

**BEFORE THE GOODS AND SERVICES TAX APPELLATE TRIBUNAL,  
NEW DELHI BENCH, NEW DELHI**

**APPLICATION NO.123 DATED 25-06-2025**

**In the appeal no. 12345 of 2025 DATED 25-06-2025**

**IN THE MATTER OF:**

**ABC INTERNATIONAL  
Pitampura, New Delhi**

**GSTIN NO. 1234567890**

**APPELLANT**

**VERSUS**

**COMMISSIONER, DGST, DELHI**

**RESPONDENT**

**INTERLOCUTORY APPLICATION TO THE HON'BLE APPELLATE  
TRIBUNAL, UNDER RULE 29 and 45 OF GSTAT (PROCEDURE)  
RULES 2025 READ WITH RULE 112 OF DGST RULES, TO BRING ON  
RECORD ADDITIONAL EVIDENCES IN THE INTEREST OF  
JUSTICE.**

**HON'BLE PRESIDENT AND HIS COMPANION MEMBERS,**

**MOST RESPECTFULLY SHEWETH:**

**The applicant above named respectfully submits as under:**

- 1. That the applicant has been registered with the GST Department for the last many years and deals in tobacco products including pan masala.**
- 2. The applicant has deposited the prescribed mandatory fee of Rs. 5000 as per rule 119(2) GSTAT (Procedure) Rules 2025 read with section 112(7) DGST**

Act along with rule 110(5) of DGST Rules Challan has been annexed as **Annexure AD-4** to this application.

3. The applicant has annexed affidavit in support of this application as **Annexure AD-3**.
4. The Interlocutory Application to the Hon'ble Appellate Tribunal has been duly signed by the Proprietor of the firm.

### **FACTUAL MATRIX**

Aggrieved by the First Appellate Authority order, the Applicant hereby wish to submit all the relevant additional evidences that are always available as part of books of account and are necessary documents of the business.

### **GROUND OF THE APPLICATION**

The applicant respectfully submits that the additional evidence now sought to be placed on record has always formed part of the books of account and day-to-day business documentation. These documents, though available, were not submitted earlier as they were not specifically requisitioned during the course of the initial proceedings before the Proper Officer. At the relevant stage, there was no indication that the subject matter in dispute would be interpreted in a manner that would necessitate the production of the present material.

The absence of these documents in earlier stages was not due to any intentional omission or negligence, but rather due to a good-faith assumption that the returns and declarations already filed were sufficient to support the refund claim. The Proper Officer, at no time, called for such documentation, and had the need for it been communicated, the applicant would have promptly submitted the same.

Further, the First Appellate Authority did not conduct an independent factual reassessment and largely adopted the order of the Proper Officer. In these

circumstances, the applicant seeks to tender these additional documents as annexed at Annexure AD-5.

These documents directly address and refute the factual inferences drawn in the absence of complete records and are therefore critical for enabling this Hon'ble Tribunal to render a just and reasoned decision. It is submitted that, in light of the above, and in accordance with Rule 29 of the GSTAT Rules read with Rule 112 of the DGST Rules, the present application may be considered favourably.

### **PRAYER**

In view of the above grounds of appeal the appellant respectfully prays as under:

- 1) That the applicant be permitted to bring the additional evidences on record to make this as part of appeal itself.
- 2) Any other relief that this Hon'ble Tribunal may deem fit and proper may also be given to the appellant.

It is prayed accordingly.

**FOR ABC INTERNATIONAL**

**PROPRIETOR**

**THROUGH CA RASHMI JAIN  
COUNSEL FOR THE APPLICANT**

### **VERIFICATION**

Verified on this day of 25<sup>th</sup> June 2025 that the contents of the above application are true to the best of my knowledge and belief and nothing material has been concealed therefrom.

**APPLICANT**

**IN THE GOODS AND SERVICES TAX APPELLATE TRIBUNAL,  
NEW DELHI BENCH, NEW DELHI**

**123456 OF 2025**

**IN THE MATTER OF:**

**ABC INTERNATIONAL  
PITAM PURA, NEW DELHI  
GSTIN NO. 1234567890**

**APPELLANT**

**VERSUS**

**COMMISSIONER, DGST, DELHI**

**RESPONDENT**

**APPEAL UNDER SECTION 112 OF THE DGST ACT AGAINST THE  
ORDER OF FIRST APPELLATE AUTHORITY DATED 22-04-2025  
PASSED UNDER SECTION 107 OF THE DGST ACT UNDER SECTION  
74 OF THE DGST ACT.**

**HON'BLE PRESIDENT AND HIS COMPANION MEMBERS,  
RESPECTFULLY SHOWETH:**

**The appellant above named respectfully submits as under:**

1. That the appellant has been registered with the GST Department for the last many years and deals in tobacco products including paan masala.
2. The appellant has deposited the prescribed mandatory deposit of 10 percent (Rs 2,34,000/-) in terms of **section 112(8) of the DGST Act** on the gross amount (Refund Tax of Rs 23,40,000/- and interest Rs. 13,32,000/- in dispute without adjusting the pre-deposit deposited at the time of hearing of

appeal under section 107. Challan has been annexed as **Annexure A 7 page 60**, to this appeal.

3. The appellant has deposited the prescribed mandatory fee of Rs. 24000 in terms of section 112(7) DGST Act read with rule 110(5) DGST Rules. **Annexure A 8 page 61** to this appeal.
4. The appeal is within time limit in terms of section **of DGST Act**
5. That the Appellant filed the application for submission of additional evidences in terms of Rule 112 of DGST Rules, annexed as **Annexure AD page 1-2** to this appeal. Fee Challan prescribed in GSTAT (Procedure) Rules 2025 paid.
6. That the appellant filed the Interlocutory Application under rule 29 of GSTAT (Procedure) Rules 2025 Read With Rule 112 of DGST Rules, for cross examination of landlord of the supplier's business premises. Annexed as **Annexure CE page 1-2** to this appeal. Prescribed Fee Challan paid.
7. The appeal has been signed by the Proprietor of the firm.

#### **PRELIMINARY OBJECTIONS OF JURISDICTION.**

- A. The question before this Hon'ble tribunal for adjudication is whether the proper officer under the provisions of Section 74 of the DGST Act was justified in recovering the refund of Rs. 23,40,000/- given to the appellant for the tax period January of 2021-22 on. 29-03-2022 after making the inquiries and satisfying himself of all the transactions at the time of sanction of the refund under section 54(1) read with rule 96 of the DGST Act and Rules, based on subsequent events.

#### **QUESTIONS OF LAW**

- A. Whether the appellant can be asked to produce the suppliers, transporters etc. for whom summons under section 70 of the DGST Act were issued by the

proper officer himself? Can such a duty be cast upon the appellant under the provisions of the DGST Act?

- B.** Whether the provisions of Section 74 could be invoked under these circumstances of the case especially when it is clear Section 74 has been invoked to bring the case within the provisions of limitation of Section 74(10) DGST Act. More so, when the conditional jurisdiction envisaged under Section 74 has not been satisfied in so far, no essential ingredients of section 74 have been satisfied by the proper officer?
- C.** Whether under these circumstances could it be said that the refund was erroneously given as is the pre-condition and requirement of conditional jurisdiction under Section 74 of the DGST Act?

#### **FACTUAL MATRIX**

#### **ANNEXURE A 4**

Refund for zero rated transactions was filed based on IGST TAX PAID transactions. The exports were made to Dubai UAE for a total refund amount of Rs 23,40,000/- The refund given was applied on 22-02-2022 and credited to our bank account on 29-03-2022.

The refund was given after due procedure as per rule 96 of DGST Rule is completed.

#### **SUBSEQUENT EVENTS REPORTED BY THE PROPER OFFICER**

The proper officer based on reports of the investigation wing has now alleged, without his independent opinion, that the certificates of the registration of the suppliers from whom we have procured the materials meant for export (this is an admitted fact that same materials were exported) have been retrospectively cancelled (no order placed on record or shown to the appellant),

That the transporters who delivered the goods to the appellant in Delhi and who were appointed by the appellant himself, are not available at the given addresses

(the fact that they delivered the goods has not been denied by the lower authorities),

That the bank payments have been doubted (though no inquiries made), foreign payments credited in the bank that were duly verified by the proper officer at the time of sanctioning the refund are not being questioned again and that summons were sent to the suppliers but none appeared? Based on these unsubstantiated evidences, the proper officer has come to a shocking conclusion that the appellant took erroneous refund, a term which is not defined in the law.

**Feeling aggrieved the appellant is approaching this Hon'ble Tribunal to seek justice and fair play.**

Required percentage 10 per cent of the tax amount of Rs. 23,40,000/-has been deposited and challan is annexed for your ready reference.

The appellant challenges the impugned order of the proper officer under Section 74 of the DGST Act read with CGST Act read with section 20 of the IGST Act, inter-alia, on the following grounds:

**GROUND OF APPEAL AND SUBMISSIONS**

**ANNEXURE A 5**

1. The appellant says and submits that the findings of the proper officer are perverse and are based on the preliminary investigation by the investigation wing of the department only. Allegations raised have no evidence or proof. factum of export has not been denied at all. payments made to suppliers also not been denied. GSTR-3B is filled, which is a valid return, which has not been doubted or even commented upon.

Section 2(117) "valid return" means a return furnished under subsection (1) of section 39 on which self-assessed tax has been paid in full;

The Appellant has undergone Aadhar authentication in the manner provided in Rule 10B of DGST Act and complied with the condition for granting of refund under Rule 96(1)(c) of DGST Act.



The findings of section 74 are not tenable in law. No finding of wilful misstatement or suppression of facts to evade tax has been made.

The books of accounts of the appellant have been produced and examined in detail by the proper officer and have been accepted without any condition.

Bank statements filed for payments made and payments received for exports have been thoroughly checked and found in order. There is no adverse finding on this issue as well.

Hence it is beyond the comprehension of the tax payer about the observations made by the lower authorities.

In view of the above, the appellant says and submits that it could not be a case of section 74, for fraud, error, inaction on the part of the supplier, no responsibility can be fixed upon the appellant.

2. The appellant says and submits that the question raised by the Proper Officer regarding BRC is not maintainable, realisation of sale proceeds in foreign currency is not the pre-condition of section 16(4) of IGST Act. Condition of realisation of sale proceeds is linked to refund of input tax credit under section 16(3) proviso IGST Act.

3. The subsequent cancellation of suppliers much beyond our purchase date 10.01.2022 is beyond our control, we have purchased the goods in the course of and in furtherance of business. Relevant evidences Purchase Bills 1 to 6 along with 6 E-Way Bills attached as **Annexure A 13 page 75-86** to this appeal.

The appellant says and submits that the averments made in the impugned order of the first appellate authority that the suppliers who supplied goods to the appellant for export, never opened their shops. No such reports have been confronted to us in writing and if these are so the appellant would like to exercise his right to cross examine such people. In any case there is no duty cast upon the appellant to verify the physical premises of the suppliers as long as they have the GSTIN No, valid on the GST Portal, and we made the payments to them in authorised banks against the tax invoices raised by them.

The appellant feels shocked that the lower authorities have presumed collusion, nothing has been brought on record to even remotely link the appellant with those firms for any other transactions, nothing has been brought on to record to lead any creditable evidence that there could be connivence or collusion between the appellant and those suppliers, the fact that their books of accounts have not been examined nor they have been confronted with the presumptions raised by the revenue, the appellant feels shocked to read such averments made only to prejudice the case of the appellant.

The serious and unsubstantiated allegations regarding fake documents, fake lorry receipts and fake invoices are really baseless and that too without bringing any evidence on record. Simply because the summon was not responded by the suppliers or the transporters may have closed their businesses – cannot result in raising the presumption that the transactions were colluded or the documents were fake; more so when the suppliers have filed 3B returns the factum of which has not been questioned by the revenue.

We have obtained the telephone numbers of the suppliers and their partners, telephone number of the transporters and their managers that are mentioned in **Annexure AD-5.1, Page 9-10** to this appeal and we shall fully cooperate with any inquiry that the revenue may resort to in the interest of justice.

4. Allegation of non-receipt of physical goods is base less Act. movement is caused by us (the recipient). the transporter took the delivery of goods from the registered place of supplier on our directions and delivered the goods directly on the TKD custom station to our appointed CHA. Documents attached on **Annexure AD-5.3 Page 15-31.**

All the preconditions as raised by The State Of Karnataka vs M/S. Ecom Gill Coffee Trading Private ... on 13 March, 2023. IN THE SUPREME COURT OF INDIA, SLP (Civil) No. 2572/2022 (Full name and citation must be given \_ are

complied with along with the procedural requirement of sec 16(2) of DGST Act. **Annexure AD-5.1 Page 9-10** to this appeal.

5. Regarding non mentioning of HSN, purchase invoices as well as sale invoice along with shipping bill are attached for your reference. **Annexure A 13 Page 75-86** and **Annexure A 14 Page 87-89**. The appellant says and submits that the allegation is baseless.
6. Rule 26 DGST Act Method of authentication states documents can be signed digitally, all the invoices are digitally signed **Annexure A 13 Page 75-86** and **Annexure A 14 Page 87-89**. There is no requirement of physical signatures on such documents and even if were so it was only a technical error that could be got rectified by the proper officer.
7. It's a common practice in the business world to get all the documentation ready before arrival of goods to the custom station for speedy delivery of goods. The goods were directly delivered at the custom station. **Annexure A 13 Page 75-86** (e-way bill). The appellant says and submits that in today's high-tech era such fast tracked documentation is a must to save on freight, time and to honour the ship space booking. This cannot be a ground for doubting the transactions
8. Further the tax invoices produced show no items except tobacco products whereas the exports are for various items including cigarettes, roasted tobacco etc. Still further none of the tax invoices bear the signature of the suppliers. Regarding transporters, the lorry receipts were shown to the taxpayer that bear no signature and even the weight mentioned on lorry. The appellant says and submits what has been purchased and what has been exported is fully covered in Tobacco products and it is only a technical nomenclature that may have been used by the appellant based on requirement of the importers.
9. There is no doubt and the proper officer has admitted that payments were entered in books on the basis of remittance advice received from the buyer,

while due to some technicalities payment was credited in bank after 15 days. Correspondence with the bank attached at **Annexure AD 5.2 Page 11-14.**

**10.** The appellant craves leave of this Hon'ble Tribunal to argue or place evidence on record, not being new evidence, before this Court in the interest of justice. The appellant says and submits as a synopsis for the kind consideration of this Hon'ble Tribunal; are we responsible for the conduct of the supplier ?, on the date when we purchased items from them against tax invoices on which they charged the tax and the cess and we paid them through banking channels, this is not denied. Also, there is not duty cast upon us to verify their business premises or their whereabouts. They have sent the goods on ex-godown basis and we have duly paid the freight and also deposited the RCM on such freight as per books of accounts produced and the returns filed.

Also, we made our stock entries based on goods receipt note. We also settled their accounts in full. And the same goods were exported item to item. The entire export documents are enclosed i.e. Shipping Bill, Bill of Lading, Packing List, etc. It is unfathomable that the customs documents were denied by lower authorities which are never issued unless the entire export invoice, packing list and items are verified by the customer officials before LEO is issued by the customs department. There are a number of judgments on this issue that support our claim which is genuine and is in due course of business. (case laws annexed separately)

**PRAYER**

IN view of the above the appellant prays as under the impugned order of the first appellate authority may be quashed and the authorities below may be directed not to proceed for recovery of the Rs. 23,40,000/- which was the legitimate claim of the appellant for the legitimate transactions.

**FOR ABC INTERNATIONAL**

**PROPRIETOR**

**THROUGH CA RASHMI JAIN  
COUNSEL FOR THE APPELLANT**

**VERIFICATION**

Verified on this day of 25<sup>th</sup> JUNE 2025 that the contents of the above appeal are true to the best of my knowledge and belief and nothing material has been concealed therefrom.

**APPELLANT**

## **ANNEXURE A 9**

BEFORE THE ASSISTANT COMMISSIONER, ZONE 1, GST  
DEPARTMENT, NEW DELHI

DIN NO. 23456764545  
15.1.2025

DATED

IN THE MATTER OF; ABC INTERNATIONAL  
PITAM PURA  
NEW DELHI

SHOW CAUSE NOTICE UNDER SECTION 74 OF THE DGST ACT 2017-  
RECALLING THE REFUND OF RS 23,40,000/- GIVEN TO YOU BASED  
ON FRAUDULENT AND FAKE EVIDENCE PRODUCED BY YOU AT THE  
TIME OF ADJUDICATION ALONG WITH INTEREST AND PENALTY.  
Assessment year 2021-22

Whereas you are a trader and an exporter of tobacco products  
including paan masala.

WHEREAS based on your returns for the period 2021-22 and based  
on zero rated transactions shown by you, you were sanctioned and  
given a cash refund of the above amount of Rs 23,40,000/- straitly  
based on your returns and your application filed along with  
documents. At the time of grant of refund within the statutory time  
of 60 days you were put to notice that any adverse report received  
after verification of documents relating to input tax credit etc  
proceedings as per law will be initiated against you to recover the  
refund erroneously given.

The refund was given to you vide RFD-06 dated 29.03.2022.

Now reports have been received from investigation wing that your 3 main suppliers i.e. RAVINDER & CO, KAROL BAGH DELHI, (GSTIN NO. 0434567890), SATINDER & CO (GSTIN NO. 0435678901) AND JATINDER & CO (GSTIN NO. 0436789012), were under investigation by the investigation wing of the department. It has been found that their registration certificates were cancelled retrospectively with effect from their date of registration which in all cases is much prior to date of your transactions i.e. 2021-22. It has been found on documentary evidence and copy of the findings is enclosed with this show cause notice as Annexure A for your information that these three firms never opened their shops at the business premises, the land lord has denied having given those shops on rent to them and above all their 3B returns ( extract enclosed as Annexure B) it has been found that they have not purchased tobacco or paan masala products at all from any of the registered tax payers. Hence the entire registration proceedings were based on fake documents.

I have examined the matter in detail and came to prima face conclusion that you were in collusion with these three firms as all your purchases of these products are from these three firms only based on which you claimed input tax credit, even though you showed tax paid exports on which you allegedly discharged your liability of IGST AFTER ADJUSTING THE INPUT TAX CREDIT FROM THESE THREE FIRMS. Also, investigation wing of the department sent them summons under section 70 of the DGST Act but they never came for tendering their statements and produce their books of accounts.

Based on documents filed by you for receipt of goods from these three firms, based on IGST Payment, we sent summons to transporters whose lorry receipts you produced, but these transporters never came forward and when physically inspected their business premises it is found that they were one-time transporters only with no regular business activity only. (Report of the Inspector enclosed as Annexure C) for your information.

In view of the above it is clear that you had obtained fake bills from the above three suppliers for the year 2021-22, the lorry receipts are fake, and neither the suppliers nor the transporters came forward to tender their statements in support of you and the whole circumstantial evidence clearly suggest that there was a complete connivance and collusion between you and the three suppliers.

Hence, you are required to show cause as to why the refund given to you of Rs 23,40,000/- be not recovered from you with interest and penalty under Section 74 as the same has been prima facie obtained by suppressing the facts, making willful tax evasion and based on collusion and connivance with the suppliers. The whole purchase seems to be fake and only a paper transaction. You are therefore requested to file reply to this show cause notice and produce the following books of accounts etc for my examination:

1. The complete shipping documents from customs; including physical inspection of goods which is mandatory as per SOP of the Customs Department
2. The names of the persons and their phone numbers with whom you dealt with and his present residential address;
3. The name of the manager of the transport company, in all the three cases it was RANDHAWA & CO CHANDIGARH HIS PRESENT ADDRESS.
4. The bank certificate certifying from whom the payment was actually received, even though you have filed bank accounts showing foreign currency payment received.

From the returns filed by these three firms it has been found that the entire ITC claims by the is not genuine and since there is no purchase of products sold to you from any source declared, it is not possible to infer that they ever paid tax to the government, more so when their input tax credit is fake.

Please note in case you are not able to prove beyond a reasonable doubt about the receipt of goods from these three taxpayers



physically the refund amount may be added to your output tax liability with interest and penalty as per Section 74 of the DGST Act. You must file reply and appear before the under signed on 1.2.2025 at 11AM and be there till you are asked to go.

ASSISTANT COMMISSIUONER

(ZONE1)

## **ANNEXURE 10**

BEFORE THE ASSISTANT COMMISSIONER ZONE I DGST  
DEPARTMENT NEW DELHI

DATE

01.2.2025

IN THE MATTER OF ABC INTERNATIONAL PITAM PURA NEW DELHI  
REPLY TO SHOW CASUE NOTICE DATED 15.2.2025 AND PERSONAL  
HEARING

PRESENT SHRI R K SHARMA ADVOCATE WHO HAS FILED THE  
FOLLOWING REPLY:

"Ref your show cause notice dated 15.1.2025 under Section 74 of the DGST Act asking us to show cause why the cash refund given to us for Rs 23,40,000/- be not recovered back with interest and penalty based on investigation reports received in your office of three suppliers mentioned in your show cause notice whose registration certificates were cancelled retrospectively from the date of their registration which is much prior to 2021-22 for which refund was sanctioned and given to us.

Also you have annexed some reports of fake documentation done by these three suppliers, landlord denying having given the declared premises on rent and also the fact that they never opened their shops.

Our reply is simple; are we responsible for their conduct, on the date when we purchased items from their against tax invoices on which they charged the tax and the cess and we paid them through banking channels, this is not denied. Also there is not duty cast upon us to verify their business premises or their whereabouts. They have sent the goods on ex-godown basis and we duly paid the freight and also deposited the RCM on such freight as per books of accounts produced and the returns filed an extract of which is

enclosed as Annexure X to this reply. Also we made our stock entries based on goods receipt note (Annexure Y duly certified). We also settled their accounts in full (Annexure Z to this reply). And the same goods were exported item to item (Annexure A to this reply). The entire export documents are also enclosed i.e. shipping bill and bill of lading. (Annexure B to this reply). It is unfathomable that the customs documents will be denied by you which are never issued unless the entire export invoice, packing list and items are verified by the customer officials before LEO is issued by the customs department. There are a number of judgments on this issue that support our claim which is genuine and is in due course of business.

The negligence, inaction or even fraud of the supplier cannot result in denial of input tax credit to us which is genuine and in due course of business. The ratio of judgment of Delhi High Court in Commissioner Sales Tax versus Milkfood Limited supports our view.

Regarding transporters names and addresses- yes the transporters were appointed by us and they picked up the materials from the business premises of the above three taxpayers who are situated in and around Chandigarh. As the transactions are more than two years old it seems the transport has been closed due to some death in the family and we are unable to give the required details as asked for by you in your show cause notice.

Also, regarding your direction to produce the suppliers for cross examination, we submit that you have all the powers under the Act to ensure their presence before you and we shall cooperate fully.

Hence, we request that the above show cause notice be dropped forthwith with how levelled baseless allegations that have no legs to stand."

## **PERSONAL HEARING GRANTED AND FINDINGS**

Present Mr R K Sharma advocate. Heard him at length.

As directed, he has produced books of accounts, 3B return copies and lorry receipts along with bank statements. However, he has been unable to show any satisfactory documentary evidence of goods having been received physically in the business premises from the three suppliers, in fact even their stock registers do not show the name of the supplier for such large transactions even though for other smaller transactions the names of the suppliers are shown. He has also not produced bank certificates about the name of the importer who has made the actual payments. On the contrary it has been found that the date on which the bank received the payments and the date on which payments were entered in their books of accounts show a large gap of 15 days on an average - how could the taxpayer record payments 15 days in advance when in fact payments were received subsequently after 15 days. Further the tax invoices produced show no items except tobacco products whereas the exports are for various items including cigarettes, roasted tobacco etc. Still further none of the tax invoices bear the signature of the suppliers. Regarding transporters, the lorry receipts were shown to the taxpayer that bear no signature and even the weight mentioned on lorry receipt and weight based on E Way Bill show large variations. No HSN details are available. The e-way bill was issued at 11 PM from Chandigarh against six invoices from the three suppliers all dated 10.1.2022 and surprisingly the exports documents were also dated 11.1.2022 and in fact the documents were filed on 11.1.2022 itself. This evidence clinches the issue that there was no supply of goods at all and only the fake billing was resorted to. How is this possible that goods that are coming by truck could reach so swiftly and exports documents with E way bills were filed with the customs at 8AM in the morning.

There are no confirmation documents produced by the taxpayer from any of the suppliers nor from the bank about the sender of payment into the bank nor a confirmation letter from the importers.

All these facts were confronted to the taxpayer and he stated that in today's era of high tech all such super efficiency is possible - but he

failed to realize that what is involved in movement of trucks and physical receipt of goods which is the sin non quo of input tax credit mechanism which he has adjusted for his IGST Payments.

The taxpayer was asked if he has to say anything more or produce any other evidence in support of the claims made for exports, he replied in the negative and quoted judgments of Arise India, Gheru Mal and others to stay that he was not responsible for the conduct of the suppliers and hence his claims are legitimate and in due course of business.

Further the counsel has vehemently argued that the provisions of Section 73 or Section 74 cannot be invoked for the inaction or negligence of even fraud of the suppliers more so when the allegation of collusion seems to be based on a conjecture or mind of the assessing officer.

When confronted with the judgment of E COM Coffee GILL TRADING OF the Supreme Court of India, the one sentence of the reply of the counsel was that this judgment is not under GST Law and is under VAT law where the scheme of the ACT IS TOTALLY DIFFERENT.

Kept for orders.

ASSISTANT COMMISSIONER (ZONE 1)

**ANNEXURE A 11**

**BEFORE THE ASSISTANT COMMISSIONER, ZONE 1, GST  
DEPARTMENT, NEW DELHI**

DIN NO. 23456764545  
8.2.2025

DATED

IN THE MATTER OF; ABC INTERNATIONAL  
PITAM PURA  
NEW DELHI

ADJUDICATION ORDER UNDER SECTION 74 OF THE DGST ACT FOR THE AY 2021-22 READ WITH SHOW CAUSE NOTICE UNDER SECTION 74 OF THE DGST ACT 2017- RECALLING THE REFUND OF RS 23,40,000/- GIVEN TO YOU BASED ON FRAUDULENT AND FAKE EVIDENCE PRODUCED BY YOU AT THE TIME OF ADJUDICATION ALONG WITH INTEREST AND PENALTY.

Assessment year 2021-22

The tax payer has filed a detailed reply to the above show cause notice on 1.2.25 when he was also personally heard in detail with all the documentary evidence he was able to produce. When asked whether he would like to produce any other document in support of the claims made in the returns, the taxpayer said he would not like to produce any other evidence and hence the matter was kept for orders.

I have gone through the records of all the investigation reports (that were confronted to the taxpayer) and the evidence produced, the taxpayer in response to the above show cause notice carefully before passing this adjudication order. I have also examined the legal provisions of Section 74 of the Act carefully and have also noted the contentions of the taxpayer that provisions of Section 74 cannot be invoked based on inaction, negligence or even fraud

practiced by the suppliers, as alleged by the revenue in its show cause notice dated 15.1.2025.

Whereas you are a trader and an exporter of tobacco products including paan masala.

WHEREAS based on your returns for the period 2021-22 and based on zero rated transactions shown by you, you were sanctioned and given a cash refund of the above amount of Rs 23,40,000/- straitly based on your returns and your application filed along with documents. At the time of grant of refund within the statutory time of 60 days you were put to notice that any adverse report received after verification of documents relating to input tax credit etc proceedings as per law will be initiated against you to recover the refund erroneously given.

Now reports have been received from investigation wing that your 3 main suppliers i.e. RAVINDER & CO, KAROL BAGH DELHI, ( GSTIN NO. 1234567890), SATINDER & CO (GSTIN NO. 2345678901) AND JATINDER & CO( GSTIN NO. 3456789012), were under investigation by the investigation wing of the department. It has been found that their registration certificates were cancelled retrospectively w.e.f their date of registration which in all cases is much prior to date of your transactions i.e. 2021-22. It has been found in documentary evidence and copy of the findings is enclosed with this show cause notice as Annexure A for your information that these three firms never opened their shops at the business premises, the land lord has denied having given those shops on rent to them and above all their 3B returns ( extract enclosed as Annexure B) it has been found that they have not purchased tobacco or paan masala products at all from any of the registered tax payers. Hence the entire registration proceedings were based on fake documents.

The reply filed by the dealer falls short of the stringent test required for claim of input tax credit more so in terms of section 155 of the DGT Act read with Supreme Court judgment in E COM COFFE GILL.

The investigation reports when examined independently by the undersigned clearly go to prove the connivance and or collusion between the suppliers and the tax payer - name of the transporter is same for the three suppliers, all of them have raised bills on the same date and all of them also prepared the e-way bills at the same time with few minutes here and there. AND ALL THE THREE HAVE RAISED identical tax invoices and perhaps on the same computer and all of them have bank accounts in the same bank Punjab national bank sector 17 Chandigarh. All have similar shortcoming in HSN mentions and above all, all of them have failed to come for tendering their statement. Even the transporters that were engaged by the tax payer to bring back the materials from the suppliers are the same.

I have considered the entire matter and tried to corroborate the evidence produced by the tax payer. I have also read the judgments of Milk Food and Arise India carefully. While those judgments may be relevant but those judgments did not consider Section 155 of the DGST Act that shifts onus on the taxpayer to prove his claim based on physical receipt of the goods by him in his business premises. Hence, the judgments quoted by the taxpayer have limited appreciation.

The tax payer has failed to satisfy how the suppliers have paid the tax to the Government when in fact they never purchased the items sold to the tax payer and how did they dispatch the goods that were physically received by the appellant - is also unexplained so far.

The reports collected by the revenue department were given to the appellant who failed to satisfy the undersigned about the transactions being genuine.

Hence in view of the above I am of the opinion that the input tax for Rs 23,40,000/- was fraudulently claimed by the taxpayer with an intention to evade tax and hence the Joint commissioner applies his mind before taking a further call on merits. The case is therefore



decided against the taxpayer and remanded only on the simple issue of applying a first head rule.

The taxpayer is directed to deposit Rs 23,40,000/- with interest of Rs 13,32,000/- and the penalty proceeding all be separately initiated. The demand has to be deposited in cash through cash ledger and reported latest by 8.3.25 failing which recovery proceedings will be initiated without any further notice to the appellant.

It is ordered accordingly. The order has been uploaded on the portal in the required column today itself.

Proceedings against the suppliers are also underway where the presence of the taxpayer may be sought.

The taxpayer may, if he so likes, file appeal to the Joint Commissioner (Appeals Zone 1) within three months from the date of this order, if he so likes failing which recovery proceedings shall be initiated.

ASSISTANT

COMMISSIONER ZONE 1

**ANNEXUURE A 12**

**BEFORE THE JOINT COMMISSIONER, APPEALS, ZONE 1, DGST  
DEPARTMENT, NEW DELHI**

**In the matter of ABC International, Pitam Pura, New Delhi**

**AY 2021-22**

**Appellate Order under Section 107(11) of the DGST Act 2017**

DIN NO. 5676758789

22.4.25

The appellant has filed an appeal against order passed by the proper officer Zone 1 under Section 74 of the DGST Act recalling refund of Rs 23,40,000/= that was erroneously given to the appellant based on fraudulent and fake documents and transactions where the taxpayer willfully intended to evade tax and unjustly enrich himself.

The appellant has alleged that he has export tobacco products and paan masala to Dubai, UAE.

The appeal was filed without any pre-deposit by writing in the prescribed form "Case of Refund" and hence no pre-deposit required. Since the order of the proper officer was not uploaded on the portal due to technical glitch the appeal was allowed to be filed.

The counsel Shri R K Sharma, Advocate was given a show cause notice as to why the appeal be not dismissed as mandatory pre-deposit of 10 percent of the tax amount has not been made, the counsel submitted that this is a case of rejection of refund and hence pre-deposit was not required to be made. When his contention was rejected and he was confronted with the demand

created under section 74, he sought time to do the needful. Since the limitation period of three months from the date of the Impugned order dated 8.2.25 as on 25.3.25 when the counsel was confronted, he was allowed to deposit the same. On 1.4.25 the counsel has produced DRC 03 of the pre-deposit and hence the appeal is taken up on merits at the request of the counsel.

The counsel has reiterated the grounds taken in show case notice and the reply filed therein by the taxpayer and arguments advanced before the adjudicating proper officer. When confronted the counsel said there is nothing more to add over and above what has been argued before the adjudicating officer and he has filed written submissions on the exact same lines.

Heard Shri R K Sharma Advocate at length. He has filed the judgments in Milkfood case of Delhi High Court, Gheru Mal of Punjab and Haryana High Court, Quest Marketing of Delhi High Court, Arise India of Delhi High Court and Mahalakshmi Cotton Mills of Supreme Court of India - to buttress his argument that default on the part of the suppliers cannot result in denial of statutory benefits to the appellant. He has read many paragraphs of these judgments which are not being quote here for the reasons based on which this order is based.

Undoubtedly the case of the appellant has compact factual matrix - his suppliers are found bogus, his suppliers have not purchased the items as per their 3B returns that are sold to him, HSN Codes are not given, E-way bills timings and export documents submission raise a serious doubt about the genuine transactions between the appellant and his suppliers, transporters are not traceable thought appointed by the appellant himself, suppliers are not traceable even though summons were sent to them on the request of the appellant, and above all the appellant has failed to cooperate with the inquiry as taken up by the proper officer to winnow the truth from the false hood. There are no confirmations filled or affidavits produced nor the appellant is willing to bring the suppliers on

record for cross examination, the appellant is also not willing to bring the transporters on record. All this is so essential to support his case but he has failed to even attempt to do so. Even the export documents except shipping bill and bill of entry, nothing else has been brought on record. Even the BRCs showing the name of persons who sent payments from out of India to the appellant are not clear. Hence the proper officer found the purchases not genuine based on which input tax credit was claimed and refund given to the appellant as the same was adjusted from IGST payment. Nothing more has been brought on record nor any request made to bring additional documents on record.

In *ECOM COFFEE GILL* judgment the SC has said 'Burden of proof' means a responsibility, an obligation to prove a fact. The burden lies on the person who asserts the claim of the input tax credit. The first and foremost thing a person must prove is that he has a genuine transaction with his supplier, resulting in the supply of goods or services or both. It should not be a sham, bogus or fake transaction. He has to produce before the authority appropriate and sufficient evidence. The Supreme Court had brushed aside the judgments of *Quest Marketing* of Delhi High Court and of the Supreme Court in *Arise India* on the ground that Section 70 of the KVAT Act ( para material to Section 155 of the DGST Act) was not at all considered in these judgments where the legislature put burden of proof on the purchaser to the legitimate claim of ITC .

The Assessing Officer in the matters under appeal, on appreciation of evidence, doubted the genuineness of the alleged purchases and denied the credit. The findings of fact recorded by the Assessing Officer came to be confirmed by the first Appellate Authority. However, the second Appellate Authority and the High Court allowed the credit, by observing that as the purchasing dealers produced the invoices issued by the respective dealers and that in some of the cases, they also made the payment through cheques, the Assessing Officer was not justified in denying the credit. Against the grant of credit, the Revenue appealed before the Supreme Court.

In this factual matrix, the question before the Supreme Court was whether the second Appellate Authority as well as the High Court were justified in allowing the credit. To decide said question, the Supreme Court was required to analyse the scope of Section 70 of the KVAT Act which provides that the burden of proving that the claim to credit is correct lies upon the purchasing dealer claiming such credit

The Supreme Court, on analysing the text and intent of Section 70 of the KVAT Act observed as under:

- Mere claim by dealer that he is a bona fide purchaser is not enough and sufficient to claim credit. The burden of proving the correctness of credit remains upon the dealer claiming such credit. Such a burden of proof cannot get shifted on the revenue.
- Mere production of the invoices or the payment made by cheques is not enough and cannot be said to be discharging the burden of proof cast under section 70 of the KVAT Act.
- The dealer claiming credit has to prove beyond doubt the actual transaction which can be proved by furnishing the name and address of the selling dealer, details of the vehicle which has delivered the goods, payment of freight charges, acknowledgement of taking delivery of goods, tax invoices and payment particulars, etc.
- For claiming credit, genuineness of the transaction and actual physical movement of the goods are the sine qua non and the aforesaid can be proved only by furnishing the details referred above.
- If the purchasing dealers fail to establish and prove the important aspect of physical movement of the goods alleged to have been purchased by them from the concerned dealers and on which the credit have been claimed, the Assessing Officer is absolutely justified in rejecting such claim.

In **Ecom Gill**, the assessee had only furnished invoices and payment proof to satisfy the burden of proof cast under Section 70 of the KVAT Act. Having elucidated on the scope of Section 70 and the documents required to satisfy the burden of proof, the Supreme Court allowed the Revenue appeals and restored the orders of the Assessing Officer denying credit to the assessee for not satisfying the burden of proof required under Section 70 of the KVAT Act.

**In view of the above discussion when the proper officer duly gave show cause notice to the appellant to prove the bonafide transactions beyond a reasonable doubt, prove the physical delivery of goods and otherwise prove the burden under Section 155 of the GST Law and the appellant miserably failed to bring on record anything to support his claim, I am unable to find any merit in the appeal filed by the appellant, more so when even before me nothing concert has been brought on record to even remotely prove the genuineness of the transactions with the above three suppliers. Hence, the appeal is devoid of any merits and is dismissed.**

**JOINT COMMISSIONER (APPEALS**

**- ZONE 1\_**

**CC: Commissioner State GST, New Delhi**

**IN THE GOODS AND SERVICES TAX APPELLATE TRIBUNAL,  
NEW DELHI BENCH, NEW DELHI**

**In the appeal no. 12345 of 2025**

**IN THE MATTER OF:**

**ABC INTERNATIONAL  
PITAM PURA, NEW DELHI**

**GSTIN NO. 1234567890**

**APPELLANT**

**VERSUS**

**COMMISSIONER, DGST, DELHI**

**RESPONDENT**

**INTERLOCUTORY APPLICATION TO THE HON'BLE APPELLATE  
TRIBUNAL, UNDER RULE 29 OF GSTAT (PROCEDURE) RULES 2025  
READ WITH RULE 112 OF DGST RULES, FOR CROSS  
EXAMINATION OF LANDLORD OF THE SUPPLIER'S BUSINESS  
PREMISES.**

**HON'BLE PRESIDENT AND HIS COMPANION MEMBERS,**

**MOST RESPECTFULLY SHEWETH:**

**The applicant above named respectfully submits as under:**

1. That the applicant has been registered with the GST Department for the last many years and deals in tobacco products including pan masala.

2. The applicant has deposited the prescribed mandatory fee of Rs. 5000 as per rule 119(2) GSTAT (Procedure) Rules 2025 read with section 112(7) DGST Act along with rule 110(5) of DGST Rules Challan has been annexed as **Annexure CE-4** to this application.
3. The applicant has annexed affidavit in support of this application as **Annexure CE-3**.
4. The Interlocutory Application to the Hon'ble Appellate Tribunal has been duly signed by the Proprietor of the firm.

### **FACTUAL MATRIX**

On 15.01.2025, the Proper Officer issued a Show-Cause Notice under Section 74, DGST Act, alleging that three supplier-firms RAVINDER & CO., SATINDER & CO., JATINDER & CO. never commenced business at their declared premises and thus claimed fraudulent input credits. This allegation hinges entirely on a “landlord’s” denial recorded during a physical verification visit to their premises.

The visiting inspector recorded the statement of “Mr. Landlord” (purported landlord) that no tenancy ever existed; – Consequently, the suppliers’ refunds of Rupees 23,40,000 was declared erroneous refund. No other findings were there.

While Goods inward records and GST returns corroborate actual trading at the premises. The visit was recently conducted while above purchases pertain to January 2022, much prior to this investigation by the Investigation Wing of the department.

### **GROUND OF THE APPLICATION**

- a. The Show-Cause Notice’s core allegation (absence of occupancy) contradicts documentary proof on record.



- b. The landlord's divergent statements were never subjected to adversarial testing.
- c. Oral examination is indispensable to secure truth and prevent miscarriage of justice.
- d. The Tribunal exercises the power of Rule 112 of DGST Rules and Rule 29 of GSTAT (PROCEDURE) RULES 2025 of analogous cases has long recognized the need to summon and cross-examine material witnesses.

### **PRAYER**

In view of the above grounds of appeal the appellant respectfully prays as under:

- 1) That the applicant be permitted to cross-examine the so-called Landlord of the business premises of the suppliers before this Hon'ble Tribunal Bench.
- 2) Any other relief that this Hon'ble Tribunal may deem fit and proper may also be given to the applicant.

It is prayed accordingly.

**FOR ABC INTERNATIONAL**

**PROPRIETOR**

**THROUGH CA RASHMI JAIN  
COUNSEL FOR THE APPLICANT**

### **VERIFICATION**

Verified on this day of 25<sup>th</sup> June 2025 that the contents of the above application are true to the best of my knowledge and belief and nothing material has been concealed therefrom.

**APPLICANT**