

**BEFORE THE GOODS AND SERVICES TAX APPELLATE
TRIBUNAL, GST BHAVAN, DELHI BENCH, NEW DELHI
APPEAL NO 007/01 OF 2025**

IN THE MATTER OF:-

M/S STAR EXPORTER PRIVATE LIMITED
141, OKHLA PHASE II, INDUSTRIAL AREA, NEW DELHI
GST NO. 567891111

APPELLANT

VS.

COMMISSIONER,
Delhi Goods And Services Tax Act,

RESPONDENT

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FORM GST APL – 05

[See rule 110(1)]

Appeal to the Appellate Tribunal

1. **GSTIN - 56789231111**
2. **Name of the appellant – STAR EXPORTER PRIVATE LIMITED**
3. **Address of the appellant –141, Okhla Phase II Industrial Area, New Delhi**
4. **Order appealed against- Number-6677/25 Date-13/02/25**
5. **Name and Address of the Authority passing the order appealed against – Joint commissioner(appeal) zone 8 GST dept New Delhi**
6. **Date of communication of the order appealed against – 14/02/2025**
7. **Name of the representative – Ms. Rajmani Jindal**
8. **Details of the case under dispute:**
 - (i) **Brief issue of the case under dispute** On 06/06/24 the appellant company made export of 2000 laptops of DELL make to DUBAI to an Association of importers and information technology products @USD 1000/ per laptop and had received cash refund of Rs two crores seventy lacs on exports from the GST Dept .but the proper officer while rejecting the whole export creates additional demand of eight crores forty lacs and also

penalty of Rs five crores forty lacs .Hon'ble First Appellate authority confirmed the additional demand of Rs eight crore forty lacs and penalty by the proper officer.

(ii) Description and classification of goods/ services in dispute-- Trading of Electronics products including export to Gulf regions

(iii) Period of dispute - 2024-25

(iv) Amount under dispute:

| Description | Central tax | State/ UT tax | Integrated tax | Cess |
|------------------|-------------|---------------|----------------------------|------|
| a) Tax/ Cess | | | Thirteen crore eighty lacs | |
| b) Interest | | | Three crores | |
| c) Penalty | | | Five crores forty lacs | |
| d) Fees | | | | |
| e) Other charges | | | | |
| | | | | |
| | | | | |

(v) Market value of seized

goods NA

9. Whether the appellant wishes to be heard in person? Yes

10. Statement of facts As Enclosed

11. Grounds of appeal As Enclosed

12. Prayer As Enclosed

13. Details of demand created, disputed and admitted

| Particulars of demand | Particulars | Central tax | State/UT tax | Integrated tax | Cess | Total amount | |
|-----------------------|--|------------------|--------------|----------------------------|------|--------------|------------------------------|
| | Amount demanded /rejected , if any (A) | a) Tax/Cess | | Thirteen crore Eighty lacs | | <total > | Thirteen crore Eighty lacs > |
| | | b) Interest | | | | < total > | |
| | | c) Penalty | | Three crores | | < Total | |
| | | d) Fees | | Five crores | | <total > | |
| | | e) Other charges | | forty lacs | | <total > | |
| | | | | | | > | |
| | Amount under dispute (B) | a) Tax/Cess | | Thirteen crore Eighty lacs | | < total > | Thirteen crore Eighty lacs > |
| | | b) Interest | | | | < total > | |
| | | c) Penalty | | Three crores | | < total > | |
| | | d) Fees | | Five crores | | < total > | |
| | | e) Other charges | | forty lacs | | < total > | |
| | | | | | | > | |

| | | | | | | | |
|---------------------------|----------------------------|--|--|-----|--|--------------|----------|
| Amount admitted (C) | a) Tax/ Cess | | | Nil | | < total > | Nil > |
| | b) Interest | | | nil | | < total > | |
| | c) Penalty | | | nil | | < total > | |
| | d) Fees | | | nil | | < total > | |
| | e) Other charge s | | | nil | | < total > | |

14. Details of payment of admitted amount and pre-deposit:

(a) Details of amount payable:

| Particulars | | | entral tax | ate/UT tax | egrated tax | Cess | Total amount | |
|-------------|---|------------------|---------------|---------------|--|------|--------------|-------------|
| | (a)Amount admitted | Tax/ Cess | | | NIL | | <total > | <total > |
| | | Interest | | | NIL | | | |
| | | Penalty | | | NIL | | <total > | |
| | | Fees | | | NIL | | < total > | |
| | | Other charges | | | NIL | | < total > | |
| | (b) Pre- deposit(10% of sputed tax/cess but not exceeding Rs.20 crore each in respect of CGST, SGST cess and not exceeding Rs.40 crore in respect of IGST | Tax/ Cess | | | Fifty four lacs i.e. 10 % of five crores fifty lacs | | > | |

(b) Details of payment of admitted amount and pre -deposit of 10% of the disputed tax and cess but not exceeding Rs. 20 crore each in respect of CGST, SGST or cess or not exceeding Rs.40 crore in respect of IGST]

| Sr. No. | Description | Tax payable | Paid through Cash/ Credit Ledger | Debit entry no. | Amount of tax paid | | | | | |
|---------|-------------|-------------|----------------------------------|-----------------|--------------------|------------|------------|------|--|--|
| | | | | | egrated tax | entral tax | ate/UT tax | CESS | | |
| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | | |
| 1. | Integrated | | Cash Ledger | | | | | | | |
| | | | Credit | | 54000000 | | | | | |
| | Tax | | Ledger | | | | | | | |
| 2. | | | Cash Ledger | | | | | | | |
| | | entral tax | | | Credit Ledger | | | | | |
| 3. | ate/UT tax | | | Cash Ledger | | | | | | |
| | | | | Credit Ledger | | | | | | |
| 4. | CESS | | | Cash Ledger | | | | | | |
| | | | | Credit Ledger | | | | | | |

(c) Interest, penalty, late fee and any other amount payable and paid:

| Sr. No. | Description | Amount payable | | | | Debit entry no. | Amount paid | | | |
|---------|-------------|----------------|------------|------------|------|-----------------|-------------|------------|------------|------|
| | | egrated tax | entral tax | ate/UT tax | CESS | | egrated tax | entral tax | ate/UT tax | CESS |
| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | 11 |
| 1. | Interest | 3000000 | | | | | NIL | | | |

| | | | | | | | | | | |
|----|----------------------|----------|--|--|--|--|-----|--|--|--|
| | | 0 | | | | | | | | |
| 2. | Penalty | 54000000 | | | | | NIL | | | |
| 3. | Late fee | | | | | | | | | |
| 4. | Others (specify) | | | | | | | | | |

[15. [Place of supply wise details of the integrated tax paid (admitted amount only) mentioned in the Table in sub-clause (a) of clause 14 (item (a)), if any

| Place of Supply (Name of State/UT) | Demand | Tax | Interest | Penalty | Other | Total |
|--|--|-----|----------|---------|-------|-------|
| 1 | 2 | 3 | 4 | 5 | 6 | 7] |
| | Admitted amount [in the Table in sub-clause (a) of clause 14 (item (a))] | --- | --- | --- | --- | --- |
| | | | | | | |

Verification :-

I, Sushil Malhotra, Director of Star Exporter Private Limited hereby solemnly affirm and declare that the information given hereinabove is true

and correct to the best of my knowledge and belief and nothing has been concealed therefrom.

Place: New Delhi

For Star Exporter private Limited

Date: 05/04/25

Director

Signed and sealed

Thru counsel Rajmani Jindal

Form GST APL – 02

[See Rule 108(3) and 109(2), 110(1) and 111(1)]

Acknowledgment for submission of appeal

Star Exporter private limited GSTIN 56789231111/Reference Number
with date

Your appeal has been successfully filed against < Application Reference
Number >

1. Reference Number- 007 /01 of 2025
2. Date of filing- 05/04/25
3. Time of filing- 10 A.M.
4. Place of filing- Delhi Bench , GST bhavan
5. Name of the person filing the appeal- Shomu Singh
6. Amount of pre-deposit- Fifty four lakhs
7. Date of acceptance/rejection of appeal- 05/04/25
7. Date of appearance- Date:05/04/25 Time:2
p.m.

8. Court Number/ Bench Court Bench: Three member bench
court no. 1

Place : New Delhi

Signature

Date : 05/04/25

Name

Designation

On behalf of Appellate Tribunal

**BEFORE THE GOODS AND SERVICES TAX APPELLATE
TRIBUNAL, GST BHAVAN, DELHI BENCH, NEW DELHI
APPEAL NO 007/01 OF 2025**

IN THE MATTER OF :

M/s Star Exporter Private Limited

141, Okhla Phase II, Industrial Area

New Delhi

GSTIN NO. 56789231111

APPELLANT

VS.

COMMISSIONER,

Delhi Goods And Services Tax Act,

RESPONDENT

**APPEAL UNDER SECTION 112(1) READ WITH RULE 110 READ
WITH SECTION 16 OF THE DGST ACT 2017 AND DGST RULES
2017- AGAINST IMPUGNED ORDER OF THE JOINT
COMMISSIONER FOR THE AY TAX PERIOD 2020-2021**

**HON'BLE PRESIDENT AND HIS COMPANION MEMBERS OF
THE HON'BLE GOODS AND SERVICES TAX APPELLATE
TRIBUNAL, DELHI BENCH, NEW DELHI**

**The Appellant Most Respectfully submits for kind consideration of this
Hon'ble Tribunal as under :**

**ALL CONDITIONS PRECEDENT FOR FILING OF THE APPEAL HAVE
BEEN SATISFIED AS UNDER:**

1) The appellant is a registered dealer of the Delhi GST Department with the GSTIN No 56789231111. The appellant is engaged in the business of trading of electronic products including export to Gulf region, more particularly to Dubai and the appellant is aggrieved with the orders passed by the proper officer and the Hon'ble First Appellant Authority.

2) The appeal is filed within the **limitation period** of three months from the date of communication of the order or decision as per section 112(1) of DGST Act as the order under appeal was received by the appellant on 13/02/25 And the appeal has been filed on 05/04/25.

3) **Mandatory pre -deposit of 10% of amount of tax** (54,00,000) in dispute after deducting 10% (54,00000) which is deposited before First Appellate Authority is deposited as per section 112(8) of the Act. A copy of challan is enclosed as **ANNEXURE A15 (page 98-99)**

Detailed calculation of pre deposit :-

Total tax demand raised by First Appellate authority Rs 5 ,40,00000(five crores forty lacs)

| | |
|----------------------------|-------------------------------|
| 10% pre deposit u/s 112(8) | 54 ,00, 000 (Fifty four lacs) |
|----------------------------|-------------------------------|

4) The order is **appealable** as does not fall under section 121 of DGST Act.

5) All copies annexed as per index are **true copies of the originals**.

6) The **fees for filing of appeal** Rs 25000/-as per challan enclosed deposited as per Rule 110(5) of the Act enclosed **as ANNEXURE 14 (page 96-97)**

7) A **Memorandum of appearance** along with Vakalatnama are enclosed.

ANNEXURE 21(page 118-120)

STATEMENT OF FACTS

1. The Appellant, **STAR EXPORTER PRIVATE LIMITED** is a company incorporated under the Companies Act, 2013 and is a registered dealer under the DGST Act, 2017 vide GSTN no.56789231111 engaged in the business of trading of electronics products including exports to gulf region more particularly to DUBAI. They are exporting goods for the last several decades and has star exporter status with many awards won.
2. For the tax period 2020-2021, the Audit was conducted under section 65 of DGST Act and concluded on 01/08/2024. The Appellant entered into purchase transactions with few suppliers (GSTIN: [GSTIN]) at Mumbai and also carried out export transactions in the course of business.
3. The appellant company exported 2000 laptop of DELL, made in Malaysia to an Association of Importers of information technology products at DUBAI @USD 1000/-per laptop on 06/06/24 (date of Export)
4. The said purchases and exports were supported by valid tax invoices, e-way bills, shipping bills, and other documentary evidences INCLUDING

PHYSICAL RECEIPT OF GOODS BY THE APPELLANT HIMSELF IN PERSON. AND THESE ARE ADMITTED FACTS.

5. However the audit team pointed out few discrepancies e.g. i) none of the supplier is distributor for DELL in India or Malaysia ii) out of five invoices dt 06/05/24 only two for DELL laptops and their configuration was different from what was exported iii) payments made to three suppliers adjusted against prior amount with them, rest two yet to be paid by appellant company iv) payments not made by an Association at Dubai but by individual buyers numbering 20. v) no inspector report from customs.vi) summons send to all 5 suppliers returned back with remark no such firm exists.

6. The Appellant claimed cash refund of Rs2,70,00,000 in accordance with provisions of the DGST Act, which was duly sanctioned after scrutiny by the GST department AND ALL THE REQUIREMENTS OF ACT AND RULES WERE FULLY SATISFIED AND THAT IS WHY REFUND WAS GIVEN. UNDER SECTION 54(7) OF THE DGST ACT.

7. On 28/08/24, the proper officer issued a SCN asking the Appellant as to why the refund of Rs 2.7 crore be not taken back with interest. COPY OF

THIS SHOW CAUSE NOTICE IS AT PAGE 100-106 (Annexure 16) OF THE APPEAL.

8. THE APPELLANT SAYS AND SUBMITS THAT now the proper officer has alleged fake purchase, fraudulent export etc the facts that were also ways before him and there is no subsequent claim by the appellant and proposed levy of tax, interest and penalty s under Section 74, along with criminal proceedings under Sections 132 read with 69. Further he also issued a show cause notice to the appellant and asked the **Appellant as to why the fraudulent export not be treated as interstate supply and not zero-rated export.**

9. A reply to SCN was filed on 17/09/24 by the appellant and explaining various points, while attending the proceedings in connection with reply to show cause notice. **A copy of the reply filed is at page 107-110 Annexure 17)**

10. On 03/10/24, the proper office made Adjudication order under section 74 of DGST Act for the tax period 2020-21 **ANNEXURE 18** (page 111-115) rejecting exports of 30 crores and he demanded a tax @18% that comes to five crores forty lacs with interest three crores and penalty five crores forty lacs and he further threatened to impose penalty under section 122 and

further threatened as to why criminal proceedings under section 132 read with section 69 be not initiated ?

11. On 13/02/25 the appellant filed appeal before the First Appellate authority under section 107 (1) of DGST Act with condonation of delay application (8th day delay) because of sickness of advocate against additional demand of proper officer enclosed as **Annexure 20** (page 39-42).

12. On 5th April 25, the Appellant has filed Appeal before the Hon'ble Goods and Services Tax Appellate Tribunal aggrieved by the order of Hon'ble First Appellate Authority under section 107 of the Act dated 13/02/25 along with four interlocutory applications as per GSTAT (Procedure) Rules 2025.

i) For urgent hearing of appeal petition, Dated 01/04/25 (**page 43-50**)

ii) Producing additional evidences Dated 01/04/25 (**page 51-60**)

iii) For summoning suppliers and Manager of appellant company Dated 01/04/25 and (**page 86-95**)

iv) For Interim stay/relief Dated 05/04/25

GROUND OF APPEAL

The Appellant aggrieved by the order of the proper officer and Hon'ble First Appellate Authority making appeal before this Hon'ble Appellate Tribunal for fair play and justice.

1) The presumption of the proper officer of wrongful refund of Rs two crores seventy lacs taken by the appellant and interest demand @18% from the date of filing of returns is totally wrong and unjustified.

Section 54(3) of DGST Act provides for a registered person may claim refund of an unutilized ITC at the end of a tax period for zero-rated supplies made without paying GST or when ITC accumulates due to higher tax rates on input supplies as compared to output supplies. The Appellant in this case made zero rated export of laptops to Dubai with proper export bills backed by **genuine tax invoices as per section 31 of the Act** from suppliers.

The refund was claimed based on genuine exports, backed by shipping bills and goods were physically received and inspected by the director of the

company Shri Sushil Malhotra along with manager who specially visited Mumbai for this purpose. The goods were couriered through ABC@CO. the courier receipt is enclosed herewith as **Annexure A8 (page 74)** and other Annexures marked as **Annexure A1 TO A7 (page 61 to 73)** The appellant reiterates that exports are genuine as the laptops taken from five suppliers are exported and payments received as per law in due time.

Interest under Section 50 arises only where there is a delay in payment of tax. In this case, there was no self-assessed tax liability declared in returns that remained unpaid. Refund was sanctioned and credited based on department's own scrutiny; invoking interest now is unfair.

2) The Allegation of the lower authority of fake billing, fake supplier is totally false not substantiated by the evidences. We have in our possession all the evidences e.g. tax invoices, proof of physical delivery, Courier receipt, Air ticket, Affidavits of five suppliers in support of purchase and also Manager of Appellant company, E-way bill and payment made.

We fully complied with **the provisions of section 16 (1) 16(2) and section 17 of the Act**, therefore we are entitled to credit of input tax credit, **Section 16(1)** which is a substantial law says for two conditions to be eligible for input tax credit:

- i) A registered tax payer and

ii) supply in the course of or furtherance of business. **Section 16(2) says, the tax payer is entitled to input tax credit if following four conditions are satisfied: -**

- i) the purchaser should be in possession of tax invoice
- ii) Goods have been physically received by the purchaser of goods
- iii) payment made to supplier against the purchase
- iv) A supplier has filed the return under section 39 of the Act.

Moreover there was no collusion between supplier and purchaser neither alleged by the department. Hon'ble supreme court in the case of **STATE OF KARNATAKA VS. ECOM GILL TRADING PRIVATE LIMITED civil appeal no. 230 of 2023** reiterated repeatedly the importance of physical movement **AND PHYSICAL RECEIPT OF GOODS** , in our case there was movement of goods from Mumbai to Delhi, we have all evidences to prove that goods were physically received by us to rebut the UNSUBSTANTIATED AND UNPROVEN ASSUMPTION OR ALLEGATION MADE BY THE REVENUE ABOUT THE FAKE BILLING OR FAKE SUPPLIERS OR NO GOODS WERE SUPPLIED BUT ONLY BILLS WERE ISSUED . ALL THESE PRESUMPTIONS, IT IS HUMBLY STATED ARE SERIOUS ALLEGATIONS AND IT WAS FOR THE REVENUE TO BRING ON RECORD TO EVEN REMOTELY PROVE SUCH ASSUMPTIONS. THE CONJECTURES OR COINCIDENCES DO NOT TAKE THE EVIDENCE AS A PROOF. FURTHER THE FACTUM OF EXPORT HAS BEEN ACCEPTED AND IT HAS ALSO BEEN ACCEPTED THAT WHAT WAS EXPORTED WERE LAPTOPS AND NOTHING ELSE. NO FURTHER ALLEGATION

MADE BY THE AUTHORITIES BELOW. IT IS MORE THAN CLEAR AND EVIDENT THAT conclusions or opinions formed on incomplete information or conjecture OR INVESTIGATION OR ENQUIRY WHERE STATUTORY, LEGITIMATE AND legal documents indicate that findings based solely on surmises lack the necessary evidentiary support to be deemed valid. **Vikramadiya singh vs. state of Bihar - PatnaMunshi Ram vs. Narsi Ram – Supreme court .**

3) At page 3 of SCN last para, **(page 102 Annex 16)** the proper officer says , THE SUPPLIERS TO THE APPELLANT HAD STATED IN THEIR RETURNS AND their return shows they have not purchased laptops at all during the year

The appellant says and submits that there is no mechanism to know the negligence of the supplier and why the honest purchaser be penalized for this. MY LORDS,

THIS IS AN ALLEGATION AGAINST THE SUPPLIER AND THERE IS NOTHING TO DO WITH THE PURCHASES OF THE APPELLANT. THERE IS NO ALLEGATION AGAINST THE APPELLANT INVOLVING HIM IN THIS ALLEGED TRASACTION. THE LAW PROVIDES ENOUGH MACHINERY TO THE REVENUE TO GO AHEAD AND CATCH THE CULPRITS AND RECOVER TAXES INCLUDING CRIMINAL PROVISIONS LIKE 132 READ WITH SECTION 69. THE APPELLANT SHALL PROVIDE ALL COOPERATION AND DOCUMENTS WHENEVER CALLED UPON TO

DO SO BY THE REVENUE. BUT HAS THE RESPONDENTS INITIATED ANY ACTION AGAINST THE SUPPLIERS WHO HAVE ISSUED TAX INVOICES, RECEIVED PAYMENTS, PHYSICALLY DELIVERED THE LAPTOPS TO THE APPELLNAT AT THEIR BUSINESS PREMISES THAT WERE FULLY FUNCTIONAL AND IF NO ACTION HAS BEEN TAKEN THEN WHY NOT? HOW AND UNDER WHAT LAW CAN THE APPELLNAT BE HELD RESPONSIBLE?

4) The lower authorities allege of **fraudulent export**, to be treated as inter-state supply not zero rated is again on their own whims and fancies while export is **as per section 2(5) and section 16 of IGST Act** and all the evidences for export is in our possession e.g. import order, Addenda to import order, import contract, custom clearance report, proof of payment received against export marked as **Annexure A9 to A12** (page 75 to 84) etc. The issues raised like brand and configuration of laptops by the lower authorities are all well addressed in the import order itself, moreover the imported laptops are well accepted and payments received from 20 people directly by the exporter in its account. It is amply evident from the documents/ evidences that there was clear agreement between the two parties and performance by each as per **Section 8 of the Contract Act 1872** makes it binding. ONCE THE IMPORTER ACCEPTS THE EXPORT OF LAPTOPS THAT AMOUNTS TO RECTIFICATION AND SUCH A RECTIFICATION MUST RELATE BACK AND IT IS NOT THE ISSUE CONCERNING REVENUE WHO HAVE NOT DENIED FACTUM OF EXPORT – GOODS HAVE GONE OUT OF INDIA.

Section 74 Where it appears to the proper officer that any tax has not been paid or short paid or erroneously refunded or where input tax credit has been wrongly availed or **utilized by reason of fraud, or any wilful-misstatement or suppression of facts** to evade tax he shall serve notice on the person chargeable with tax which has not been so paid or which has been so short paid or to whom the refund has erroneously been made, or who has wrongly availed or utilized input tax credit, requiring him to show cause as to why he should not pay the amount specified in the notice along with interest payable thereon under section 50 and a penalty equivalent to the tax specified in the notice.

The appellant humbly submits that there is no tax evasion as alleged. Penalty under **Section 74 of the Act** requires **mens rea**—i.e., fraud, wilful misstatement, or suppression of facts. In this case, the claim was made transparently;. We request consideration of voluntary compliance and absence of intent to evade. Section 132 relates to criminal liability in cases of deliberate and fraudulent evasion. Invoking Section 132 at this stage, is premature and disproportionate. Arrest under Section 69 is an extreme coercive measure and violates principles of natural justice if initiated without adjudication.

QUESTION OF LAW

1) WHETHER THE AUTHORITIES BELOW WERE JUSTIFIED IN DENYING THE REFUND TO THE APPELLANT BASED ON PRESUMPTIONS AND WITHOUT ANY FINDINGS AND WITHOUT BRINGING ON RECORD THE AVERMENTS MADE IN THE ORDER OF FIRST APPELLANT AUTHORITY?

M/S. Milk Food Ltd. vs. Commissioner, VAT and Others, [2003] 59 VST 1 (Delhi).

The Tribunal appeared to have placed the burden wrongly upon the appellant dealer. It is not the burden of the selling dealer to show that the declarations in form No ST-1 were not spurious or were genuine or that the conditions to which the forms were issued to the purchasing dealer by the department were complied with. The burden will shift to the selling dealer only if it is shown that the selling dealer and the purchasing dealer had acted in collusion and connived with each other to evade tax by obtaining spurious forms of deduction. The claim was disallowed in assessment due to certain discrepancies between form ST-1 and the accounts given by the purchasing dealers in form ST-2 or colour of form was different. This was not for the selling dealer to explain. The fact of different colour of form gave rise to the suspicion that the forms are not genuine could be a starting point for further inquiry but by itself does not establish any guilt on the part of the selling

dealer. There appears to have no further query conducted by the sales tax authorities to show that the forms are spurious; neither there is evidence to show that the appellant was in any way connected with the alleged fraud committed by the purchasing dealer. Accordingly, the High Court allowed the appeal filed by the appellant.

Delhi High Court's judgment in the case of **On Quest Merchandising India Private Limited v. Government of NCT of Delhi & Ors.**, where it was held that a purchasing dealer cannot be penalized for the failure of a selling dealer to deposit the tax collected. It was argued that their case is identical to the On Quest Merchandising case and therefore, the decision in that case should apply to their petitions as well. Requested that the show cause notices and consequential orders issued to them under the Assam and Central GST Acts be set aside based on the Delhi High Court's judgment.

In a host of decisions, various High Courts across the country have opined that input is an inalienable right of an innocent buyer. For example, in **Gheru Lal Bal Chand v. State of Haryana**, the constitutionality of section 8 of the Haryana VAT Act, 2003 was challenged before the Punjab & Haryana High Court. The provision imposed a similar liability on the buyer if the seller failed to deposit the tax collected in the treasury. The Court read down section 8 and held that no liability could be fastened on a buyer on account

of non-payment of tax by the seller in the treasury unless a case of fraud is made out by the Revenue, or unless collusion/connivance between the seller and buyer is established.

In *Sri Vinayaga Agencies v. The Assistant Commissioner*, a writ petition was filed challenging an order of the tax department which reversed the input claimed by a purchasing dealer on account of non-payment by supplier pursuant to the law laid down in section 19 of the Tamil Nadu VAT Act, 2006. **The Madras High Court** held that law could not empower tax authorities to revoke the input tax credit availed on a plea that the selling dealer has not deposited the tax. It can revoke input credit only if it relates to the incorrect, incomplete or improper claim of such credit by a dealer. Based on this decision, the Madras High Court allowed a similar writ in *Indroyal Furniture Company v. The Assistant Commissioner*. Even though the Court did not find an opportunity to rule on the validity of such law, it did in effect read down the provision.

The issue was examined in depth by the Delhi High Court in *Arise India Limited v. Commissioner of Tax*. Section 9 of the Delhi VAT Act, 2004 which sought to deny input tax credit in such circumstances, was under challenge. The Court held that such clauses require the buyer to do an “impossible” task, i.e., to anticipate the seller who will not deposit tax

collected with the government and therefore avoid transacting with such selling dealers. The Court read down section 9 to not include a buyer who has bona fide entered into purchase transactions with validly registered dealers who have issued tax invoices against the transaction.

The Delhi High Court explained that such provision, if not read down, is violative of Article 14 of the Constitution for being inherently arbitrary. The only case when such provision applies is if the tax authorities come across some material to show that the purchasing dealer and the selling dealer acted in collusion in detriment to the exchequer. However, in the event that the selling dealer has failed to deposit the tax collected, the remedy for the authorities is to proceed against the defaulting selling dealer to recover such tax and not deny the purchasing dealer his input. The Supreme Court dismissed the Revenue's petition seeking special leave to appeal against this decision.

The Bombay High Court in *Mahalakshmi Cotton Ginning v. The State of Maharashtra*, appears to have struck a discordant note, when it upheld a similar provision in the Maharashtra VAT Act, 2002. It reasoned that a plea of hardship on account of buyers could not result in the invalidation of a statutory provision in a fiscal enactment, which is otherwise lawful. Further, the purpose of an input is to obviate the cascading effect of taxes; and this

must be balanced with the need to secure tax compliance and ensure zero loss of legitimate revenue to the government. This balance is drawn by ensuring that while input is available against tax paid on purchase of goods, the set-off is based on the actual deposit of tax into the government treasury.

However, as explained in *Arise India*, the Maharashtra VAT Act lacked provision to take care of a situation where the seller and the buyer acted in collusion with a view to defraud the authorities. In fact, the operative part of the order of the Bombay High Court indicates that the Bombay High Court ordered authorities to prosecute selling defaulters. The relevant Revenue department also undertook to upload on its website the details of the defaulting dealers and once there was a final recovery of the tax from the seller, refund would be granted to the buyer. In summary, even though the Court did not explicitly read down the provision, in effect, it did uphold the buyer's right to input credit.

2) CAN THE DEFICIENCIES IN THE SCN WHICH IS THE FOUNDATION OF LITIGATION BE RESPOND UPON BY THE AUTHORITIES BELOW MORE SO WHEN THE APPELLANT ANSWER THE QUESTIONS OF FACT OR MATERIAL WHICH WAS NOT CONFRONTED TO THE APPELLANT.?

It is well settled that a finding or conclusion not supported by evidence brought on record or are against the law or suffer from the vice of procedural irregularity are perverse findings. The expression "**perverse findings**" would mean a finding which is not only against the weight of evidence but is altogether against the evidence itself. A deliberate departure from what is normal and reasonable is also termed a perverse. It is further well settled that a finding/conclusion/verdict arrived at that no reasonable person could have arrived on the basis of the material before him is also termed as perverse. Thus, a finding/conclusion arrived at by the quasi-judicial authorities/Courts by considering irrelevant evidence or ignoring relevant evidence or against not properly weighing the evidence or against the evidence would be perverse and the order would be liable to be set aside on this ground alone.

However, there is another significant principle which has held the field since last more than six decades, which can also be termed as a **facet of perversity** i.e. where a quasi-judicial authority or a Court acts on material, which is partly relevant and partly irrelevant, then in such a situation, it is impossible to say to what extent the mind of the authority/court was affected by the irrelevant material used by it in arriving at its finding. Such a finding would be vitiated. This principle came to be laid down by the Constitution Bench

of the Hon'ble Supreme Court in the matter of **Dhirajlal Girdharilal v. CIT** [1954] 26 ITR 736 wherein it is, inter-alia, held that:-

"It is well established that when a court of fact acts on material, partly relevant and partly irrelevant, it is impossible to say to what extent the mind of the court was affected by the irrelevant material used by it in arriving at its finding. Such a finding is vitiated because of the use of inadmissible material and thereby an issue of law arises."

In **Commissioner of Customs (Import) v. Dilip Kumar & Co.** [2018] 95 taxmann.com 327/69 GST 239 (SC), the Hon'ble Supreme Court held that in construing penal statutes and taxation statutes, the Court has to apply strict rule of interpretation. It is axiomatic that taxation statute has to be interpreted strictly because the State cannot at their whims and fancies burden the citizens without authority of law. In other words, when the competent Legislature mandates taxing certain persons/certain objects in certain circumstances, it cannot be expanded/interpreted to include those, which were not intended by the legislature.

In support of the above stand of the assessee we would like to rely upon and submit the following judgements of various judiciaries, as follows:

In the case of ***Dhakeshwari Cotton Mills vs. CIT (1954) 26 ITR 775 (SC)*** wherein Hon'ble Apex Court held that AO cannot make any addition on the account of his guess work without having any material evidence on record. The relevant extracts of the said judgement are reproduced as under: "that in making the assessment under sub-section 3 of section 23 of the Income Tax Act, 1922 [corresponding to the section 143(3) of the Income tax Act, 1961], the Income Tax Officer is not entitled to make a pure guess and make an assessment without reference to any evidence or any material at all. There must be something more than bare suspicion to support the assessment under section 23(3)"

And, in the case of ***CIT vs. J.J. Enterprises (2002) 122 Taxman 12(SC)*** wherein the Hon'ble Supreme Court approving the decision of the lower authorities affirmed that the addition made on the basis of 'pure guess work' were unsustainable. Also, in the case of ***State of Orissa vs. Maharaja B.P. Singh Deo (1970) 76 ITR 690 (SC)*** wherein the Assistant Collector has not given no reasons for enhancing the assessment and his order does not disclose the basis on which he has enhanced the assessment. The Hon'ble Supreme Court held that the assessment must be based on some relevant material. It is not a power that can be exercised under the sweet will and pleasure of the concerned authorities. Reliance is further placed on the

decision in the case of *Brij Bhushan Lal Parduman Kumar vs. CIT (1978) 115 ITR 524 (SC)* wherein it was held that in the best judgment assessment an honest and fair estimate of the income should be made and the same must not be capricious but should have a reasonable nexus to the available material and the circumstances of the case. Further, in the case of *State of Kerala vs. C. Velukutty (1966) 60 ITR 239 (SC)* it was held that though there is an element of guesswork in a ‘best judgment assessment’, it should not be a wild one, but should have a reasonable nexus to the available material and the circumstances of each case. Though the section provides for a summary method because of the default of the assessee, it does not enable the assessing authority to function capriciously without regard to the available material.

The Appellant seeks liberty to argue any other issue that may arise in connection with and incidental with Appellants appeal before this Hon’ble Tribunal.

1. CAN INTEREST UNDER SECTION 50 BE LEVIED AS PER LAW?
2. CAN MY EXPORTS BE TREATED AS INTERSTATE SUPPLY WHEN FACTUM OF EXPORTS HAS NOT BEEN DENIED BY THE REVENUE?

3. CAN PENALY BE IMPOSED BASED ON SUCH PRESUMPTIONS EITHER IN SECTION 74 OR IN SECTION 122 WITHOUT ANY PROOF ON RECORD JUSTFYING THE LEVY OF PENALTY?

PRAYERS

IT IS MOST RESPECTFULLY prayed that in view of the above factual and legal matrix of the case. the Hon'ble GST Appellate Tribunal may be pleased to order that :-

1. Set aside the order passed by the Hon'ble First Appellate Authority under Section 107(1) and by the proper officer.
2. Quash the enhanced demand of Rs. 8,40,00,000 and penalty of Rs 5,40,00,000
3. Proceedings under Section 132 and arrest under Section 69 be DIRECTED TO BE dropped
4. The Appellant be permitted to retain the refund amount sanctioned as per law.
5. Refund of pre-deposit as per law.
6. Any other relief as the Hon'ble Tribunal deems fit.

IT IS PRAYED ACCORDINGLY.

Appellant
Thru Rajmani Jindal Advocate

VERIFICATION:-

That the facts and information given is true and fair to the best of my knowledge and belief and nothing material has been concealed therefrom

Verified on 05th day of April 2025 at New Delhi.

APPELLANT

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

**INTERLOCUTARY APPLICATION NO..... OF 2025 IN
APPEAL NO 007/01 OF 2025**

IN THE MATTER OF :-

M/s Star Exporter Private Limited

-- APPELLANT

VS.

COMMISSINER,

Delhi Goods And Services Tax Act,

RESPONDENT

---RESPONDENT

AFFIDAVIT

I, Sushil Malhotra s/o Shri S.K. Malhotra at 141, Okhla Phase II, Industrial area, New Delhi Director of Star Exporter Private Limited on behalf of the company do hereby solemnly affirm and declare as under :-

1. That I know the applicable contents of applicable petition filed under section 112(1) of DGST Act 2017.

2. That I understand of the facts of the petition and filed under my instructions by the counsel.

3. That all the facts and information given is true and correct to the best of my knowledge and belief.

Deponent

Signed and sealed

Verification :-

Verified at New Delhi on this 5th day April 2025 that the contents of the above affidavit and accompanying appeal petition are true to the best of my knowledge and belief and nothing material has been concealed therefrom.

NOTRISED

Deponent

Signed and sealed

Annexure A 20

**BEFORE THE JOINT COMMISSIONER (APPEAL) ZONE 8
GST DEPTT, NEW DELHI**

DIN 6677886677

13.2.2025

**BEFORE THE JOINT COMMISSIONER (APPEAL) ZONE 8 GST DEPTT, NEW
DELHI**

IN THE MATTER OF;

Star Exporter Private Limited

**141 Okhla Phase II
Industrial Area
NEW DELHI
GSTIN NO. 567892311**

**Present for the appellant: Ms Rajmani Jindal Advocate along
with Director of the Company Shri Sushil Malhotra**

**Present for the Revenue: Learned D R R K Jain Assistant
Commissioner.**

Appellate Order under Section 107 of the DGST Act 2017

This is an appeal preferred by the above tax payer against the order of the proper officer Zone 8 for the tax period 2020-21 creating additional demand of Rs 8,40,00,00/- that includes tax of Rs. 5,40,00,000/- Also penalty of Rs

5,40,00,00/- The tax payer has paid 10 percent of the tax amount by reversing input tax credit and DRC challan has been annexed with the on line appeal. The appeal has been filed late by a few days for which the appellant has an application for condonation of delay. Keeping in view the averments made in the application and the delay being below one month and keeping in mind the health issues of the counsel for the petitioner, in my view the delay deserves to be condoned and accordingly the delay of 8 days is condoned and appeal taken up on merits as per urgent request of the appellant.

The counsel for the appellant has reiterated the same grounds as replied and as recorded in the orders below. Nothing new has been brought on record to substantiate the claims for genuine exports and no refunding back to the revenue the refund amount of 27 lakhs with interest and penalty.

On being questioned the counsel could not explain anything nor the Director present as to how the exports were done which is virtually outside the normal course of such international transactions – the products don't match i.e. ;purchase and supply; the configuration do not match, suppliers do not exist, suppliers have never made purchases of products that the appellant has allegedly purchased from them, the custom verification report cannot be produced, suppliers when summoned do not come nor the appellant is able to give their whereabouts, the appellant has failed to prove physical receipt of materials even remotely, the payments come from people who are strangers to the transactions; suppliers are not paid and some stories are cooked up; some suppliers are not paid and ITC is claimed and not reversed as per law and above all the whole explanations given at the time of audit and subsequence to show cause notice really lack credibility and seem to be an after- thought.

Regarding her submissions that the appellant had no wilful intention to evade any tax nor anything has been substantiated by the proper officer in his impugned order. I am unable to appreciate this argument – whole factual matrix created proof of collusion or connivance of the appellant with the suppliers; the vagueness of invoices, the payment story created(only when caught during audit) and payments not made as per law etc. etc. are substantial evidences against the appellant where any indulgence shown at this stage will lead to serious economic consequences unjustly enriching the appellant at the cost of the exchequer.

The whole scenario clearly points out beyond reasonable doubt a fit case where the suppliers and buyers have colluded together and the export of laptops is not the laptops that seem to have been billed by the supplier – without supply of any goods. These laptops, if exported, clearly have been bought without bill and without incurring and paying GST Liability and hence refund of tax on such dubious and non bonafide transactions is not possible. I reject the prayer to stay the further proceedings including section 69 proceedings, departmental inquiry against the officers who gave such refunds. It is a fit case where such investigation is required and the proper officer was fully justified. However, before any. Adverse action is taken against the appellant due process of law shall be followed by the proper officer.

Regarding request for interim stay on proceedings under section 69, proceedings for levy of penalty and proceeding for recovering wrongful ITC claimed, in my view at this stage such powers cannot be exercised in favor of the appellant nor any power has been shown to me that I can exercise.

Thus, based on records made available, and no further evidence on record, and based on arguments of the learned counsel for the appellant, Ms

Rajmani Jindal, in my view the appeal has no merit and deserve to be dismissed. The proper officer is free to proceed as per law after providing reasonable opportunity of being heard to the appellant.

The order has been put on portal today itself.

Digitally signed

Joint Commissioner (Appeal)

Certified true copy

GSTAT FORM 01

[See rule 29 and 49]

Interlocutory Application to the Appellate Tribunal

1. **GSTIN** – 56789231111
2. **Name of the appellant** – Star exporter private limited
3. **Address of the appellant/applicant/respondent** – 141, Okhla phase II,
Industrial area ,New Delhi
4. **Original Appeal Number-6677/25** **Date-13/02/25**
5. **Date of last hearing** –
6. **Name of the representative** – Ms. Rajmani Jindal
7. **Purpose of the Interlocutory application** – **URGENT HEARING**
8. **Whether the appellant or applicant or respondent wishes to be heard in person** - Yes
9. **Statement of facts** – As Enclosed
10. **Grounds of application** – As Enclosed
11. **Prayer** - As Enclosed

Place: New Delhi

Date: 01/04/25

Signature
Name of the appellant
For Star Exporter Private Ltd
Director
Thro counsel Rajmani Jindal

BEFORE THE GOODS AND SERVICES TAX APPELLATE

TRIBUNAL, GST BHAVAN, DELHI BENCH, NEW DELHI

APPEAL NO 007/01 OF 2025

IN THE MATTER OF:-

M/s Star Exporter Private Limited
141, Okhla Phase II, Industrial Area
New Delhi
GSTIN NO. 56789231111

----- APPELLANT

VS.

COMMISSINER,
Delhi Goods And Services Tax Act,

---- 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 URGENT HEARING**

HON'BLE PRESIDENT AND HIS COMPANION MEMBERS
MOST RESPECTFULLY SHOWTH

**The Appellant Most Respectfully submits for kind consideration of this
Hon'ble Tribunal as under :**

**ALL CONDITIONS PRECEDENT FOR FILING OF THE APPLICATION
HAVE BEEN SATISFIED AS UNDER:**

1) The appellant is a registered dealer of the Delhi GST Department with the GSTIN No 56789231111. The appellant is engaged in the business of trading of electronic products including export to Gulf region, more

particularly to Dubai and the appellant is aggrieved with the order passed by the proper officer and the Hon'ble First Appellant Authority.

2) The Appellant 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.

3) The applicant has annexed affidavit of Director of the company in support of the application.

FACTUAL MATRIX

IT IS submitted that the Appellant company praying for urgent hearing as we were prevented from filing at lower level and these evidences are very crucial and important for appreciating the facts of the case properly.

GROUND OF APPLICATION

The applicant making this application to make his submission as the matter is urgent and the order made by authorities below who passed order on the basis of assumptions and presumptions without making any enquiries what so ever. The Hon'ble First Appellate Authority too followed the order of the proper officer. Ther appeal needs to be heard urgently as there is threat to recovery tax of 5.40 crores with interest and penalty on account of alleged erroneous refund as per revenue and if this threat is enforced the

appellant may be forced to close the business and suffer irreparable financial injury.

PRAYER

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

- 1) That the applicant may be permitted to make this application and further make this application as part of this appeal itself.
- 2) Any other relief that this Hon'ble Tribunal may deem fit and proper

It is prayed accordingly,

Appellant

Thro Counsel Rajmani Jindal

Place : New Delhi

BEFORE THE GST TRIBUNAL, NEW DELHI BENCH, NEW DELHI

IN THE MATTER OF :STAR EXPORTS PRIVATE LIMITED,

OKHLA NEW DELHI

AFFIDAVIT

I, Sushil Malhotra s/o Shri S.K. Malhotra at 141, Okhla Phase II, Industrial area, New Delhi Director of Star Exporter Private Limited on behalf of the company do hereby solemnly affirm and declare as under:-

1. That I know the applicable contents of application filed under section 112(1) of DGST Act 2017.
2. That I understand of the facts of the application and filed under my instructions by the counsel.
3. That all the facts and information given is true and correct to the best of my knowledge and belief.

Deponent

Signed and sealed

Verification :-

Verified at New Delhi on this 1st day of April 2025 that the contents of the above affidavit are true and correct.

Deponent.

Signed and sealed

CHALLAN FOR PAYMENT

| | | | | | | |
|---|---|--|-----------------------------|--------------------------------------|--------------------|-------------------------|
| Form GST PMT-06 Payment Challan | | | | | | |
| (See Rule 87(2)) | | | | | | |
| Challan for deposit of goods and services tax | | | | | | |
| | | | | | | |
| CPI N | 21023300_____ _1 | | Challan Generat ed On | 01/04/25 14:46 | Expi ry Date | 27-05- 2025 14:46 |
| Details of Taxpayer | | | | | | |
| GST IN | 56789231111 | | Email | | Mob ile | 8XXX XXXX X427 |
| Leg al Nam e | STAR EXPORTER PRIVATE LIMITED. | | Address | XXXXXXXXXX XXXXXX Delhi,11____ | | |
| | | | | | | |
| Reason for Challan | | | | | | |
| Reas on | Any other payment | | | | | |

| Details of Deposit (All Amount in Rs.) | | | | | | | |
|--|----------------|------------|--------------|-------------|-----|------------|-----------|
| Government | Major Head | Minor Head | | | | | |
| | | Tax | Inte rest | Pen alty | Fee | Oth ers | To tal |
| Government of India | CGST(0005) | 0 | 0 | 0 | 0 | 0 | 0 |
| | IGST(0008) | 0 | 0 | 0 | 0 | 0 | 0 |
| | CESS(0003) | 0 | 0 | 0 | 0 | 0 | 0 |
| | Sub- Total | 0 | 0 | 0 | 0 | 0 | 0 |

| | | | | | | | |
|-------------------------|---------------------------|---|---|---|------|---|------|
| Delhi | SGST(0007) | 0 | 0 | 0 | 5000 | 0 | 5000 |
| Total Amount | | 0 | 0 | 0 | 5000 | 0 | 5000 |
| Total Amount (in words) | Rupees Five Thousand Only | | | | | | |

| Mode of Payment | | | | | | | |
|-----------------|-----|------------------------|--|--|-------------|--|--|
| E-Payment | YES | Over the Counter(OT C) | | | NEFT / RTGS | | |

| Particulars of depositor | |
|---|--------------------------------|
| Name Shankar lal | |
| Designation/Status(clerk) | |
| Signature SIGNED | |
| Date 01/04/25 | |
| Paid Challan Information | |
| GSTIN _____ | 56789231111 |
| Taxpayer Name | STAR EXPORTER PRIVATE LIMITED. |
| Name of the Bank | AXIS BANK |
| Amount | 5000 |
| Bank Reference No.(BRN)UTR | 123456 |
| CIN | 654321123456 |
| Payment Date | 01/04/25 |
| Bank Ack No. | 00000000001111111 |
| (For Cheque / DD deposited at Bank's counter) | |

GSTAT FORM -01

[See rule 29 and 49]

Interlocutory Application to the Appellate Tribunal

- GSTIN 56789231111
2. Name of the appellant Star exporter private limited
 3. Address of the appellant/applicant/respondent – 141, Okhla phase II, Industrial area, New Delhi
 4. Original Appeal Number- 6677/2025 Date 13.02.25
 5. Date of last hearing –
 6. Name of the representative – Ms. Rajmani Jindal
 7. Purpose of the Interlocutory application – ADDITIONAL

EVIDENCES UNDER RULE 29 GSTAT (Procedure) Rules 2025 read
with Rule 112 of DGST Rules

8. Whether the appellant or applicant or respondent wishes to be heard in person –
Yes
9. Statement of facts - As Enclosed
10. Grounds of application – As Enclosed
11. Prayer - As Enclosed

Place: New Delhi
Date: 01/04/25
Signature
Name of the appellant

For Star Exporter Private Limited
Director
Signed and Sealed
Thro counsel Rajmani Jindal

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

APPEAL NO 007/01 OF 2025

IN THE MATTER OF :-

M/s Star Exporter Private Limited

APPELLANT

VS.

COMMISSINER, DGST

RESPONDENT

AFFIDAVIT

I, Sushil Malhotra s/o Shri S.K. Malhotra at 141, Okhla Phase II, Industrial area, New Delhi Director of Star Exporter Private Limited on behalf of the company do hereby solemnly affirm and declare as under:-

1. That I know the applicable contents of Application filed under Rule 29 of GSTAT Rules 2025 read with Rule 112 of DGST Rules.

2. That I understand of the facts of the Application and filed under my instructions by the counsel.

3. That all the facts and information given is true and correct to the best of my knowledge and belief.

Deponent

Signed and sealed

Verification :-

Verified at New Delhi on this 1st day of April 2025

NOTRISED

Deponent

Signed and sealed

CHALLAN FOR PAYMENT

| | | | | | | |
|---|---|--|-----------------------------|--------------------------------------|--------------------|-------------------------|
| Form GST PMT-06 Payment Challan | | | | | | |
| (See Rule 87(2)) | | | | | | |
| Challan for deposit of goods and services tax | | | | | | |
| | | | | | | |
| CPI N | 21023300_____ _1 | | Challan Generat ed On | 01/04/25 14:46 | Expi ry Date | 27-05- 2025 14:46 |
| Details of Taxpayer | | | | | | |
| GST IN | 56789231111 | | Email | | Mob ile | 8XXX XXXX X427 |
| Leg al Nam e | STAR EXPORTER PRIVATE LIMITED. | | Address | XXXXXXXXXX XXXXXX Delhi,11____ | | |
| | | | | | | |
| Reason for Challan | | | | | | |
| Reas on | Any other payment | | | | | |

| Details of Deposit (All Amount in Rs.) | | | | | | | |
|--|------------|------------|-----------|----------|-----|---------|--------|
| Government | Major Head | Minor Head | | | | | |
| | | Tax | Inte rest | Pen alty | Fee | Oth ers | To tal |
| Government of India | CGST(0005) | 0 | 0 | 0 | 0 | 0 | 0 |
| | IGST(0008) | 0 | 0 | 0 | 0 | 0 | 0 |
| | CESS(0003) | 0 | 0 | 0 | 0 | 0 | 0 |

| | | | | | | | |
|-------------------------|---------------------------|---|---|---|------|---|------|
| | Sub-Total | 0 | 0 | 0 | 0 | 0 | 0 |
| Delhi | SGST(0007) | 0 | 0 | 0 | 5000 | 0 | 5000 |
| Total Amount | | 0 | 0 | 0 | 5000 | 0 | 5000 |
| Total Amount (in words) | Rupees Five Thousand Only | | | | | | |

| Mode of Payment | | | | | | | |
|-----------------|-----|------------------------|--|--|-------------|--|--|
| E-Payment | YES | Over the Counter(OT C) | | | NEFT / RTGS | | |

| Particulars of depositor | |
|---|--------------------------------|
| Name Ram singh | |
| Designation/Status(clerk) | |
| Signature SIGNED | |
| Date 01/04/25 | |
| Paid Challan Information | |
| GSTIN _____ | 56789231111 |
| Taxpayer Name | STAR EXPORTER PRIVATE LIMITED. |
| Name of the Bank | AXIS BANK |
| Amount | 5000 |
| Bank Reference No.(BRN)UTR | 123456 |
| CIN | 654321123456 |
| Payment Date | 01/04/25 |
| Bank Ack No. | 00000000001111111 |
| (For Cheque / DD deposited at Bank's counter) | |

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

**INTERLOCUTORY APPLICATION NO. of 2025 in
APPEAL NO 007/01 OF 2025**

IN THE MATTER OF :

M/s Star Exporter Private Limited

APPELLANT

VS.

COMMISSIONER,

Delhi Goods And Services Tax Act,

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 PRODUCTION OF ADDITIONAL
EVIDENCE**

**HON'BLE PRESIDENT AND HIS COMPANION MEMBERS
MOST RESPECTFULLY SHOWTH**

**The Appellant Most Respectfully submits for kind consideration of this
Hon'ble Tribunal as under :**

**ALL CONDITIONS PRECEDENT FOR FILING OF THE APPLICATION
HAVE BEEN SATISFIED AS UNDER:**

- 1) The appellant is a registered dealer of the Delhi GST Department with the GSTIN No 56789231111. The appellant is engaged in the business of trading of electronic products including export to Gulf region, more particularly to Dubai and the appellant is aggrieved with the order passed by the proper officer and the Hon'ble First Appellant Authority.
- 2) The Appellant 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 rule110(5) of DGST Rules.
- 3) The applicant has annexed affidavit of Director of the company in support of the application.

FACTUAL MATRIX

IT IS submitted that the Appellant company wants to submit additional evidences as we were prevented from filing at lower level, these evidences are very crucial and important for appreciating the facts of the case properly.

GROUND OF APPLICATION

The applicant wishes to bring on record the additional evidences in the form of following documents (**As per Annexure A1 TO A 8**)

- 1) **The confirmations from all five suppliers on affidavit** that they sold goods to appellant company and payment received by them.(**Marked as Annexures A1 TO A 5**)

LIST OF SUPPLIERS WITH GSTIN :-

1) Shri Mussadi Lal s/o Bussadi Lal GSTIN NO. xxxxxxxxxxxxxxxx

2) Shri Raju Bhai s/o Shri Debu Bhai GSTIN NO.

xxxxxxxxxxxxxxxxxxxx

3) Shri Bhogi Ram s/o Shri Lalu Ram Ram GSTIN

NO. xxxxxxxxxxxxxxxxxxxx

4) Shri Brajesh Patil s/o Mukund Patil GSTIN NO. xxxxxxxxxxxxxxxx

5) Shri Rajat Patnayak s/o Trilok Patnayak GSTIN NO.

xxxxxxxxxxxxxxxxxxxx

II) **A statement by Manager of the Appellant company** on affidavit who inspected the laptops at Mumbai along with Director of Appellant company Shri Sushil Malhotra. **Marked as Annexure A 6**

III) A copy of **Air ticket** of Shri Sushil Malhotra visited Mumbai to inspect personally laptops from suppliers. **Marked as Annexure A 7**

IV) A **courier receipt** of ABC @ CO. of dispatching laptops from Mumbai to Delhi **Marked as Annexure A 8**

V) The Appellant company after reply to SCN on 17/09/24 requested the proper officer fifteen days prior to passing of adjudication order (passed on 03/10/24) under section 74 of DGST Act for Summoning/calling all the suppliers of laptops but they did not call them rather messed up the matter.

To mitigate the effect of observations made by authorities below who passed order on the basis of assumptions and presumptions without making any enquiries what so ever. The Hon'ble First Appellate Authority too followed the order of the proper officer.

PRAYERS

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

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

It is prayed accordingly,

APPELLANT

THROUGH RAJMANI JINDAL, ADVOCATE

**BEFORE THE GOODS AND SERVICE TAX TRIBUNAL, NEW DELHI
BENCH, NEW DELHI**

AFFIDAVIT

Stamp Rs 500/- ANNEX A1

1, Mussadi Lal S/O Busaddi Lal at 34, 2nd Floor, Worli complex, ABC house, Mumbai vide GSTIN No.xxxxxxxxxx registered in Maharashtra do hereby solemnly affirm and declare as under:-

1 That I supplied goods more particularly laptops of Dell make vide tax invoice no. MUM001122/24 dated 06/05/24 to Appellant company, Star exporter private limited.

2 That the query received from the purchaser as purchases of laptops were doubted by the GST Department. It is confirmed sale made against tax invoice to the Appellant company is genuine, laptops supplied and payment received.

3 That the contents of this affidavit are true and correct to best of my knowledge and belief.

Deponent

Signed and Sealed

Verification:-

Verified at Mumbai on 25th day of March 25 THAT THE CONTENTS OF
THE ABOVE AFFIDAVIT ARE TRUE TO THE BEST OF MY
KNOWLEDGE AND BELIEF AND NOTHING MATERIAL HAS BEEN
CONCEALED THEREFROM..

NOTRISED

Deponent

Signed and sealed

**BEFORE THE GOODS AND SERVICE TAX TRIBUNAL, NEW DELHI
BENCH, NEW DELHI**

AFFIDAVIT

Stamp of Rs 500/- Annex A2

I, RAJU BHAI S/O DEBU BHAI at 34, 4th Floor, Worli complex, ABC House, Mumbai vide GSTIN No.xxxxxxxxxxx registered in Maharashtra do hereby solemnly affirm and declare as under:-

1 That I supplied goods more particularly laptops of Dell make vide tax invoice no. MUM002244/24 dated 06/05/24 to Appellant company, Star exporter private limited.

2 That the query received from the purchaser as purchases of laptops were doubted by the GST Department. It is confirmed sale made against tax invoice to the Appellant company is genuine, laptops supplied and payment received.

3 That the contents of this affidavit are true and correct to best of my knowledge and belief

Deponent

Signed and sealed

Verification:-

Verified at Mumbai on 25th day of March 25 THAT THE
CONTENTS OF THE ABOVE AFFIDAVIT ARE TRUE TO THE BEST
OF MY KNOWLEDGE AND BELIEF AND NOTHING MATERIAL
HAS BEEN CONCEALED THEREFROM..

NOTRISED

Deponent

Signed and Sealed

**BEFORE THE GOODS AND SERVICE TAX TRIBUNAL, NEW DELHI
BENCH, NEW DELHI**

AFFIDAVIT

Stamp of Rs 500/- Annex A3

I, Bhogi Ram S/O Lalu Ram at 34, 8th Floor, Worli Complex , ABC House, Mumbai vide GSTIN No.xxxxxxxxxxx registered in Maharashtra do hereby solemnly affirm and declare as under:-

1 That I supplied goods more particularly laptops of Dell make vide tax invoice no. MUM003366/24 dated 06/05/24 to Appellant company, Star exporter private limited.

2 That the query received from the purchaser as purchases of laptops were doubted by the GST Department. It is confirmed sale made against tax invoice to the Appellant company is genuine, laptops supplied and payment received.

3 That the contents of this affidavit are true and correct to best of my knowledge and belief.

Deponent

Signed and Sealed

Verification:-

Verified at Mumbai on 25th day of March 25 THAT THE
CONTENTS OF THE ABOVE AFFIDAVIT ARE TRUE TO THE BEST
OF MY KNOWLEDGE AND BELIEF AND NOTHING MATERIAL
HAS BEEN CONCEALED THEREFROM..

NOTRISED

Deponent

Signed and Sealed

**BEFORE THE GOODS AND SERVICE TAX TRIBUNAL, NEW DELHI
BENCH, NEW DELHI**

AFFIDAVIT Stamp Rs 500/- Annex A4

I, Brajesh Patil S/O Mukuand Patil at 34, 11th Floor, Worli Complex, ABC House, Mumbai vide GSTIN No.xxxxxxxxxx registered in Maharashtra do hereby solemnly affirm and declare as under:-

1 That I supplied goods more particularly laptops of Dell make vide tax invoice no. MUM006688/24 dated 06/05/24 to Appellant company, Star exporter private limited.

2 That the query received from the purchaser as purchases of laptops were doubted by the GST Department. It is confirmed sale made against tax invoice to the Appellant company is genuine, laptops supplied and payment received.

3 That the contents of this affidavit are true and correct to best of my knowledge and belief.

Deponent

Signed and sealed

Verification:-

Verified at Mumbai on 25th day of March 25. THAT THE CONTENTS
OF THE ABOVE AFFIDAVIT ARE TRUE TO THE BEST OF MY
KNOWLEDGE AND BELIEF AND NOTHING MATERIAL HAS BEEN
CONCEALED THEREFROM..

NOTRISED

Deponent

Signed and

sealed

**BEFORE THE GOODS AND SERVICE TAX TRIBUNAL, NEW DELHI
BENCH, NEW DELHI**

AFFIDAVIT Stamp Rs 500/- Annex A5

I, Rajat Patnayak s/o Trilok Patnayak at 34, 14th Floor, Worli Complex,
ABC House, Mumbai vide GSTIN No.xxxxxxxxxx registered in
Maharashtra do hereby solemnly affirm and declare as under:-

1 That I supplied goods more particularly laptops of Dell make vide tax
invoice no. MUM007799/24 dated 06/05/24 to Appellant company, Star
exporter private limited.

2 That the query received from the purchaser as purchases of laptops were
doubted by the GST Department. It is confirmed sale made against tax
invoice to the Appellant company is genuine, laptops supplied and payment
received.

3 That the contents of this affidavit are true and correct to best of my
knowledge and belief.

Deponent

Signed and Sealed

Verification:-

Verified at Mumbai on 25th day of March 25. THAT THE CONTENTS OF
THE ABOVE AFFIDAVIT ARE TRUE TO THE BEST OF MY
KNOWLEDGE AND BELIEF AND NOTHING MATERIAL HAS BEEN
CONCEALED THEREFROM..

Deponent

NOTRISED

Signed and Sealed

**BEFORE THE GOODS AND SERVICE TAX TRIBUNAL, NEW DELHI
BENCH, NEW DELHI**

AFFIDAVIT Stamp Rs 500/- Annex A6

I, Mikel Jackson s/o Robin Jackson at 78, Subhdra chambers 2 nd floor,
Colaba, Mumbai, Manager of Appellant company do hereby solemnly
affirm and declare as under :-

1. That I inspected the laptops to be exported to Dubai received from all the
five suppliers with tax invoices.
2. That laptops are also inspected by our Director Shri Sushil Malhotra
personally, who had come to Mumbai specially for this purpose, enquired
about the configuration, model no. packing and other related matters.
3. That goods are handed over to Shri Sushil Malhotra with invoices.
4. That he himself arranged the courier agency ABC @ CO, dispatched the
laptops to Delhi
5. That my contact details with mobile number are M- xxxxxxxxxxxxxxxx

Alternate no. xxxxxxxxxxxxxxxx.

6. That the contents of this affidavit are true and correct to best of my knowledge and belief.

Deponent

Signed and Sealed

Verification:-

Verified at Mumbai on 25th day of March 25 THAT THE CONTENTS OF THE ABOVE AFFIDAVIT ARE TRUE TO THE BEST OF MY KNOWLEDGE AND BELIEF AND NOTHING MATERIAL HAS BEEN CONCEALED THEREFROM..

NOTRISED

Deponent

Signed and Sealed

Air ticket

Passenger name

MR. Sushil Malhotra . Q8J7801

DEL - BOM

Tuesday

06/05/2024

10 AM

DEL - MUMBAI
INDIGO
Departure
DEL DEL
Dehi Indira Gandhi
International Terminal

Sat 10 AM
6/5/24

Arrival
Mumbai BOM
Chhatrapati
Shivaji
Maharaj Inter
Airport (BOM)

Terminal T1
Sat 12.25 P.M.
6/5/24

Status

Confirmed

Baggage/meal

Adult 15kg / paid meal

Non Refundable

Payment details

Terms & conditions

Courier Receipt

Express Courier Service

. 06/05/24

ABCO Co
Mumbai
34, Worli Complex
Ground Floor
ABC House, Mumbai

From -

Sushil Malhotra
Director
Star Exporter Private Limited

Details
1000 Laptops

To

Star Exporters Private Ltd
141, Okhla, Phase II
Industrial Area
New Delhi

IMPORT ORDER

Annex A 9

Order No. 001234

Star Exporter Private Limited

Date 10/4/24

141, Okhla Phase II, Industrial Area

The Association of importers of

New Delhi

Information technology products

DUBAI

Dear Sir,

We are glad to place an order of 2000 Laptops of DELL make from Malaysia. Following are the details of order :-

Item description:-

LAPTOPS DELL BRAND OF MALAYSIA

Quantity & configuration :- 2000 in numbers of specified configuration

- Processor

13th Generation Intel® Core™ i5-1334U (12 MB cache, 10 cores, 12 threads, up to 4.60 GHz)

- Operating System

Windows 11 Home, Single Language English

- Video Card

Intel® Iris® Xe Graphics

- Memory

16GB, 2x8GB, DDR5, 5200MT/s

- Storage

512GB M.2 PCIe NVMe Solid State Drive

- Display

16.0-inch 16:10 FHD+ (1920 x 1200) Ant

Keyboard English International Non- backlit .

Unit PRICE:- USD 1000/- per laptop

CURRENCY :- The payment be made in \$ USD

Total price per laptop:- 2000 x1000 (quantity x unit price) \$ USD
2000000

HSN Code:- 12345678

Shipping Details:-

Shipping Method : Air freight (Courier) Through ABC @ CO.

Payment Details:- Through letter of credit

Payment Schedule: payment upon delivery of goods

Other Details:-

All laptops must be in perfect condition.

Signature

Star Exporter Private Limited

Exporter

Sealed

Signature

Association of Importers of information technology products

Importer

Sealed

Annex A10

Addenda with amendments to purchase /import order dated 10/04/24

From:- **Star Exporter Private Limited**
Date 15/04/24 **141, Okhla Phase II , Industrial Area,**
The Association of importers of **New Delhi**
Information technology products
Dubai

Dear Sir,

With reference to our import order dated 010/04/24 for purchase of 2000 laptops of following configuration of DELL brand from Malaysia, we are happy to inform that since our Association involved in the information technology products, and receiving a huge response for laptops from small individual buyers. Therefore looking their response , we are making little change in the purchase order , as follows :-

Quantity :- 2000 in numbers

1) Brand :- 800 Laptops of **Dell BRAND** 1200 Laptops of **HP brand**
of course of configuration given below --

Configuration :- 13th generation , Inter core processors 5 120 U,
Windows 11 Pro ,16 GB. Memory 16 GB: 1 x 16 GB, DDR5, 5600
MT/s , Display

14", FHD+ 1920x1200, 60Hz, WVA, IPS, Touch, 250 nit,
ComfortView

Color Ice Blue, with Fingerprint Reader

Storage 512 GB SSD, Keyboard English International Non- backlit .

2) Configuration point:- During telephonic conversation, it was informed that there were few issues for DELL brand with specific configuration as

per purchase order placed on 010/04/24 . We want to clarify as a matter of abundance precaution that :-

- 1) We will accept 800 Laptops of Dell and 1200 Laptops of HP brand.
- 2) The configuration of laptops must be as per import order. We understand this is you are delivering also.
- 3) **Payment Issue:-** The payment would be made by the 20 individual buyers directly (Direct payment basis) to Star Exporter Private Limited in USD whose names are given below with complete details.
- 4) **Containers :-**As communicated there would be total 500 containers ,each container having four laptops . So 200 containers of Dell laptops and 300 containers of HP brand .

Name of 20 persons with details enclosed herewith with copy of Import contract entered into with them for import of Laptops .

We are enclosing herewith original Import order along with amended one for your ready reference with copy of import contract entered into with 20 buyers.

For Association of importers of information Technology Products

Authorised Signatory

Signed and sealed

For Star Exporter Private Ltd/ Exporter company

Authorised Signatory

Signed

IMPORT CONTRACT Annex A11

DATE : 14/04/24

BETWEEN

The Head of the Import Department of The Association of Importers of Information Technology Products ,office in Dubai (hereinafter referred to as "the Importer Buyer"),

AND

- 1) Shri Rajkumar Singla at Dubai (hereinafter referred to as "the BUYER").
- 2) Shri Sadiq Lal at Dubai (hereinafter referred to as "the BUYER").
- 3) Shri Ashwani Chabbra at Dubai (hereinafter referred to as "the BUYER").
- 4) Shri Ram Gopal Verma at Dubai (hereinafter referred to as "the BUYER").
- 5) Shri Parsadi Lal at DUBAI (hereinafter referred as " the BUYER)
- 6) Shri Vikram Rana at Dubai (hereinafter as "the BUYER)
- 7) Shri Nanak Chand at Dubai (hereinafter as "the Buyer)
- 8) Shri Gullak Singh at Dubai (hereinafter as "the BUYER)
- 9) Shri Shiv Kumar at Dubai (hereinafter as "the BUYER)
- 10) Shri Kasturi Lal at Dubai (hereinafter as "the BUYER)
- 11) Shri Gyan Chand at Dubai (hereinafter as "the BUYER)

- 12) Shri Hukum Singh at Dubai (hereinafter as “the BUYER)
- 13) Shri Thakur Dass at Dubai (hereinafter as “the BUYER)
- 14) Shri Ram Singh Kushwaha at Dubai (hereinafter as “the BUYER)
- 15) Shri Gauri Shankar at Dubai (hereinafter as “the BUYER)
- 16) Shri Ramanna Pal Singh at Dubai (hereinafter as “the BUYER)
- 17) Shri Sukhvir Singh at Dubai (hereinafter as “the BUYER)
- 18) Shri Joginder Khilawan at Dubai (hereinafter as “the BUYER)
- 19) Shri Pratap goel at Dubai (hereinafter as “the BUYER)
- 20) Shri Virender Singh at Dubai (hereinafter as “the BUYER)

All Above Parties declare an interest in the purchase of Laptops under the present Contract and undertake to observe the following contract:

1) LAPTOPS PURCHASE

[Description of the Laptops: type of products, features, quantities, units, etc.]

2000 in numbers of specified configuration 13th generation , Inter core processors 5 120 U, Windows 11 Pro ,16 GB. Memory 16 GB: 1 x 16 GB, DDR5, 5600 MT/s , Storage 512 GB SSD, Keyboard English International

Non- backlit .

Unit PRICE:- USD 1000/- per laptop

2) PRICE OF LAPTOP:

\$ USD 1000 per laptop

Quantity 2000 laptops

3) PAYMENT

It is agreed by the parties that payment be made directly to STAR EXPORTER PRIVATE LIMITED/ Exporter in INDIA in \$ USD not to Association of Importers of Information Technology Products.

For Association of importers of information technology products

Head of purchase department

Signed and sealed

BUYERS

- | | |
|-------------------------|--------|
| 1) Shri Rajkumar Singla | signed |
| 2) Shri Sadiq Lal | signed |
| 3) Shri Ashwani Chabbra | signed |
| 4) Shri Ram Gopal Verma | signed |
| 5) Shri Parsadi Lal | signed |
| 6) Shri Vikram Rana | signed |
| 7) Shri Nanak Chand | signed |
| 8) Shri Gullak Singh | signed |
| 9) Shri Shiv Kumar | signed |
| 10) Shri Kasturi Lal | signed |

| | |
|-----------------------------|--------|
| 11) Shri Gyan Chand | signed |
| 12) Shri Hukum Singh | signed |
| 13 Shri Thakur Dass | signed |
| 14) Shri Ram Singh Kushwaha | signed |
| 15) Shri Gauri Shankar | signed |
| 16) Shri Ramanna Pal Singh | signed |
| 17) Shri Sukhvir Singh | signed |
| 18) Shri Joginder Khilawan | signed |
| 19) Shri Pratap goel | signed |
| 20) Shri Virender Singh | signed |

CUSTOM INSPECTION REPORT

The Product Name:- LAPTOPS

- 1) It is carefully checked from purchase order dt 010/04/24 and one addenda to the order dated 015/04/24 that:

There are invoices dated 06/06/24 , mentioned 800 laptops of DELL BRAND made from Malaysia and 1200 laptops of HP BRAND (HP HEWLETT- PACKARD)

Further we checked their configuration are as per amended purchase order, it tallied perfectly.

There is no difference in actual cargo and declared laptop.

- 1) **CONFIGURATION:-** The configuration of the laptops are as per amended purchase order dated 15/04/25 only and tallied perfectly .

Configuration :- 13th generation , Inter core processors 5 120 U, Windows 11 Pro ,16 GB. Memory 16 GB: 1 x 16 GB, DDR5, 5600 MT/s , Display

14", FHD+ 1920x1200, 60Hz, WVA, IPS, Touch, 250 nit, ComfortView

Color Ice Blue, with Fingerprint Reader

Storage 512 GB SSD, Keyboard English International Non- backlit .

- 2) **WEIGHT :-** The declared gross and net weight is same.
- 3) **QUANTITY :-** The declared quantity is 2000 laptops with 500 containers having four laptops in each one container and matches with physical quantity. It is containing 200 containers (total 800

laptops) each container containing 4 laptops of DELL BRAND and 300 containers each (total 1200 laptops) containing 4 laptops of HP BRAND

4) H S CODE:- H S Code declared for the export is correct.

5) LAPTOP PRICE:- The price of laptops are as invoices declared i.e. USD 1000/- per laptop.

Custom inspector

Signed and sealed

For Star exporter private limited

Agent

E-WAY BILL Annex A-13

GSTAT FORM -01

[See rule 29 and 49]

Interlocutory Application to the Appellate Tribunal

1. GSTIN 56789231111
2. Name of the appellant Star exporter private limited
3. Address of the appellant/applicant/respondent – 141, Okhla phase II,
Industrial area New Delhi
4. Original Appeal Number-6677/2025--- Date- 13/02/25
5. Date of last hearing
6. Name of the representative – Ms. Rajmani Jindal
7. Purpose of the Interlocutory application – CALLING SUPPLIERS
TO GIVE EVIDENCES BY SUMMONING UNDER THE
PROVISIONS OF THE DGST ACT
8. Whether the appellant or applicant or respondent wishes to be heard in
person – Yes
9. Statement of facts - As Enclosed

10. Grounds of application –

As Enclosed

11. Prayer -

As Enclosed

Place: New Delhi

Date: 01/04/25

For Star Exporter Private Limited

Name of the Appellant

Director

Signed and sealed

Thru counsel Rajmani Jindal

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

APPEAL NO 007/01 OF 2025

IN THE MATTER OF :-

M/s Star Exporter Private Limited

141, Okhla Phase II, Industrial Area

New Delhi

GSTIN NO. 56789231111

E-mail Id:- xxxxxxxxxxxxxxxx

Mobile no. xxxxxxxxxxxxxxxx

APPELLANT

VS.

COMMISSINER,

Delhi Goods And Services Tax Act,

Ward : ABCD

Address : GST Dept. New Delhi

RESPONDENT

AFFIDAVIT

I, Sushil Malhotra s/o Shri S.K. Malhotra at 141, Okhla Phase II, Industrial area, New Delhi Director of Star Exporter Private Limited on behalf of the company do hereby solemnly affirm and declare as under:-

1. That I know the contents of Application filed under Rule 29 of GSTAT (Procedures) Rules 2025 read with Rule 112 of DGST Rules.
2. That I understand of the facts of the Application and filed under my instructions by the counsel.
3. That all the facts and information given is true and correct to the best of my knowledge and belief.

Deponent

Signed and sealed

Verification :-

Verified at New Delhi on this 1st day of April 2025

NOTRISED

Deponent

Signed and sealed

CHALLAN FOR PAYMENT

| | | | | | | |
|---|---|--|-----------------------------|--------------------------------------|--------------------|-------------------------|
| Form GST PMT-06 Payment Challan | | | | | | |
| (See Rule 87(2)) | | | | | | |
| Challan for deposit of goods and services tax | | | | | | |
| | | | | | | |
| CPI N | 21023300_____ _1 | | Challan Generat ed On | 01/04/25 14:46 | Expi ry Date | 27-05- 2025 14:46 |
| Details of Taxpayer | | | | | | |
| GST IN | 56789231111 | | Email | | Mob ile | 8XXX XXXX X427 |
| Leg al Nam e | STAR EXPORTER PRIVATE LIMITED. | | Address | XXXXXXXXXX XXXXXX Delhi,11____ | | |
| | | | | | | |
| Reason for Challan | | | | | | |
| Reas on | Any other payment | | | | | |

| Details of Deposit (All Amount in Rs.) | | | | | | | |
|--|------------|------------|-----------|----------|------|---------|--------|
| Government | Major Head | Minor Head | | | | | |
| | | Tax | Inte rest | Pen alty | Fee | Oth ers | To tal |
| Government of India | CGST(0005) | 0 | 0 | 0 | 0 | 0 | 0 |
| | IGST(0008) | 0 | 0 | 0 | 0 | 0 | 0 |
| | CESS(0003) | 0 | 0 | 0 | 0 | 0 | 0 |
| | Sub-Total | 0 | 0 | 0 | 0 | 0 | 0 |
| Delhi | SGST(0007) | 0 | 0 | 0 | 5000 | 0 | 5000 |

| | | | | | | | |
|-------------------------|---------------------------|---|---|---|------|---|------|
| Total Amount | | 0 | 0 | 0 | 5000 | 0 | 5000 |
| Total Amount (in words) | Rupees Five Thousand Only | | | | | | |

| Mode of Payment | | | | | | | |
|-----------------|-----|------------------------|--|--|-------------|--|--|
| E-Payment | YES | Over the Counter(OT C) | | | NEFT / RTGS | | |

| Particulars of depositor | |
|---|--------------------------------|
| Name LALSINGH | |
| Designation/Status(clerk) | |
| Signature SIGNED | |
| Date 01/04/25 | |
| Paid Challan Information | |
| GSTIN _____ | 56789231111 |
| Taxpayer Name | STAR EXPORTER PRIVATE LIMITED. |
| Name of the Bank | AXIS BANK |
| Amount | 5000 |
| Bank Reference No.(BRN)UTR | 123456 |
| CIN | 654321123456 |
| Payment Date | 01/04/25 |
| Bank Ack No. | 00000000001111111 |
| (For Cheque / DD deposited at Bank's counter) | |

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

Interlocutory application no of 2025 in

APPEAL NO 007/01 OF 2025

IN THE MATTER OF :

M/s Star Exporter Private Limited

141, Okhla Phase II, Industrial Area

New Delhi

GSTIN NO. 56789231111 **APPELLANT**

E-mail Id :- xxxxxxxxxxxxxx

Mobile no. xxxxxxxxxxxxxx

VS.

COMMISSIONER,

Delhi Goods And Services Tax Act, **RESPONDENT**

Ward : ABCD

Address : GST Dept. New Delhi

**INTERLOCUTORY APPLICATION TO THE HON'BLE
APPELLATE TRIBUNAL UNDER RULE 29 OF GSTAT
(PROCEDURE) RULES 2025 READ WITH RULE 112 OF DGST
RULES**

HON'BLE PRESIDENT AND HIS COMPANION MEMBERS

MOST RESPECTFULLY SHOWTH

**The Appellant Most Respectfully submits for kind consideration of this
Hon'ble Tribunal as under :**

**ALL CONDITIONS PRECEDENT FOR FILING OF THE APPLICATION
HAVE BEEN SATISFIED AS UNDER:**

1) The appellant is a registered dealer of the Delhi GST Department with the GSTIN No 56789231111. The appellant is engaged in the business of trading of electronic products including export to Gulf region, more particularly to Dubai and the appellant is aggrieved with the order passed by the proper officer and the Hon'ble First Appellant Authority.

- 2) The Appellant 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 rule110(5) of DGST Rules.
- 3) The applicant has annexed affidavit of Director of the company in support of the application.

FACTUAL MATRIX

IT IS submitted that the Appellant company wants that the suppliers of laptops be called so that the true legal position of valid purchase could be unearth , these evidences are very crucial and important for appreciating the facts of the case properly.

GROUND OF APPLICATION

The applicant wishes to bring on record the statements of five sellers of laptops before this Hon'ble Tribunal. The Appellant company after reply to SCN on 17/09/24 requested the proper officer fifteen days prior to passing of adjudication order (passed on 03/10/24) under section 74 of DGST Act for Summoning/calling all the suppliers of laptops but they did not call them rather messed up the matter.

To mitigate the effect of observations made by authorities below who passed order on the basis of assumptions and presumptions without making

any enquiries what so ever. The Hon'ble First Appellate Tribunal too followed the order of the proper officer.

PRAYER

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

1) That the applicant be permitted to call the suppliers of laptops to bring on record their statements/evidences and to make this application as part of this appeal itself.

2) Any other relief that this Hon'ble Tribunal may deem fit and proper

It is prayed accordingly,

APPELLANT COMPANY

Thru COUNSEL FOR THE APPELLANT

NEW DELHI

DATED..01/04/2025

Annexure A14

CHALLAN FOR FILING FEES OF APPEAL

| | | | | | | | |
|---|---|--|-----------------------------|--------------------------------------|--|--------------------|-------------------------|
| Form GST PMT-6 Payment Challan | | | | | | | |
| (See Rule 87(2)) | | | | | | | |
| Challan for deposit of goods and services tax | | | | | | | |
| | | | | | | | |
| CPI N | 21023300_____ _1 | | Challan Generat ed On | 01/04/25 14:46 | | Expi ry Date | 27-05- 2025 14:46 |
| Details of Taxpayer | | | | | | | |
| GST IN | 56789231111 | | Email | | | Mob ile | 8XXX XXXX X427 |
| Leg al Nam e | STAR EXPORTER PRIVATE LIMITED. | | Address | XXXXXXXXXX XXXXXX Delhi,11____ | | | |
| | | | | | | | |
| Reason for Challan | | | | | | | |
| Reas on | Any other payment | | | | | | |

| Details of Deposit (All Amount in Rs.) | | | | | | | |
|--|------------|------------|--------------|-------------|-----|------------|-----------|
| Government | Major Head | Minor Head | | | | | |
| | | Tax | Inte rest | Pen alty | Fee | Oth ers | To tal |

| | | | | | | | |
|-------------------------------|----------------------------------|---|---|---|-------|---|----------|
| Government of India | CGST(0005) | 0 | 0 | 0 | 0 | 0 | 0 |
| | IGST(0008) | 0 | 0 | 0 | 0 | 0 | 0 |
| | CESS(0003) | 0 | 0 | 0 | 0 | 0 | 0 |
| | Sub- Total | 0 | 0 | 0 | 0 | 0 | 0 |
| Delhi | SGST(0007) | 0 | 0 | 0 | 25000 | 0 | 50 00 |
| Total Amount | | 0 | 0 | 0 | 25000 | 0 | 50 00 |
| Total Amount (in words) | Rupees Twenty Five Thousand Only | | | | | | |

| Mode of Payment | | | | | | | |
|-----------------|-----|------------------------------|--|--|----------------|--|--|
| E-Payment | YES | Over the Counter(OT C) | | | NEFT / RTGS | | |

| Particulars of depositor | |
|--|-----------------------------------|
| Name LALSINGH | |
| Designation/Status(clerk) | |
| Signature SIGNED | |
| Date 01/04/25 | |
| Paid Challan Information | |
| GSTIN _____ | 56789231111 |
| Taxpayer Name | STAR EXPORTER PRIVATE LIMITED. |
| Name of the Bank | AXIS BANK |
| Amount | 25000 |
| Bank Reference No.(BRN)UTR | 123456 |
| CIN | 654321123456 |
| Payment Date | 01/04/25 |
| Bank Ack No. | 00000000001111111 |
| (For Cheque / DD deposited at Bank's counter) | |

Annex A15

CHALLAN FOR PRE DEPOSIT OF DISPUTED TAX AMOUNT

| | | | | | | |
|---|---|-----------------------------|--------------------------------------|--------------------|-------------------------|--|
| Form GST PMT-06 Payment Challan | | | | | | |
| (See Rule 87(2)) | | | | | | |
| Challan for deposit of goods and services tax | | | | | | |
| | | | | | | |
| CPI N | 21023300_____ _1 | Challan Generat ed On | 01/04/25 14:46 | Expi ry Date | 27-05- 2025 14:46 | |
| Details of Taxpayer | | | | | | |
| GST IN | 56789231111 | Email | | Mob ile | 8XXX XXXX X427 | |
| Leg al Nam e | STAR EXPORTER PRIVATE LIMITED. | Address | XXXXXXXXXX XXXXXX Delhi,11____ | | | |
| | | | | | | |
| Reason for Challan | | | | | | |
| Reas on | Any other payment | Pre deposit of tax | | | | |

| Details of Deposit (All Amount in Rs.) | | | | | | | |
|--|------------|------------|-----------|----------|-----|---------|--------|
| Government | Major Head | Minor Head | | | | | |
| | | Tax | Inte rest | Pen alty | Fee | Oth ers | To tal |
| Government of India | CGST(0005) | 0 | 0 | 0 | 0 | 0 | 0 |
| | IGST(0008) | 0 | 0 | 0 | 0 | 0 | 0 |

| | | | | | | | |
|-------------------------|-----------------------------|---|---|---|-------------|---|----------|
| | CESS(0003) | 0 | 0 | 0 | 0 | 0 | 0 |
| | Sub-Total | 0 | 0 | 0 | 0 | 0 | 0 |
| Delhi | SGST(0007) | 0 | 0 | 0 | 540000 0 | 0 | 50 00 |
| Total Amount | | 0 | 0 | 0 | 540000 0 | 0 | 50 00 |
| Total Amount (in words) | Rupees Fifty Four Lakh Only | | | | | | |

| Mode of Payment | | | | | | | |
|-----------------|-----|------------------------|--|--|-------------|--|--|
| E-Payment | YES | Over the Counter(OT C) | | | NEFT / RTGS | | |

| Particulars of depositor | |
|---|--------------------------------|
| Name LALSINGH | |
| Designation/Status (clerk) | |
| Signature SIGNED | |
| Date 01/04/25 | |
| Paid Challan Information | |
| GSTIN _____ | 56789231111 |
| Taxpayer Name | STAR EXPORTER PRIVATE LIMITED. |
| Name of the Bank | AXIS BANK |
| Amount | 54,00,000 |
| Bank Reference No.(BRN)UTR | 123456 |
| CIN | 654321123456 |
| Payment Date | 01/04/25 |
| Bank Ack No. | 00000000001111111 |
| (For Cheque / DD deposited at Bank's counter) | |

Annex A 16

SHOW CAUSE NOTICE

**BEFORE THE ASSISTANT COMMISSIONER, ZONE 8, DELHI GST DEPTT, N
DELHI**

IN THE MATTER OF;

Star Exporter Private Limited

141 Okhla Phase II
Industrial Area
NEW DELHI
GSTIN NO. 567892311

DIN NO. 45646464646

DATED 28.8..2024

**SHOW CAUSE NOTICE UNDER SECTION 74 OF THE DGST ACT
2017 READ WITH CGST ACT 2017 FOR THE TAX PERIOD 2020-
21**

Whereas the audit team has just concluded audit for the year 2020-21 on 1.8.24. Audit was started on 10.4.24 complying with the provisions of Section 65 of the DGST Act.

The audit memos given to you and the replies filed by you have been taken on record. The audit report has been handed over to you for

your information in advance incorporating the replies and the documents you filed on your own during the audit proceedings. All the books of accounts as produced by you have also been referred in the audit report and what has not been produced that too has been mentioned in the audit report.

Whereas in terms of section 65(6) of the DGST Act I am required to determine your tax liability in terms of section 73 or section 74 of the DGST Act.

WHEREAS based on audit proceedings and the audit report prepared and confronted to you, I am satisfied that there has been wilful suppression of facts, wilful misstatements made and fraudulent misrepresentation of facts on various issues with an intent to wilfully evade payment of tax, interest and penalty; hence this Show Cause Notice is issued under section 74 of the DGST ACT. The issues involved are:

- 1) You allegedly exported 2000 laptops to Dubai to an Association of Importers of information technology products @ USD 1000/- per laptop. The date of export invoice is 6.6.24.
- 2) The brand of laptops mentioned in the export bills produced before the audit team was **Dell, Made in Malaysia as country of origin** and this was exactly as per import orders placed by you by the importer and hence you could not have deviated from such directions. You have produced relevant documents based on which you claimed the export transactions to seek refund of unutilised input tax credit. **It is clear you are not the manufacturer of laptops.**

While examining the books of accounts and the relevant purchases made from Mumbai, on IGST basis, that you allegedly exported as per your own version, surprisingly it is noticed that you purchased the 2000 laptops from 5 different

sellers, and none of them was the OEM. All on the same date i.e. 6.5.24 . **The list of suppliers and their GSTIN numbers are annexed in Annexure I to this show cause notice.** Each of them has supplied you 400 laptops @ 75000/- each total Rs 30,00,000/- plus GST @ 18 percent.

I have examined the books of accounts and the relevant purchase bills. These are duly mentioned in the audit report. It is quite surprising that none of these suppliers are distributors for Dell, India or Malaysia. In fact all the five invoices are not purchase of Dell laptops but only two are for Dell **Laptops and there too the configuration mentioned is quite different than what is exported by you as discernible from the purchase bills.** The details of such bills for all the five suppliers are mentioned in Annexure 1 to this show cause notice along with the payments you alleged to have made to them. In fact you have made payments to only three suppliers and the rest of the suppliers are yet to be made payments. Three suppliers too you did not make payments but set off such payments from the amounts due from them to you for your earlier business transactions. **Rest two are yet to be paid by you.**

I have also examined the orders placed by the Association of Importers, Dubai and gone through the contents therein. The Order is also annexed as Annexure II to this show cause notice for your ready reference. The import order does not specify at all the individual names of buyers in Dubai and no other details are mentioned thereon. Equally surprising is the fact that you exported goods worth USD 20,00,000/- on Direct Payment basis and not through letter of credit basis that was mentioned in the purchase orders. On questioning during audit proceedings no amendment or addenda to the purchase order was shown to the audit team.

ON repeatedly asking you failed to bring on report Inspectors Report from Customs who may have opened your consignments and verified the details of laptops. Summons sent to customs authorities in Mumbai by the undersigned on 11.9.24 remained unrepresented a copy of which was also given to you on 12.9.24 to help finding out more details. The summon sent is as per Annexure III to this show cause notice.

The wilful suppression of facts, fraudulent misrepresentation and wilful evasion of tax (by way of wrongful or erroneous claim of refund) came to further proof when the BRC you produced were checked. The payments were not made by Association of Importers of IT Products, Dubai buy by many individual buyers numbering 20 in whose favour there was no bill of lading or export invoice or there is nothing brought on record that they ever placed import orders on you. The total list is annexed as Annexure IV to this show cause notice. Further the products you purchased for exports from five suppliers as mentioned herein above on 6.5.24, in one go were totally different than what you exported and no explanation came forward even though audit memos were given to you and served upon you during audit proceedings.

Further two suppliers from whom you purchased 400 laptops worth 28,00,000/0 were not paid by you and you tried to create a story that there was a dispute with them on quality of the products when in fact the importers did not raise any dispute, whatsoever. Even the dispute you tried to explain was unsupported by any document or any other evidence in support of your assertion. Many opportunities were provided to you before the audit came to be concluded.

In view of the above it is more than clear, in the absence of contrary evidence you may bring on record, that the whole transaction of exports was fraudulent based on purchases that

were not exported. **Surely there was no purchase made in due course of business that you allegedly exported.** And you failed to prove or bring on record any documents during audit proceedings that you ever earlier purchased such laptops and you were holding them in stocks on the date when you exported the consignment. While action has been taken to inform the Customs Authorities and letter dated 22.9.24 has been sent to them for initiating criminal action in the matter, as per due process of law, **as per Annexure IV, I propose to recover the refund of Rupees 27 lakhs from you immediately along with interest up to date and penalty as per law. This is a clear case of wrongful claim of refund that has been erroneously given to you and taken by you fraudulently. A departmental inquiry has also been instituted as to how such a refund was sanctioned and cash refund given under section 54 of the DGST Act.**

The total unutilised input tax credit from 5 suppliers has to be held to be fake; because their tax invoices do not show details that are required to be given in terms of section 31 of the DGST Act; their returns show they have not purchased laptops at all during the year. Hence, this is a clear case of fake billing notwithstanding the fact their invoices appear in 2 B report. The findings on their purchases as found out by anti -evasion team are in Annexure V to this notice the contents of which are self -explanatory. Summons were sent to all these suppliers on 4.9.24 but the same came back with the remarks “ no such firm exists and this report is for all the five”. As per Annexure VI. Surprisingly all the five have shown their principal registered place at 34, Worli Complex, ABC House, Mumbai. A letter has also been sent to Commissioner, GST, Maharashtra at Mazgaon Office to institute inquiry in this whole episode which is a huge case of fraudulent transactions and claiming of refunds without actually purchasing or exporting the same goods. Annexure VII

In view of the above you are required to show cause:

- 1) Why the cash refund of Rs 27,00,000/- that was wrongfully claimed by you and erroneously given to you without verification of transactions should not be recovered
- 2) Why the amount as above be noted recovered with interest @ 18 percent from the date of filing of return;
- 3) Why penalty as per provisions of Section 74 of DGST Act be not imposed
for such wilful tax evasion methods employed by you;
- 4) Why criminal proceedings under Section 132 read with Section 69 of DGST Act by not initiated by you?
- 5) Why the fraudulent exports as claimed by you be not treated not as zero rated but interstate supplies and taxed accordingly with interest and penalty?

You are directed to file your reply and appear before the undersigned on 15.09. 24 with all the evidence, judgments, confirmations etc. that you may have in your possession to rebut the above findings that are prima face against you. In the absence of your personal appearance, with or without your lawyer, along with evidence that you may want to file at this stage in support of your claims, I shall proceed to determine your tax liability with interest and penalty under Section 74 of the DGST Act and take further action as may be deemed fit and proper in the provisions of DGST Act.

All Annexures enclosed with this Show Cause Notice are annexed with this show cause notice.

Digitally signed by

Assistant Commissioner, Zone

Annex A 17

REPLY BY APPELLANT COMPANY

**BEFORE THE ASSISTANT COMMISSIONER, ZONE 8, DELHI GST DEPTT, N
DELHI**

IN THE MATTER OF;

Star Exporter Private Limited

141 Okhla Phase II
Industrial Area
NEW DELHI
GSTIN NO. 567892311

DATED 17.9..2024

**REPLY OF THE TAX PAYER TO SHOW CAUSE NOTICE UNDER
SECTION 74 OF THE DGST ACT 2017 READ WITH CGST ACT
2017 FOR THE TAX PERIOD 2020-21 dated 28.8.24**

Present Shri Sushil Malhotra, tax payer and Director. On questioning he has confirmed that he is fully aware of the facts of the case and has carefully read the show cause notice. He is fully conversant with English language. He is assisted by an advocate Ms Rajmani Jindal.

On various issues mentioned in the show cause notice noting has been brought on record in rebuttal to the points raised in the show cause notice. The Counsel has tried to explain that for refund what is to be seen is the factum of exports and by filing the required documents as per law the factum of export has been proved and nothing else remains. Further she has vociferously argued that to claim refund in cash of unutilised input tax credit there is no inquiry possible in terms of Section 54 of the DGST Act which is a self-

contained code. Further she has vehemently argued that the purchases from the five suppliers as per Annexure annexed to show cause notice are absolutely genuine and goods were physically couriered after inspection by the Director Shri Sushil Malhotra himself who had travelled to Mumbai for this purpose. The courier agency ABC @ CO can be summoned and they shall confirm the same.

On the question of different products purchased and different products exported, she tried to wriggle out by stating that the importer agreed to purchase different configurations @ same price but wanted us to write the description DELL Laptop, Made in Malaysia with the required configuration. She tried to explain that this happens frequently in international transactions and such technically incorrect configuration cannot lead to any presumption of fraud or wilful statement or suppression of facts. There has not been and cannot be any attempt to evade tax as what refund is being claimed is legitimately due to the tax payer as per law and these hyper technical issues should not lead to such serious presumptions against the tax payer who has been exporting goods for the last several decades and has been a star exporter status exporter with many awards won.,

The counsel admitted that for two suppliers, due to dispute with them, the payments have not been made till today. Regarding dispute a stand was changed now and she stated that dispute is not regarding quality of this present consignment but for prior consignments. When questioned about any evidence, she said is it required?

Regarding letters sent to Commissioner, GST, Customs Commissioner etc. for inquiries the counsel was quite agitated and virtually threatened as to how could this be done by revenue without making proper inquiries or investigation and she further stated that all this is to harass the taxpayer.

She reiterated the assertions that exports are genuine, goods were laptops that were physically exported and these were the same

laptops that were purchased from the five suppliers mentioned herein above.

Regarding payment from 20 importers with whom the taxpayer had no contractual privity, she asserted that all such Associations work on such methods; they aggregate individual orders and then negotiate the import price, deliver goods to them and ask them to pay direct to the exporter. She vehemently argued that there is nothing wrong – the only requirement of law is that payment should have been received by the exporter within certain time – whether a stranger to the transaction can make payment was a question she did not address.

On the issue of suppliers being fake suppliers as per reports copies of which were given to the tax payer, she argued is the tax payer responsible for the lapse on the part of the sellers? She reiterated that the purchases were genuine, payments were genuine, e-way bills were received and stocks entered into the books of accounts and exported. On the question of physical receipt of the materials the counsel sought time to bring on record the proof of physical receipt of goods. When question the Director could not answer what are the name of the suppliers or their partners or directors and how were the orders placed on them? He was just clueless on this issue.

Time has been given till 24.9.24 to bring on record the documents including LR's etc. to substantiate that the goods were physically received from those five parties and in case the details are not given, adjudication order will be passed without any further notice.

Finally she argued that this is not a case of Section 74 of DGST Act

The order sheet is signed by the counsel and by the Director. **No formal reply was filed to the show cause notice. No documents have been filed and the tax payer has relied upon the documents submitted during audit proceedings.**

Signed by

Appellant company

Annex A 18

BEFORE THE ASSISTANT COMMISSIONER, ZONE 8, DELHI GST DEPTT, N
DELHI

IN THE MATTER OF;

Star Exporter Private Limited

**141 Okhla Phase II
Industrial Area
NEW DELHI
GSTIN NO. 567892311**

**DIN 45646464646
3.10.2024**

ADJUDIUCATION ORDER UNDER SECTION 74 OF THE DGST ACT 2017

TAX PERIOD 2020-21

The tax payer had sought time to file some additional documents while attending the proceedings in connection with reply to show cause notice dated 28.8.24 and considering his request time was granted up to 29.9.24 but no reply has been filed nor the matter has been attended. No purpose would be served by sending another notice and hence the matter is taken up for adjudicating the issues involved in the show cause notice.

The taxpayer is engaged in trading of electronic products including exports to Gulf region , more particularly to Dubai.

After the tax payer has obtained a cash refund of Rs 27 lakhs on account of export of laptops to Association of Importers, Dubai, the case was taken up for further proceedings based on internal risk investigation reports. And the case was put up to Audit proceedings under Section 65.

During audit proceedings a number of gaps were noticed that are conveyed through show cause notice and these were:

- a) What was exported is not what was purchased for the purpose of that export?
- b) What was shown on the export invoices was not something that was purchased?
- c) There was no physical verification report by the customer officers put on record verifying that laptop only were exports and of a particular brand as ordered by the importer in Dubai?
- d) The payment did not come from the Association but from various persons who had no contractual privity with the tax payer?
- e) These individual payments were credited to Association Account, without any instructions from the buyers and accounts were squared?
- f) Bank Receipts clearly showed the names of persons who had sent payments to the tax payer and with whom the tax payer had no contractual privity?
- g) The suppliers from whom purchases are allegedly made were found totally non-existent and in their 3 B returns for the relevant period there was no purchase of Laptop at all even though they are alleged to have issued tax invoices?
- h) The tax payer could not bring on record even a semblance of evidence to show beyond a reasonable doubt that the laptops were actually physically purchased and physical delivery of the same was

obtained by the taxpayer and further that the same laptops were exported?

- i) Payments were made to suppliers in a few cases and there too there a disputes and in two cases payments have not been made even today?
- j) The taxpayer has been changing his stand on various issues at this stage over audit proceedings.
- k) On repeated questioning and inquiring not even one proof has been brought on record regarding proof of physical delivery of goods by the tax payers from the alleged suppliers from Mumbai? In fact there is no document brought on record except tax invoices were shown with some courier receipts stating goods came by air?

The various inquiries have been initiated by the Department including letters to Commissioner Maharashtra regarding 5 suppliers who are non-existent right from day 1 of their registration; letter to Commissioner Customs as to how the laptops that were not purchased were allowed to be exported with a fake nomenclature etc, summons to suppliers under Section 70 of the DGST Act have been sent etc. etc.

2. Section 74 of DGST Act has been invoked as the above facts more than satisfy the requirements; the taxpayer has claimed wrongful input tax credit from the 5 suppliers under question as not even a semblance of evidence has been put on record to satisfy the requirements of a genuine transaction and hence as per Section 155 of DGST Act the tax payer has miserably failed to prove that he is entitled to any input tax credit? The purchases are not genuine, are not reconciled to what has been exported, the suppliers returns show no purchases of such laptops even though the bills appeared in 2B reports. Hence there is a clear cut design to not only fraudulently misrepresent, willful suppress the facts leading to wilful evasion of tax or getting wrongful refund that was not otherwise due.

3.. Keeping in view the above issues that are uncontested rather tacitly admitted by the tax payer all the export transactions are rejected for reasons that payment etc are collateral to transactions of exports; and when the very genesis of the transaction is doubted, other things are immaterial. In my view no export of laptops were conducted by the taxpayer and even if it did it was not out of purchases made by the taxpayer -that are apparently not genuine purchases.

Hence, I reject the exports of 30,00,000,00/- tax the same at the rate of 18 percent and this comes to 5,40,00,000/- with interest of Rs. 3,00,00,000 (Three crores) and penalty shall be imposed separately depending upon the payments that may be made by the taxpayer. In total demand on rejection of exports is Rs. 8,40,00,000/-

PENALT EQUIVALENT TO TAX AMOUNT OF 5,40,00,000/- IS ALSO IMPOSED UNDER SECTON 74 OF THE DGST ACT READ WITH CGST ACT READ WITH SECTION 20 OF THE IGST ACT as the tax payer has failed to deposit the amount pursuant to show casue notice.

For input tax rejection, separate proceedings are being initiated against the tax payer as per law.

Similarly criminal proceedings under section 132 read with Section 69 are being initiated as this is a fit case to invoke those provisions against the tax payer?

The tax payer is issued demand note for the same in the prescribed form and he is directed to pay the same within 30 days from the date of this order which is being put on portal today itself.

Digitally signed by
Assistant Commissioner, Zone 8

BOARD RESOLUTION Annex A19

**CERTIFIED TRUE COPY OF THE RESOLUTION PASSED IN THE
MEETING OF BOARD OF DIRECTORS OF M/S STAR EXPORTER
PRIVATE LIMITED HELD AT ITS REGISTERED OFFICE ON
15/02/25 AT 12 p.m.**

“RESOLVED THAT the Board hereby do the Company do prefer an appeal before the Hon’ble GST Appellate Tribunal, Delhi bench, GST Bhavan New Delhi under Section 112 read with rule 110 of the Central Goods and Services Tax Act, 2017, against the order passed by First Appellate authority ,Joint commissioner (appeals) ,zone 8 New Delhi on 15/02/25 and all necessary applications, documents, and representations be filed to protect the interest of the Company.”

“FURTHER RESOLVED THAT Mr. Sushil Malhotra Director be and is hereby authorized to sign and file the said appeal, affidavit, Vakalatnama, and all necessary documents, and to represent the Company before the appropriate authorities, including appearing personally and through counsel Ms Rajmani Jindal.”

“RESOLVED FURTHER THAT a certified copy of this resolution be provided to the relevant authorities as may be required.”

For M/s Star Exporter Private Limited

Certified true copy

Signature & seal

Name: Sushil Malhotra

Designation: Director

DIN NO. xxxxxxxxxx

Place: New Delhi

Date: 15/02/25

GSTAT FORM -04 Annexure A 20

(see Rule 72)

Memorandum of Appearance

To

The Registrar,

The Goods and Services Tax Appellate Tribunal

In the matter of star Exporter Private Ltd.-----Appellant

Vs.

Commissioner of Goods and Services Tax -- Respondent

Appeal no. 007/01 of 2025

Sir,

Please take notice that I, Rajmani Jindal, Advocate duly authorized to enter appearance and do hereby enter appearance, on behalf of Appellant.

Star Exporter Private Ltd. in the appeal no.

A copy of the authorization /vakalatnama issued by the Appellant authorizing me to enter appearance and to act for every purpose connected with the proceedings for the Star Exporter private ltd. in enclosed duly signed by me for identification.

Yours sincerely,

Dated 20th March 2025

Rajmani Jindal

5/66, First Floor, Padam Singh Road,

Karol Bagh, New Delhi-11

Enrolment no. D/685/94

Encl :- Vakalatnama

VAKALATNAMA

DETAILS OF RELIED UPON JUDGEMENTS

ANNEX A 21

| S.NO | NAME OF THE CASE |
|-------------|---|
| 1 | M/s MILK FOOD LTD. VS. COMMISSINER VAT AND OTHERS (2003) 59 VST 1 (DELHI). |
| 2 | QUEST MERCHANDISING PRIVATE LIMITED VS. GOVT. OF NCT OF DELHI AND ORS Delhi high court 26 th Oct 2017. |
| 3 | GHERU LAL BAL CHAND VS. STATE OF HARYANA, Punjab & Haryana High Court, 23 Sep 2011. |
| 4 | SRI VINAYAKA AGENCIES VS THE ASSISTANT COMMISSINER, Madras High Court, 29 Jan 2013. |
| 5 | ARISE INDIA LIMITED VS. COMMISSINER OF TAX Delhi High Court |
| 6 | MAHALAKSHMI COTTON GINNING VS. STATE OF MAHARASHTRA, Bombay High Court 11 May, 2012 |
| 7 | VIKRAMADIYA SINGH VS STATE OF BIHAR, Patna High Court cwj case no. 1012/2017— PATNA MUNSHI VS NARSI RAM -SUPREME COURT ,14 TH Jan 1983 |
| 8 | DHRAJLAL GIRDHARILAL VS CIT (1954) 26 ITR 736 |
| 9 | COMMISSINER OF CUSTOMS (IMPORTS) VS DILIP KUMAR (2018) 95 taxman .com 327/69 GST 239 (SC) |
| 10 | DHAKESHWARI COTTON MILLS VS CIT (1954) 26 ITR 775 (SC) |
| 11 | CIT VS J.J. ENTERPRISES (2002) Taxman 124(SC) |
| 12 | STATE OF ORRISA VS MAHARAJA B.P. SINGH DEO (1970) 76 ITR 690(SC) |
| 13 | BRIJ BHUSHAN LAL PARDUMAN KUMAR VS CIT (1978) 115 ITR 524 (SC) |
| 14 | STATE OF KERALA VS. C. VELUKUTTY (1966) 60 ITR 239 (SC) |

CAN AUDITOR UNDER SECTION 65 OF GST ACT 2017 BE A JUDGE IN ITS OWN CAUSE

The principle "no one can be a judge in their own cause" is a fundamental aspect of natural justice. It's a cornerstone of fair and impartial legal proceedings, ensuring that individuals or entities aren't both involved in a matter and making decisions about it. This principle is widely recognized in legal systems globally, including the Indian judicial framework

As per principles of natural justice, the SCN issuing and the Adjudicating Authority should not be the same officer but Statutorily there is no restriction. Technically speaking, the law does not place any such restrictions.

"The principles of natural justice have come to be recognized as being part of the guarantee contained in Article 14 of the Constitution of India Supreme Court in the case of ***UNION OF INDIA VS TULSIRAM PATEL AND OTHERS (1985) 3 SCC 398***

"It is well established principle that natural justice is dynamic in nature and applied according to different situations and requirements. The principles under it are not rigid in character and neither is there any legal straight jacket against its application. They are not unchallengeable but flexible in nature and can be changed, excluded, moulded & modified by the statutes, rules constitution and also by the tribunal under which the case is held."

A sense of confidence in the Courts is essential to maintain the fabric of ordered liberty for a free people and it is for the subordinate judiciary by its action and the High Court by its appropriate control to ensure it.

J. Mohapatra and Co. and anothers v. State of Orissa and Anr., (1984) 4 SCC 103, it was observed thus :-

".....**Nemo judex in causa sua**, that is, no man shall be a Judge in his own cause, is a principle firmly established in law. Justice should not only be done but should manifestly be seen to be done. It is on this principle

that the proceedings in Courts of law are open to the public except in those cases where for special reason the law requires or authorizes a hearing in camera. Justice can never be seen to be done if a man acts as a Judge in his own cause or is himself interested in its outcome. The principle applies not only to judicial proceedings but also to quasi-judicial and administrative proceedings.....,"

Mukand Poly Products v. BPCL, 2024 SCC OnLine Bom 2347, decided on 22-07-2024]

‘No one can be a judge in their own cause’; Bombay HC reiterates principle of natural justice in petition against BPCL.

The Court noted that the appellate authority formed under BPCL’s Policy remedy would have comprised of their officers, and the same could not be permitted as BPCL could not be a judge in their own cause.

In [Ashok Kumar Yadav and Ors. v. State of Haryana and Ors.](#), (1985) 4 SCC 417, a 5 Judges Bench of the Apex Court held as follows :-

".....it is one of the fundamental principles of our jurisprudence that no man can be a Judge in his own cause and that if there is a reasonable likelihood of bias it is "in accordance with natural justice and common sense that the justice likely to be so biased should be incapacitated from sitting". The question is not whether the Judge is actually biased or in fact decides partially, but whether there is a real likelihood of bias. What is objectionable in such a case is not that the decision is actually tainted with bias but that the circumstances are such as to create a reasonable apprehension in the mind of others that there is a likelihood of bias affecting the decision. The basic principle underlying this Rule is that justice must not only be done but must also appear to be done and this Rule has received wide recognition in several decisions of this Court. It is also important to note that this Rule is not confined to cases where judicial power *stricto sensu* is exercised.....This Court emphasized that it was not necessary to establish bias but it was sufficient to invalidate the selection process if it could be shown that there was reasonable likelihood of bias. The likelihood of bias may arise on account

of proprietary interest or on account of personal reasons, such as, hostility to one party or personal friendship or family relationship with the other. Where reasonable likelihood of bias is alleged on the ground of relationship, the question would always be as to how close is the degree of relationship or in other words, is the nearness of relationship so great as to give rise to reasonable apprehension of bias on the part of the authority making the selection.

Supreme Court of India has consistently upheld this principle in various judgments, reinforcing that no one can be both a party and a judge in their own cause. *Datta Majur Kamdar Sahakari Mandli Limited VS Deputy Conservator of Forests - GUJRATERA INFRA ENGINEERING LTD. VS ARAVALI POWER COMPANY PVT. LTD. - Delhi.*

yunus Khan v. State of Uttar Pradesh and ors.

In this case, it was held that the principle of *Nemo iudex in causa sua* shall be upheld and if there is a case where a person who is accused, himself is the judge or has fiduciary relations with the adjudicator or in any manner whatsoever, is likely to cause bias on the adjudication process, then the judgment or order so passed, shall not be valid and binding in nature.

Sri K. Vijaya Bhaskar Reddy vs Government of Andhra Pradesh and ors

In this case, as well, it was observed that the principle of equity and justice is greatly dependent on the rule against bias. The judgment read as: 'A Judge is disqualified from determining any case in which he may be, or may fairly be suspected to be, biased.'

Departmental Bias

The problem of departmental bias is something which is inherent in the administrative process, and if it is not effectively checked, it may negate the very concept of fairness in the administrative proceeding.

In **Gullapalli Nageswara Rao v. APSRTC** the order of the government

nationalizing road transport was challenged in this case. One of the grounds for challenge was that the Secretary of the Transport Department who gave the hearing was biased, being the person who initiated the scheme and also being the head of the department whose responsibility it was to execute it. The court quashed the order on the ground that, under the circumstances, the Secretary was biased, and hence no fair hearing could be expected.

