

IN THE GOODS AND SERVICE TAX TRIBUNAL, NEW DELHI BENCH, NEW DELHI

APPEAL NO..... OF 2025

IN THE MATTER OF :

K.M.TRADING CO. PRIVATE LIMITED

Daryaganj New Delhi

GSTIN No.... 111111111

APPELLANT

VERSUS

COMMISSIONER, DELHI DGST

I.P.MARG, NEW DELHI

RESPONDENT

**APPEAL UNDER SECTION 112 OF THE DGST ACT AGAINST THE
IMPUGNED ORDER OF JOINT COMMISSIONER DATED 25-02-2025
DISMISSING THE APPEAL AND CONFIRMING THE ORDER OF
THE PROPER OFFICER.**

HON'BLE PRESIDENT OF THE GST TRIBUNAL AND HIS COMPANION
MEMBERS, RESPECTFULLY SHOWETH:

1. The appellant is a private limited company (Bona fide Person) engaged in the business of trading of paints for the last so many years and has filed all the returns in time and paid the tax as per provisions of the law.
2. The appeal has been filed within limitation period. The impugned order was received on dated 25-02-2025 and the appeal is being filed on dated 1st April, 2025.

3. The appeal is being filed by the Director of the company Sh.XYZ, who is duly authorised as per Board Resolution of the Company that can be produced if required.

4. The demand raised in the order is as under :

Tax Demand 10,00,44,720-

Interest Demand 6,20,00,000-

There is no admitted tax liability. All the above demands are disputed by the registered person. The company has deposited Rs. 1,00,04,472- being 10 % of the Disputed Tax Demand as pre-deposit required.

5. The show cause notice, proceedings before the proper officer and the impugned orders are annexed as annexure a, b and c respectively as mentioned in the index.

6. The prescribed fee has been deposited as per law.

FACTUAL MATRIX OF THE CASE

1. A show cause notice (DRC- 01) dated 10-06-2024 was received from the proper officer in pursuance of the GST Audit conducted u/s 65 for the year 2022-23. The adjudication order passed by the proper officer on the dated 16-08-2024 u/s 73 of the CGST ACT was received. The registered person filed the appeal u/s 107 to the First Appellate Authority on the dated 25-09-2024. The First Appellate Authority has passed ex-parte order and dismissed the appeal on the ground of non attendance by the registered person and confirmed the order of the Proper Officer. In the order of the First Appellate Authority, at three places the dates (year) are written as 2024 instead of 2025. It seems that the orders are passed in a casual manner.

2. That all the notices and the Order of the First Appellate Authority were uploaded on the portal in **wrong tab** – Additional Notices and Orders.
3. The department alleged that the company has given discounts to the customers on B to C supply basis worth Rs. 23 Crores and have issued GST credit notes and passed on the GST credit to customers. The registered person replied that the discounts are given to the customers are within the legal parameters and as per the industry norms. The customers do not take ITC hence they need not reverse. The credit notes given to them are not linked with invoices. This is only a procedural lapse. The account of the customers are confirmed by them.
4. The department alleged that the company has given compensation worth Rs. 2.5 Crore to a geyser manufacture for defective paint supplies and has claimed GST reduction. The above geyser manufacturer is a related person within the meaning of section 15.
5. The department alleged that the company has also separately charged in the bills taxes (other than gst) worth Rs. 54 lakhs but these have not been included in the value of invoice. The registered person replied that it is a case of pure agency.
6. The department alleged that regarding the credit notes received from the companies (Suppliers) worth 32 Crores, copies of credit notes clearly show that the company had reduced their GST liability but the company (Recipient) in turn has not reversed the ITC. The registered person replied that it was for the supplier to ensure reversal of ITC by the recipient before reducing their output tax liability, as per section 34 of the cgst act. The default lies with the supplier and not with the recipient. The illegal gst reduction by the supplier from their output tax liability should be recovered from them.

FEELING AGGRIEVED THE APPELLANT IS APPROACHING THIS HON'BLE TRIBUNAL TO SEEK FAIR PLAY AND JUSTICE.

GROUND OF APPEAL

1. The orders of the lower authorities are simply made on the presumptions and conjectures with no substantial proof. Opportunity of being heard was not provided. This is a gross violation of principal of natural justice.

2. The appellant has filed the appeal u/s 107 to the First Appellate Authority. They alleged that the appellant was called on four dates but there has been no response.

The appellant says and submit that orders and notices were not properly served. All the notices and orders of the first appellate authority were uploaded on the portal in the **wrong tab** – Additional Notices and Orders. This is incorrect uploading of notices. It should have been uploaded on the **correct tab** – Notices and Orders. Therefore, it is not a proper service of notice as per the law. The company was unaware of the notices and orders. Reliance is placed on following judgement.

Hindustan Pipes Sales v. State of U.P. and Another (WRIT TAX No. 651 of 2025) **Hon`ble Allahabad High Court.**

The tax authorities uploaded the notices under the "Additional Notices and Orders" tab instead of the "Due Notices and Orders" tab on the GST portal. This misplacement led to the taxpayer being unaware of the notices.

Court's Decision: Recognizing the procedural lapse, the Allahabad High Court quashed the demand order dated April 16, 2024. The Court directed the tax authorities to issue a fresh notice, ensuring it is uploaded correctly under the appropriate tab on the GST portal.

Hence the allegation of the department is not valid and order is liable to be set aside.

3. The department alleged that the company has given discounts to the customers on B to C supply basis worth Rs. 23 Crore and have issued GST credit notes and passed on the GST credit to customers.

The appellant say and submit that the consumers are unregistered persons. The discounts given to them are within the legal parameters and as per the industry norms. They are not registered persons. They have not claimed any ITC as per section 16 and they are not required to reverse the ITC in terms of section 15(3)(ii) of the cgst act. Section 16 talks about the Registered Person as defined in section 2(94). These provisions are not applicable to B to C supply. The registered person has shown these supply in the gst returns as B to C.

All the financial receipts and payments from these customers are from the banking channels only. Their statement of accounts are confirmed by

them. For your ready reference, we are filing herewith confirmed statement of account of one customer.

Hence the allegation of the department is not valid and the order is liable to be set aside.

4. The department alleged that the company has given compensation worth Rs. 2.5 Crore to a geyser manufacturer for defective paint supplies and has claimed GST reduction. The geyser manufacturer is a related person within the meaning of section 15.

The appellant say and submit that the registered person has raised a credit note for compensation to the geyser manufacturer for Rs. 2.5 Crore and charged GST on it. The compensation is the income of the geyser manufacturer. The amount of gst (ITC) has been reversed by the geyser manufacturer and corresponding output tax liability has been reduced by the registered person as per section 34 of cgst act. There is no loss to the revenue. The geyser manufacturer has issued claim document for the geysers destroyed due to defective paint supply and it is mutually accepted by us in terms of an agreement. We are filing herewith the above said claim document and agreement. That section 15 of the cgst act talks about the Discounts, whereas our case is for Compensation. The value declared in the credit note shall be deemed to be the open market value of the goods or services as per the **second proviso of Rule 28(1)**.

The Rule 28(1) reads as under:

Rule 28. Value of supply of goods or services or both between distinct or related persons, other than through an agent. -

¹[(1)] The value of the supply of goods or services or both between distinct persons as specified in sub-section (4) and (5) of [section 25](#) or where the supplier and recipient are related, other than where the supply is made through an agent, shall-

(a) be the open market value of such supply;

(b) if the open market value is not available, be the value of supply of goods or services of like kind and quality;

(c) if the value is not determinable under clause (a) or (b), be the value as determined by the application of [rule 30](#) or [rule 31](#), in that order:

Provided that where the goods are intended for further supply as such by the recipient, the value shall, at the option of the supplier, be an amount equivalent to ninety per cent of the price charged for the supply of goods of like kind and quality by the recipient to his customer not being a related person:

Provided further that where the recipient is eligible for full input tax credit, the value declared in the invoice shall be deemed to be the open market value of the goods or services.

Hence the allegation of the department is not valid and the order is liable to be set aside.

5. The department alleged that the company has also separately charged in the bills taxes (other than gst) worth Rs. 54 lakhs but these have not been included in the taxable value. It is a related party transaction.

The appellant says and submit that there are certain taxes (other than gst) to be paid by the company on behalf of the recipient. These taxes have been charged in the invoice on actual payment basis. The company has paid the taxes and to be recovered from the recipient on back to back basis and there is no mark up. It is a case of pure agent. We are filing herewith the document received from the recipient.

Hence the allegation of the department is not valid and the order is liable to be set aside.

6. The department alleged that regarding the credit notes received from the companies (Suppliers) worth 32 Crores, copies of credit notes clearly show that the companies had reduced their GST liability but the company (Recipient) in turn has not reversed the ITC.

The appellant say and submit that it was for the supplier to ensure reversal of ITC by the recipient before reducing their output tax liability. The illegal gst reduction by the supplier from their output tax liability should be recovered from them.

This point is related with section 34 as discussed in length in point no. 3 above. **There was an amendment in section 34 of the cgst act by the finance act 2025**, regarding mandatory reversal of ITC by the recipient.

This is a prospective amendment. Our case is for FY 2022-23. The new amendment is not applicable in our case. Hence the department have no jurisdiction over this matter.

Hence the allegation of the department is not valid and the order is liable to be set aside.

PRAYER

In view of the foregoing, the appellant respectfully prays before your honor that the appeal may please be allowed. And also pray that the order of the First Appellate Authority be quashed or any other order be passed in favor of appellant by this Hon`ble Tribunal in the interest of natural justice. We have submitted all the factual documents before this Hon`ble Tribunal. We pray before your honor that our case may be decided here, if possible.

The appellant respectfully prays as above.

SD/-

APPELLANT

Thru CA. C.K.GUPTA

VERIFICATION:

Verified on this 01-04-2025, that the contents of the above appeal petition are true to the best of my knowledge and belief and nothing material has been concealed therefrom.

SD/-

APPELLANT

BRIEF OF THE CASE:

K.M.TRADING CO. PRIVATE LIMITED
VERSUS
COMMISSIONER, DELHI DGST

APPELLANT
RESPONDENT

The appellant is a private limited company (Bona fide Person) engaged in the business of trading of paints. The appeal has been filed within limitation period.

Total demand raised is Tax 10,00,44,720+Interest 6,20,00,000. There is no admitted tax liability. All the above demands are disputed by the registered person. The company has deposited Rs. 1,00,04,472- being 10 % of the Disputed Tax Demand as pre-deposit.

1. We are filing herewith additional evidence in this case. The First Appellate Authority has passed **ex-parte** order on the ground of non attendance and confirmed the order of the proper officer. Opportunity of being heard was not provided to the registered person. We have already moved an application for additional evidence.
2. In the order of the First Appellate Authority, at three places the dates (year) are written as 2024 instead of 2025 (Refer page no. 18). It seems that the orders are passed in a casual manner.
3. That all the notices and the Order of the First Appellate Authority were uploaded on the portal in **wrong tab** – Additional Notices and Orders. This misplacement led to the taxpayer being unaware of the notices. In the case of **Hindustan Pipes Sales v. State of U.P.**(Refer page no. 19) the **Hon`ble Allahabad High Court** quashed the demand order. The Court directed the tax authorities to issue a fresh notice, ensuring it is uploaded correctly under the appropriate tab on the GST portal. We are filing herewith Screen Shot of the portal Additional Notices & Orders for your ready reference.
4. The department alleged that the company has given discounts to the customers on B to C supply basis worth Rs. 23 Crore and have issued GST credit notes and passed on the GST credit to customers.

The appellant say and submit that the consumers are unregistered persons. The discounts given to them are within the legal parameters and as per the industry norms. They have not claimed any ITC as per section 16 and they are not required to reverse the ITC in terms of section 15(3)(ii) of the cgst act. Section 16, regarding ITC, talks about the Registered Person as defined in section 2(94). These provisions are not

applicable to B to C supply. The registered person has shown these supply in the gst returns filed u/s 39 as B to C.

All the financial receipts and payments from these customers are from the banking channels only. Their statement of accounts are confirmed by them. For your ready reference, we are filing herewith confirmed statement of account of one customer on sample basis.

Hence the allegation of the department is not valid and the order is liable to be set aside.

5. The department alleged that the company has given compensation worth Rs. 2.5 Crore to a geyser manufacture for defective paint supplies and has claimed GST reduction. The department also alleged in the scn (Refer page no. 13) that geyser manufacturer is a related person within the meaning of section 15 be not disallowed as grossly violating the pre condition of the law.

The appellant says and submit that the registered person has raised a credit note for compensation to the geyser manufacturer for Rs. 2.5 Crore and charged GST on it. The compensation is the income of the geyser manufacturer. The amount of gst (ITC) has been reversed by the geyser manufacturer and corresponding output tax liability has been reduced by the registered person. Section 15 of the cgst act is applicable in the case of discounts and not on the compensation. Discount is always pre supply and compensation is always post supply. We are filing herewith Agreement with Geyser manufacturer, Claim agreement and claim document for your ready reference.

Hence the allegation of the department is not valid and the order is liable to be set aside.

6. The department alleged that the company has also separately charged in the bills taxes (other than gst) worth Rs. 54 lakhs but these have not been included in the taxable value. It is a related party transaction. The appellant says and submit that there are certain taxes (other than gst) to be paid by the company on behalf of the recipient. These taxes have been charged in the invoice on actual payment basis. The company has paid the taxes and to be recovered from the recipient on back to back basis and there is no mark up. It is a case of pure agent. We are filing herewith document for correspondence with the recipient.

Hence the allegation of the department is not valid and the order is liable to be set aside.

7. The department alleged that regarding the credit notes received from the companies (Suppliers) worth 32 Crores, copies of credit notes clearly show that the companies had reduced their GST liability but the company (Recipient) in turn has not reversed the ITC.

The appellant say and submit that it was for the supplier to ensure reversal of ITC by the recipient before reducing their output tax liability. Credit notes are dealt in section 34. Proviso to Section 34(2) (Refer page no. 7) clearly says that no reduction in output tax liability of the supplier shall be permitted ITC if availed has not been reversed by the recipient. For the fault of the supplier, the recipient can not be penalized. The action should be taken by the department against the supplier only. Our case is for FY 2022-23. The new prospective amendment in section 34 of the cgst act by the finance act 2025 is not applicable in our case. Hence allegation of the department is without jurisdiction.

Hence the allegation of the department is not valid and the order is liable to be set aside.

PRAYER

In view of the foregoing, the appellant respectfully prays before your honor that the appeal may please be allowed. And also pray that the order of the First Appellate Authority be quashed or any other order be passed in favor of the appellant in the interest of natural justice. We have submitted all the factual documents before this Hon`ble Tribunal. We pray before your honor that our case may be remanded back.

For and on behalf of the Appellant

Authorised Signatory

The Hon`ble Appellate Tribunal
New Delhi

Dated: 01-04-2025

Sub: Application seeking leave to produce Additional Evidence

Ref: M/s. K.M.Trading Co. Pvt. Ltd. for 2022-23.

With due respect it is stated before your honor that we are filing herewith additional evidence in the above mentioned case in terms of Rule 112 of the cgst rules. The first appellate authority has passed **ex-parte order** (Refer page no. 18 of the paper book). Opportunity of being heard was not provided to the registered person. There is gross violation of section 75(4) of the cgst act, which mandates providing a hearing opportunity before passing an adverse order. This is contravention of principal of natural justice.

As per Rule 112 of cgst rules, appellant was prevented by **sufficient cause** from producing the evidence before first appellate authority.

Relying on the judgment of *Hon`ble Supreme Court in Madanlal V. Shyamlal (2002) 1 SCC 535*, it was submitted that the expression 'sufficient cause' should be given a **liberal interpretation** to ensure the substantial justice is done.

We are filing herewith the following documents before this Hon`ble court as the additional evidence:

Screenshot of Additional Notices and Orders, Agreement with the Geyser Manufacturer before supply, Claim Agreement and Claim document after supply. Correspondence letter with recipient.

PRAYER

It is therefore, prayed to the Hon`Court to kindly allow the appellant to produce the additional evidence i.e. Screenshot of Additional Notices and Orders, Agreement with the Geyser Manufacturer before supply, Claim Agreement and Claim document after supply and correspondence with recipient in the interest of justice to the registered person.

For and on behalf of Appellant

Authorised signatory