***(4) “adjudicating authority” means any authority, appointed or authorised to pass any order or decision under this Act, but does not include the [Central Board of Indirect Taxes and Customs], the Revisional Authority, the Authority for Advance Ruling, the Appellate Authority for Advance Ruling, [the Appellate Authority, the Appellate Tribunal and the Authority referred to in sub-section (2) of section 171];***

***5. Powers of officers under GST.-***

***(4) Notwithstanding anything contained in this section, an Appellate Authority shall not exercise the powers and discharge the duties conferred or imposed on any other officer of central tax.***

***74. Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised by reason of fraud or any willful-misstatement or suppression of facts.-***

***(9) The proper officer shall, after considering the representation, if any, made by the person chargeable with tax, determine the amount of tax, interest and penalty due from such person and issue an order.***

***107. Appeals to Appellate Authority.-***

***(11) The Appellate Authority shall, after making such further inquiry as may be necessary, pass such order, as it thinks just and proper, confirming, modifying or annulling the decision or order appealed against but shall not refer the case back to the adjudicating authority that passed the said decision or order:***

***Provided that an order enhancing any fee or penalty or fine in lieu of confiscation or confiscating goods of greater value or reducing the amount of refund or input tax credit***



*shall not be passed unless the appellant has been given a reasonable opportunity of showing cause against the proposed order:*

*Provided further that where the Appellate Authority is of the opinion that any tax has not been paid or short-paid or erroneously refunded, or where input tax credit has been wrongly availed or utilised, no order requiring the appellant to pay such tax or input tax credit shall be passed unless the appellant is given notice to show cause against the proposed order and the order is passed within the time limit specified under section 73 or section 74.”*

11. A perusal of Section 2(4) of the Act would show that the Adjudicating Authority would not include the Appellate Authority which is quite an obvious position inasmuch as, the Adjudicating Authority is the first Authority which deals with the entire dispute. Under Section 74(9), the proper officer has to consider the representation made by the Petitioner. It is the case of the Petitioner that its reply has not been considered but a perusal of the adjudication order would show that the said order is quite detailed and takes into consideration the various submissions made including in respect of SCN being issued for multiple financial years.

12. Even if it is presumed that the Adjudicating Authority did not adequately consider the reply filed by the Petitioner, in the opinion of this Court, the entire purpose of providing a first appeal to the Appellate Authority is to rectify any error made by the Adjudicating Authority. Section 107(11) of the Act is clear to the extent that the Appellate Authority has the power to either confirm, modify or annul the decision or order. This, in effect, means that the Appellate Authority is permitted to take all such measures required or pass all such orders, which could be passed in a first appeal.





13. The only embargo in the said provision, is that the matter is not to be remanded back. The purpose or the legislative intent behind the said embargo is to ensure finality in proceedings and to prevent repetitive re-consideration of the matter by the Adjudicating Authority. The Appellate Authority is fully empowered to consider the entire matter afresh including the reply of the Petitioner, as also the reasoning given by the Adjudicating Authority, the evidence on record including the statements and the documents. There can be no doubt that the appeal is a full-fledged first appeal before the Appellate Authority

14. In fact, a coordinate bench of this Court ***Addl. D. G. (Adjudication) v. Its My Name P. Ltd.***, (2020 SCC OnLine Del 2760) in while dealing with a parallel provision i.e., Section 129B of the Customs Act, has not only held that the expressions '***confirm, modify or annul the decision or order***' have wide amplitude, but also encouraged the Appellate Authority to decide the matter on merits, wherever possible. The relevant portions of the judgment is extracted below:

***“56. Firstly, section 129B(1) of the Act empowers the learned Tribunal, seized with an appeal, challenging the order of the adjudicating authority, to "pass such orders thereon as it thinks fit, confirming, modifying or annulling the decision or order appealed against or may refer the case back to the authority which passed such decision or order with such directions as the Appellate Tribunal may think fit, for a fresh adjudication or decision, as the case may be, after taking additional evidence, if necessary". We are convinced that the jurisdiction, of the learned Tribunal, to "confirm, modify or annul" the order dated October 4, 2019, was wide enough to encompass the power to direct provisional release, and fix the terms thereof. Remand,***



to the authority to pass the order under appeal before the learned Tribunal, is, statutorily, only an alternative course of action, the learned Tribunal. We may take judicial notice, at this point, of the fact repeated demands, to the authorities below, merely clog the litigative process and lead to multiplicity of proceedings, and benefits neither the assessee nor the Revenue. Where, therefore, the learned Tribunal is in a position to decide the appeal, it would be well advised to do so, rather than merely remand the matter to the authority below. Indeed, in a case in which the learned Tribunal is in a position to decide the appeal on merits, and pass effective unenforceable directions, remand, by it, of the proceedings, the authority below, may amount, practically, to abdication of its jurisdiction. It is obviously with a view to ensure that the demand is not resorted to, as an "easy way out", that the Legislature has, advisedly, conferred wide powers, on the learned Tribunal, to confirm, modify or annul the order before it. On principle, therefore, we are unable to discern any apparent illegality, or want of propriety, on the part of the learned Tribunal, in directing provisional release and fixing the terms thereof, rather than remand in the matter to the ADG, to undertake the said exercise.

15. Similarly, in *Sun Pharma Laboratories v. Union of India* (Writ Petition. (C) No. 09 of 2020), the Appellate Authority, despite finding the grounds relied upon by the Adjudicating Authority to be erroneous, sustained the rejection of the refund claim on an alternate line of reasoning. Consequently, the Applicant/Petitioner had preferred the said writ petition challenging the decision of the Appellate Authority. The Division Bench of the Sikkim High Court upheld the Appellate Authority's power under Section





107(11) of the Act to re-examine the matter on merits. The relevant portions of the order are extracted below:

*5. An appeal was preferred by the petitioner before the Commissioner (Appeals), CGST and Central Excise, Siliguri on 01.07.2019, who passed an order dated 11.09.2019 holding that the ground of rejection of the refund claim in the impugned order was erroneous. However, after an examination as to whether or not any excess payment of tax had actually occurred in the case, rejected the appeal by holding that there is no requirement of refund.*

*6. Therefore, recourse is taken to redress the grievance of the petitioner by filing this writ petition before this Court, as no Goods and Services Tax Appellate Tribunal had been constituted to entertain an appeal under Section 112 of the CGST Act.*

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**16. We are unable to accept the submission of learned counsel for the petitioner that once the order of the Adjudicating Authority was held to be erroneous by the Appellate Authority, the Appellate Authority ought to have allowed refund of excess tax paid by allowing the appeal of the petitioner (the appellant) without any further consideration.**

*17. Relevant part of section 107(11) of CGST Act, 2017 reads as under:*

*(11) The Appellate Authority shall, after making such further inquiry as may be necessary, pass such order, as it thinks just and proper, confirming, modifying or annulling the decision or order appealed against but shall not refer the case back to the adjudicating authority that passed the said decision or order.*

**18. Having regard to the contour and ambit of section 107 (11) of CGST Act, in our considered**



**opinion, the Appellate Authority cannot be faulted for undertaking an enquiry even after observing that the order of the Adjudicating Authority was erroneous because the Appellate Authority has to decide whether the petitioner has made out a case for grant of refund.”**

The above order makes it clear that the powers of the Appellate Authority under Section 107(11) of the Act are wide enough to include powers to reconsider the reasoning adopted by the Adjudicating Authority and evidence on record by undertaking an enquiry into the merits.

16. In this view of the matter, this Court is not inclined to modify the order dated 18<sup>th</sup> March, 2025.

17. The application is dismissed. The Petitioner is, however, entitled to avail of the appellate remedy in accordance with law as directed in order dated 18<sup>th</sup> March 2025.

**W.P.(C) 2926/2025 & CM APPL. 13885/2025 (for interim order)**

18. List on 22<sup>nd</sup> August, 2025.

**PRATHIBA M. SINGH  
JUDGE**

**RAJNEESH KUMAR GUPTA  
JUDGE**

**JULY 10, 2025/nd/Ar.**