Tata Play Ltd vs Sales Tax Officer Class Ii/ Avato on 29 July, 2025

Author: Prathiba M. Singh

Bench: Prathiba M. Singh

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* IN THE HIGH COURT OF DELHI AT NEW DELHI
Reserved on: 01st May
Date of decision: 29th
+ W.P.(C) 4781/2025 & CM APPL. 22012/2025
TATA PLAY LTD ..... Peti
Through: Mr. Gautam Narayan, Senior
Advocate with Mr. Anirudh Bak
Mr. Victor Das, Mr. Vipul Sin
Ms. Anwesh Padhi, Advocates.
versus
SALES TAX OFFICER CLASS II/ AVATO ..... Resp
Through: Ms. Vaishali Gupta, Panel Coun
(Civil) GNCTD.

CORAM:
JUSTICE PRATHIBA M. SINGH
JUSTICE RAJNEESH KUMAR GUPTA

JUDGMENT

Prathiba M. Singh, J.

1. This hearing has been done through hybrid mode. I. Factual Background

2. The present petition has been filed by the Petitioner- Tata Play Ltd. under Article 226 of the Constitution of India, challenging the Show Cause Notice dated 30th November, 2024 (hereinafter, 'the impugned SCN') issued by the Respondent- Sales Tax Officer Class II/ AVATO, Department of Trade and Taxes Office, New Delhi (hereinafter, 'the Respondent-Department'), pertaining to the tax period April 2020 to March 2021.

3. Further, the petition also challenges the consequent demand order dated 28th February, 2025 (hereinafter, 'the impugned order') arising from the impugned SCN whereby the Respondent has demanded a payment of Rs.

5,63,52,147/- as tax along with Rs. 4,22,64,110/- towards interest and Rs. 56,35,214/- towards penalty in respect of the tax period April 2020 - March 2021.

4. The present petition arises out of the following two major aspects that require the consideration

of this Court:

a. Whether the impugned SCN was issued to the Petitioner within the period of limitation, as prescribed under Section 73 of the Central Goods and Service Tax Act, 2017 (hereinafter, 'the CGST Act')?

b. Whether adequate opportunity has been afforded to the Petitioner for filing a reply with respect to the impugned SCN and for participating in the personal hearings thereafter?

I(A). Brief Facts

5. The Petitioner is a company registered under the Companies Act, 1956 and is engaged in the business of providing Direct-To-Home (DTH) broadcasting services. The Petitioner company is registered under the Central Goods and Service Tax Act, 2017 (hereinafter, 'the CGST Act') vide GSTIN 07AAGCS9294M1ZH.

6. Vide the impugned SCN and the consequent impugned order issued by the Respondent-Department, a demand was raised upon the Petitioner on the ground that the Petitioner had erroneously availed excess Input Tax Credit (hereinafter, 'ITC'). The validity of the said demand raised by the Respondent-Department stands challenged by the Petitioner before this Court.

7. The impugned SCN issued by the Respondent-Department, along with stipulating the grounds for raising the demand therein, also contains the details of personal hearing granted to the noticee, as also the date of filing of reply to the impugned SCN. The same is reproduced herein below:

Details of personal hearing and due date to file reply:

Sr. Description Particulars No. Date by which reply has to be 1 30-12-2024 submitted 2 Date of personal hearing 17-01-2025 3 Time of personal hearing 1:15 pm Venue where personal hearing will WARD OFFICE, be held 13TH FLOOR

8. After the issuance of the impugned SCN on 30th November, 2024, the Petitioner, on 27th December, 2024, sent a reply to the Respondent- Department. In the said reply, the Petitioner sought an extension of 15 days to allow them sufficient time to compile and submit the required documents to support their contentions against the demands raised in the impugned SCN.

9. Thereafter, on 20th January, 2025, the Respondent-Department uploaded an adjournment notice on the GST Portal of the Petitioner and extended the time for filing reply to the impugned SCN along with granting another opportunity for personal hearing on 27th January, 2025.

10. On 22nd January, 2025, the Petitioner proceeded to file a detailed reply to the impugned SCN, along with all the supporting documents. This was followed by a supplementary reply dated 21st

February, 2025 wherein further clarifications were provided against the demands raised in the impugned SCN.

11. However, the Petitioner failed to avail the opportunity for personal hearing on 27th January, 2025 which was granted by the Respondent-

Department on 20th January, 2025.

12. Subsequently, the impugned order dated 28th February, 2025, was issued, raising a demand upon the Petitioner for Rs. 5,63,52,147/- as tax along with Rs. 4,22,64,110/- towards interest and Rs. 56,35,214/- towards penalty in respect of the tax period April 2020 - March 2021. II. Submissions on behalf of the Petitioners

13. Firstly, it is the case of Mr. Gautam Narayan, ld. Senior counsel on behalf of the Petitioner that the demand in the impugned SCN and the consequent impugned order has been raised by the Respondent-Department without jurisdiction and beyond the prescribed limitation period. Hence, the same is liable to be set aside.

i. To support this contention, the Petitioner has relied upon Notification No. 40/2021 dated 29th December, 2021, read with Rule 80(1) of CGST Rules, 2017, wherein the last date for furnishing of returns for FY 2020-21 was extended till 28th February, 2022. ii. Therefore, the stand of the Petitioner is that the period for initiation of any proceedings under Section 73(2) read with Section 73(10) of the CGST Act with respect to FY 2020-21 came to an end on 28th November, 2024.

iii. Emphasis has been laid by the Petitioner on Section 73(10) of the CGST Act, while submitting that a wrongly availed ITC can only be challenged within three years of such wrongful availment, provided that a show cause notice is issued three months prior to the expiry of the said three years.

iv. It is further urged on behalf of the Petitioner that in the present case, the three year period for passing the impugned order expired on 28th February, 2025 and the impugned SCN was issued on 30th November, 2024, when it should have been issued prior to 28 th November, 2024. Thus, it is the case of the Petitioner that the order for reversion of the ITC by the Respondent-Department was beyond the statutory limitation and thus, without jurisdiction. v. To support this stand, the Petitioner has relied upon a judgment of the High Court of Andhra Pradesh dated 05th February, 2025 in W.P. No.1463 of 2025 titled M/s Cotton Corporation of India v Assistant Commissioner (ST) (Audit) (FAC), 2025 SCC Online AP 652 wherein, while interpreting pari materia provisions of the APGST Act, 2017, the High Court dealt with facts similar to the instant case and held the proceedings to be time barred.

vi. Further, reliance has also been placed upon by the Petitioner on the decision of the Supreme Court in State of Himachal Pradesh & Anr. vs. Himachal Techno Engineers & Anr., (2010) 12 SCC 210, wherein the time limit of three months set out in Section 34 of the Arbitration and Conciliation Act, 1996 has been considered and interpreted.

14. Secondly, it is submitted on behalf of the Petitioner that an opportunity for personal hearing ought to have been afforded to the Petitioner in terms of Section 75(4) of the CGST Act; whereas, the impugned order has been passed in violation of the principles of natural justice. In this regard, it is further submitted that the right to be granted an opportunity of personal hearing is made subject to grant of not more than three adjournments under the proviso to Section 75(5) of the CGST Act.

i. It is the stand of the Petitioner that they did not seek three adjournments of personal hearing and therefore, the right of the Petitioner to a personal hearing under Section 75(4) of the CGST Act could not have been curtailed. Thu, the Respondent was, in fact, under a statutory obligation to grant an opportunity for personal hearing to the Petitioner under Section 75(5) of the CGST Act.

ii. It is further submitted that on 22nd January, 2025, the Petitioner submitted a detailed reply to the impugned SCN and had also sought an opportunity for personal hearing. It is also emphasised by Mr. Narayan, ld. Senior Counsel for the Petitioner, that while uploading the said reply on the GST portal, although the Petitioner selected 'Yes' for the option of personal hearing, however, due to a glitch on the GST portal, it shows as 'No' on the printed form.

iii. While acceding to the fact that the Petitioner missed the personal hearing scheduled for 27th January, 2025, it is submitted that on 21 st February, 2025, the Petitioner sent an additional reply to the impugned SCN and once again, sought an opportunity for personal hearing. However, again, due to the glitch in the GST portal, despite selecting 'Yes' by default, the printed form shows as 'No' for the personal hearing option.

iv. Reliance has also been placed upon the order passed by this Court in M/s. Sree Ananta Exim vs. Union of India & Ors., W.P. (C) No. 10424 of 2014 wherein while dealing with an order passed under Section 73 of the CGST Act, the Court remanded the matter to the Adjudicatory Authority to afford the Petitioner therein an opportunity of personal hearing. In the said case, similar to the instant case, due to a glitch in the system, the tax payer was not permitted to select the option of personal hearing.

III. Per Contra: Submissions on behalf of Respondent-Department

15. It is submitted on behalf of the Respondent-Department that the impugned order issued under Section 73 of the CGST Act is an appealable order under Section 107 of the CGST Act. Hence, it is submitted that the Petitioner shall be directed to avail the statutory remedy and the present petition shall be disposed of accordingly.

16. It is further submitted on behalf of Respondent-Department that the due date of filing return for FY 2020-21 as per Rule 80 of the CGST Rules read with Notification No. 40/2021 - Central Tax dated 29th December, 2021 was 28th February, 2022. Thus, it is the case of the Respondent-Department that as per Section 73(10) of CGST Act, the necessary order in the present set of facts could have been passed till 28th February, 2025 and thus, last date of issuing impugned SCN is three months prior to 28th February, 2025 that is 30th November, 2024.

i. It is submitted by Ms. Vaishali Gupta, ld. Counsel for GNCTD that the time of 'three months' is to be interpreted as 'three calendar months' and thus 3 months prior to 28th February,2025 would come to 30th November, 2024.

ii. It is further clarified on behalf of the Respondent-Department that the date of 28th February, 2025, being the last date of the month, the month of February, 2025 is to be calculated as one month, month of January, 2025 is to be calculated as second month and month of December, 2024 is to be calculated as third month. Reliance is placed on judgment of the House of Lords in Dodds vs Walker (1981) 2 AII ER 609 (HL) wherein of the interpretation of a number of months is described to be calculated as calendar months.

iii. Thus, in the light of these submissions, it is the case of the Respondent-Department that the date three months prior to 28th February, 2025 would be 30th November, 2024 and hence, the impugned SCN as well as the impugned order are well within the limitation period.

17. With respect to the opportunities for personal hearing, it is submitted on behalf of the Respondent-Department that multiple opportunities were granted to the Petitioner for personal hearing, however, the Petitioner failed to avail the same.

i. It is the case of the Respondent-Department that the impugned SCN dated 30th November, 2024 provided for an opportunity of personal hearing on 17th January, 2025 to the Petitioner. However, on request of the Petitioner, the hearing scheduled on 17 th January,2025 was adjourned to 27th January, 2025.

ii. It is further stated that the Petitioner filed a reply dated 22 nd January, 2025 and requested for personal hearing however, failed to attend the hearing scheduled on 27th January, 2025. Thereafter, the Petitioner filed an additional reply dated 21st February, 2025 whereby no opportunity of personal hearing was sought by the Petitioner. iii. With respect to the argument pertaining to the glitch in the GST Portal raised by the Petitioner, it is submitted by the Respondent- Department that during their course of arguments before this Court on 24th April, 2025, the Petitioner pointed that there is a glitch on GST portal because of which the assessee is constrained to tick 'no' to the personal hearing in the form. However, a perusal of the contents of reply dated 21st February, 2025 would show that no opportunity of personal hearing was sought by the petitioner. Hence, it is the case of the Respondent-Department that the Respondent has given suitable opportunities for personal hearing to the Petitioner. IV. Analysis & Findings

18. Heard the parties. The Court has also perused the written submissions submitted on behalf of the parties.

IV(a) Whether the impugned SCN was issued to the Petitioner within the period of limitation, as prescribed under Section 73 of the CGST Act?

19. Under the Scheme of Section 73 of the CGST Act, whenever it appears to the 'proper officer' that any tax has not been paid or short paid or has been erroneously refunded or where ITC has been

wrongly availed or utilized, a notice can be served on the person chargeable with such tax, requiring to show cause as to why he should not pay the amount specified in the notice along with interest payable thereon.

20. The limitation for issuance of such a notice under Section 73 of the CGST Act has to be construed in the light of Section 73(2) and 73(10) of the CGST Act. The said two sub-sections are set out below:

> "Section 73(2) - The proper officer shall issue the notice under sub-section (1) at least three months prior to the time limit specified in sub-section (10) for issuance of order.
>
> ....
>
> Section 73(10) - The proper officer shall issue the order under sub-section (9) within three years from the due date for furnishing of annual return for the financial year to which the tax not paid or short paid or input tax credit wrongly availed or utilized relates to or within three years from the date of erroneous refund."

21. A perusal of the above stated provisions would show that an order has to be passed by the 'proper officer' within a period of three years from the due date for furnishing the annual returns for the said financial year. For issuance of a show cause notice, at least three months' period prior to the time limit under Section 73(10) of the CGST Act would be available. Thus, the show cause notice has to be issued at least three months prior to the outer limit prescribed for passing of an order under Section 73(10) of the CGST Act.

22. In the opinion of this Court, there is a difference in the language of the two sub-sections discussed herein above. Section 73(10) of the CGST Act prescribes an outer limit for passing of an adjudication order under the Act.

23. On the other hand, Section 73(2) of the CGST Act provides that at least three months prior to the outer limit of 3 years for passing an order under Section 73(10) of the CGST Act, a notice is to be served.

24. While the purpose behind Section 73(10) of the CGST Act is to fix the date by which an adjudication order has to be issued, the purpose of Section 73(2) of the CGST Act is to ensure that at least three months is available to the taxable person for filing a reply to the show cause notice issued to them and for being heard in a proper manner. Thus, the time period between issuance of the show cause notice and the outer limit for passing of the order should be at least three months.

25. The statutory intent behind providing this gap of 3 months can be interpreted to arise from a further reading of Section 73, CGST Act wherein, Section 73(3), CGST Act contemplates the service of a statement upon the noticee, giving all the details of the demand proposed to be raised. Further, under Section 73(5), CGST Act, the noticee has the option of paying the tax by doing a

self-assessment and if such amount is paid within 30 days of the issuance of the show cause notice under Section 73(1), CGST Act, no penalty would be payable by the noticee.

26. Additionally, the noticee is also entitled to give a representation in response to the show cause notice issued and thereafter, only once such representation is duly considered, an order under Section 73(10), CGST Act, shall be passed.

27. In the light of this background, the following decisions which have been cited by the ld. Counsels for both parties in the present case are considered by this Court:

> A. State of Himachal Pradesh and Anr. v. Himachal Techno Engineers and Anr. (2010) 12 SCC 210:
>
> i. In this case, the Supreme Court was dealing with a petition filed under Section 34 of the Arbitration and Conciliation Act, 1996. The question that arose for consideration in the case was as to what would be the limitation for filing such a petition. ii. The Supreme Court distinguished between the language used in Section 34(3) of the Arbitration and Conciliation Act, 1996 and the proviso to Section 34(3). While the main provision used the expression 'three months', the proviso used the expression '90 days'. The Supreme Court, while following Dodds v. Walker (1981) 2 AII ER 609 (HL), a decision of the House of Lords, held as under:
>
> "14. The High Court has held that "three months"

mentioned in Section 34(3) of the Act refers to a period of 90 days. This is erroneous. A "month" does not refer to a period of thirty days, but refers to the actual period of a calendar month. If the month is April, June, September or November, the period of the month will be thirty days. If the month is January, March, May, July, August, October or December, the period of the month will be thirty-one days. If the month is February, the period will be twenty-nine days or twenty-eight days depending upon whether it is a leap year or not.

15. Sub-section (3) of Section 34 of the Act and the proviso thereto significantly, do not express the periods of time mentioned therein in the same units. Sub-section (3) uses the words "three months" while prescribing the period of limitation and the proviso uses the words "thirty days" while referring to the outside limit of condonable delay. The legislature had the choice of describing the periods of time in the same units, that is, to describe the periods as "three months" and "one month"

> respectively or by describing the periods as "ninety days" and "thirty days" respectively. It did not do so. Therefore, the legislature did not intend that the period of three months used in sub-section (3) to be equated to 90 days, nor intended that the period of thirty days to be taken as one month.

16. Section 3(35) of the General Clauses Act, 1897 defines a "month" as meaning a month reckoned according to the British calendar.

17. In Dodds v. Walker the House of Lords held that in calculating the period of a month or a specified number of months that had elapsed after the occurrence of a specified event, such as the giving of a notice, the general rule is that the period ends on the corresponding date in the appropriate subsequent month irrespective of whether some months are longer than others. To the same effect is the decision of this Court in Bibi Salma Khatoon v. State of Bihar.

18. Therefore when the period prescribed is three months (as contrasted from 90 days) from a specified date, the said period would expire in the third month on the date corresponding to the date upon which the period starts. As a result, depending upon the months, it may mean 90 days or 91 days or 92 days or 89 days."

B. M/s Cotton Corporation of India v Assistant Commissioner (ST) (Audit) (FAC), 2025 SCC Online AP:

> i. The decision of the Supreme Court in Himachal Techno Engineers (Supra) was followed in this case where the Court held that a delay of two days in issuing a show cause notice under the GST Act would not be liable to be condoned. The Court held that the period under Section 73(2) of the GST Act is mandatory. The relevant paragraphs of the said judgment are extracted herein below:
>
> "10. The aforesaid Judgments clearly laid down the principle that, when a period, available for a certain action, is defined in terms of months, it would mean that the corresponding date of the corresponding month would be the cutoff date. In the present case, the cutoff date for issuing an order is 28.02.2025. The three months period which would elapse from this date would be 28.11.2024. Since the notice was issued on 30.11.2024, it would be beyond the time stipulated under Section 73(2) of the GST Act.
>
> 11. The next issue that remains before this Court is whether the delay of two days in issuing the said notice can be condoned or whether the issue is not relevant as the provision is only directory.
>
> 12. As pointed out by the learned counsel, the GST Act, has put in place certain protections for tax payers. One of the primary protections is that orders cannot be passed against the tax payers, beyond the periods stipulated in the Act. It is settled law that these periods of limitation are mandatory and not orders can be passed beyond the periods set out in the Act. In such a situation, it would be difficult to hold that the stipulation as to the period of initiation, of such proceedings, by issuance of a show cause notice, would only be directory and not mandatory.
>
> 13. Another way of looking at this issue is the purpose for which such limitation has been prescribed under the Act. Section 75 of the GST Act, stipulates that the tax payer is not only entitled to a notice before any assessment is carried out but also the right of personal hearing, irrespective of whether such personal hearing is requested.

> When there is a possibility of an adverse order being passed against tax payer, the facility of obtaining at least three adjournments for personal hearing etc. The said provisions, protecting the interest of the tax payer, would be rendered otiose if notice should permitted to be sent without a minimum waiting period. The said protections can then be bypassed by the authorities issuing show cause notice with a week's time or 10 days and calling upon tax payer to put forth his objections in that shortened time. That does not appear to be intent of the provisions of Section 75(2) or Section 73 (10) of the GST Act.
>
> 14. For all the aforesaid reasons, we would have to hold that the time permit set out under 73(2) of the Act is mandatory and any violation of that time period cannot be condoned, and would render the show cause notice otiose."

28. Considering all the submissions made by the concerned parties, this Court is of the opinion that it is not in dispute that the last date for filing of returns in terms of Rule 80(1)(A) of the CGST Rules was extended till 28th February, 2022. The said rule is set out below:

> "Rule 80(1)(A) -
>
> Notwithstanding anything contained in sub-rule (1), for the financial year 2020-2021, the said annual return shall be furnished on or before the twenty-eighth day of February, 2022"

29. Thus, in the facts of the present case, the period under Section 73(10), CGST Act, for issuance of the impugned order was to end on 28th February, 2025. Calculating backwards, the impugned SCN had to be issued at least three months prior to 28th February, 2025 i.e., there ought to be a clear three months period between the date of issuance of the impugned SCN and the outer limit for passing of the impugned order.

30. The impugned SCN in this case was issued on 30th November, 2024. It is the case of the Petitioner that it was delayed by two days as the stipulated three months period would have expired on 28th November, 2024.

31. The Respondent-Department's case on the contrary is that there was a gap of three clear calendar months between the issuance of the impugned SCN and passing of the impugned order i.e., December, 2024, January, 2025 and February, 2025 and therefore the issuance of the impugned SCN on 30th November, 2024 is not barred by limitation.

32. Curiously, the dates which were considered by the Andhra Pradesh High Court in M/s Cotton Corporation of India(supra) are totally identical to that in the present case. However, an analysis of the decision in Himachal Techno Engineers (Supra) would show that the expression 'three months' has to be reckoned and interpreted as three calendar months and not as 90 days.

33. While the month of December has 31 days, the month of January has 31 days and the month of February has 28 days. Thus, the total number of days come to 90 days. Even if the time period is calculated as 90 days, there is a clear gap of 90 days between the dates of 30 th November, 2024 to 28th February, 2025. Thus, viewed in either way, the impugned SCN would not be barred by limitation and on this issue, this Court, therefore, does not agree with the decision of the Andhra Pradesh High Court in M/s Cotton Corporation of India(supra).

34. The Supreme Court, while deciding Himachal Techno Engineers (supra) has referred to the definition of 'month', as stipulated in the General Clauses Act which reads as under:

> "month" shall mean a month reckoned according to the British calendar."

35. Thus, a period of three months would mean three British calendar months i.e., December, 2024, January, 2025 and February, 2025.

36. Hence, upon a careful consideration of all the facts and circumstances of this case, read with all the relevant case laws, as relied upon by the parties, this Court is of the opinion that the issuance of the impugned SCN dated 30 th November, 2024, is well within the stipulated time period of 3 three months before the passing of the impugned order dated 28th February, 2025. Thus, the impugned SCN and the impugned order, having been issued within the statutory limitations, are neither time barred nor issued without jurisdiction and are thus, not liable to be set aside on this ground.

IV(b) Whether adequate opportunity has been granted to the Petitioner for filing a reply to the impugned SCN and for participating in the personal hearing?

37. Coming to the second issue i.e., whether adequate opportunity has been afforded to the Petitioner for participating in the proceedings emanating from the impugned SCN, the records would show that the impugned SCN was issued on 30th November, 2024. Thereafter, a reply was to be filed by the Petitioner on or before 30th December, 2024 i.e., a full month was given to the Petitioner to file a reply.

38. The impugned SCN also communicated a date for personal hearing, which was fixed for 17th January, 2025. However, just three days before the expiry of the date to file a reply i.e., on 27th December, 2024, the Petitioner sought 15 days' time extension for filing the reply. The said letter issued by the Petitioner to the Respondent-Department, seeking extension of time to file reply reads as under:

> "Dear Sir, We, Tata Play Limited ('we' or 'us' or 'the company' or 'Noticee') are registered under Central Goods and Services Tax Act (CGST Act) and Delhi Goods and Services Tax Act (DGST Act), 2017 vide GSTIN 07AAGCS9294M1ZH are in receipt of the above referred SCN with reference ZD071124042245S dated 30 November 2024 issued under section 73 of CGST Act, 2017 for FY 2020-21.

> In this regard, while we have initiated the collation of necessary data and information for preparing the response, we would like to respectfully bring to your kind attention that the due date for submission of Annual Return (Form GSTR- 9) and reconciliation statement (Form GSTR-9C) is also 31st December 2024 and the team is currently occupied with finalisation of the same.
>
> Given the above, we humbly request your good office to grant an extension of 15 days from the due date of the notice to allow us sufficient time to compile and submit the required documents, ensuring complete compliance with all statutory obligations."

39. Thus, following the request made by the Petitioner on 27th December, 2024, the time for filing a reply was then extended till 27th January, 2025. The first reply was then submitted by the Petitioner on 22nd January, 2025. The same was titled as an "Interim reply against the Show Cause Notice dated 30th November, 2024".

40. Subsequently, an additional reply was also filed by the Petitioner on 21st February, 2025. The Petitioner, however, did not attend the personal hearing on 27th January, 2025 and in the petition, concedes that it was due to an "inadvertent oversight" that it could not attend the hearing. Subsequently, the impugned order came to be passed on 28th February, 2025.

41. The chronology of events in the present case, as discussed at length herein above, would show that adequate opportunity was given to the Petitioner for filing of the reply. Two dates for personal hearing were fixed i.e., 17th January, 2025 and 27th January, 2025. For the first hearing, an adjournment was sought by the Petitioner and for the second hearing, no adjournment was sought. In fact, the Petitioner admits that they missed the hearing due to an inadvertent oversight.

42. Section 75(5) of the CGST Act, which is relied upon by the Petitioner to argue that a minimum of three opportunities of hearing ought to have been granted, reads as under:

> "(5) The proper officer shall, if sufficient cause is shown by the person chargeable with tax, grant time to the said person and adjourn the hearing for reasons to be recorded in writing:
>
> Provided that no such adjournment shall be granted for more than three times to a person during the proceedings"

A perusal of the above would show that it is only upon sufficient cause being shown, that an adjournment of hearing can be granted by the proper officer. The proviso to the said provision states that a maximum of three adjournments can be granted in any circumstance.

43. However, this provision cannot be interpreted in a manner that there has to mandatorily be a minimum of three adjournments afforded to every person. For seeking an adjournment, such person has to show sufficient cause and at the bare minimum, has to at least make a request for adjournment.

44. In the present case, for the first hearing, an adjournment was sought and the same was granted. For the second hearing, no adjournment appears to have been sought. In fact, in the reply dated 22nd January, 2025, even if it is presumed that the Petitioner sought a hearing, the hearing was granted on 27 th January, 2025 but was not attended by the Petitioner.

45. A perusal of the reply dated 22nd January, 2025 reveals as under:

> "E. PRAYER
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> 29. The Noticee requests to be heard in person in the event their contentions are not acceptable, and continuation of the proceedings is sought. Without prejudice to any of the contentions set above, it is submitted that the Noticee reserves the right to know the basis/ issue and make additional submissions during the personal hearing and before the passage of any notice/ adverse order.
>
> 30. Furthermore, the Noticee craves leave to add to, alter, modify or rescind the submissions made here-in-above, either wholly or partly and to produce further documents and/or evidence before or at the time of such personal hearing.
>
> 31. The Noticee requests you to take the above on record and acknowledge the receipt of the same. The Noticee assures you their fullest co-operation in this connection."

46. After filing of the reply dated 22nd January, 2025, the personal hearing was yet to take place on 27th January, 2025 but since the Petitioner did not attend the hearing, nor sought an adjournment, the proper officer proceeded to pass the impugned order on 28th February, 2025.

47. In the additional reply dated 21st February, 2025, which was submitted just a week before the expiry of the last date to pass the order, the Petitioner, being conscious of the fact that it had missed the opportunity for personal hearing on 27th January, 2025, stated as under:

> "23. Should you require any other clarifications/information, we would be glad to provide you the same. We assure you of our full cooperation and are hopeful that you will accede to this request and oblige. In case of any concerns, we request that personal hearing be granted in this matter."

48. A conjoint reading of all the relevant notices along with the replies filed by the Petitioner would show that adequate opportunity has been granted by the Respondent-Department for filing of reply and for personal hearing. The interpretation given to Section 75(5), CGST Act, that a minimum of three adjournments ought to be granted is not tenable. In terms of the said provision, it is a maximum of three adjournments that can be granted upon showing sufficient cause and upon a request being made.

49. Under these circumstances, this Court is of the view that entertaining the present writ petition is not warranted.

50. As held by the Supreme Court in Civil Appeal No. 5121 of 2021 titled The Assistant Commissioner of State Tax and Others vs. M/s Commercial Steel Limited, a writ petition can be entertained under exceptional circumstances only which are set out in the said judgment as under:

> "11. The respondent had a statutory remedy under section
>
> 107. Instead of availing of the remedy, the respondent instituted a petition under Article 226. The existence of an alternate remedy is not an absolute bar to the maintainability of a writ petition under Article 226 of the Constitution. But a writ petition can be entertained in exceptional circumstances where there is:
>
> (i) a breach of fundamental rights;
>
> (ii) a violation of the principles of natural justice;
>
> (iii) an excess of jurisdiction; or
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> (iv) a challenge to the vires of the statute or delegated legislation.

12. In the present case, none of the above exceptions was established. There was, in fact, no violation of the principles of natural justice since a notice was served on the person in charge of the conveyance. In this backdrop, it was not appropriate for the High Court to entertain a writ petition. The assessment of facts would have to be carried out by the appellate authority. As a matter of fact, the High Court has while doing this exercise proceeded on the basis of surmises. However, since we are inclined to relegate the respondent to the pursuit of the alternate statutory remedy under Section 107, this Court makes no observation on the merits of the case of the respondent.

13. For the above reasons, we allow the appeal and set aside the impugned order of the High Court. The writ petition filed by the respondent shall stand dismissed. However, this shall not preclude the respondent from taking recourse to appropriate remedies which are available in terms of Section 107 of the CGST Act to pursue the grievance in regard to the action which has been adopted by the state in the present case.

51. In the opinion of this Court, an appeal before the appellate authority is a continuation of the proceedings before the adjudicating authority itself. A full-fledged remedy for filing an appeal has already been provided under Section 107 of the CGST Act. This Court, while interpreting the powers of Appellate Authority under Section 107 of the CGST Act in W.P.(C) 2926/2025 titled Sonu Monu Telecom Pvt. Ltd. Through its Director Jitender Garg & Anr. V. The Union of India Revenue Secretary, Ministry of Finance & Anr. held as under:

> "12. Even if it is presumed that the Adjudicating Authority did not adequately consider the reply filed by the Petitioner, in the opinion of this Court, the entire purpose of providing a first appeal to the Appellate Authority is to rectify any error made by the Adjudicating Authority. Section 107(11) of the Act is clear to the extent

that the Appellate Authority has the power to either confirm, modify or annul the decision or order. This, in effect, means that the Appellate Authority is permitted to take all such measures required or pass all such orders, which could be passed in a first appeal.

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

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

"56. Firstly, section 129B(1) of the Act empowers the learned Tribunal, seized with an appeal, challenging the order of the adjudicating authority, to "pass such orders thereon as it thinks fit, confirming, modifying or annulling the decision or order appealed against or may refer the case back to the authority which passed such decision or order with such directions as the Appellate Tribunal may think fit, for a fresh adjudication or decision, as the case may be, after taking additional evidence, if necessary". We are convinced that the jurisdiction, of the learned Tribunal, to "confirm, modify or annul" the order dated October 4, 2019, was wide enough to encompass the power to direct provisional release, and fix the terms thereof. Remand, to the authority to pass the order under appeal before the learned Tribunal, is, statutorily, only an alternative course of action, the learned Tribunal. We may take judicial notice, at this point, of the fact repeated demands, to the authorities below, merely clog the litigative process and lead to multiplicity of proceedings, and benefits neither the assessee nor the Revenue. Where, therefore, the learned Tribunal is in a position to decide the appeal, it would be well advised to do so, rather than merely remand the matter to the authority below. Indeed, in a case in which the learned Tribunal is in a position to decide the appeal on merits, and pass effective unenforceable directions, remand, by it, of the proceedings, the authority below, may amount, practically, to abdication of its jurisdiction. It is obviously with a view to ensure that the demand is not resorted to, as an "easy way out", that the Legislature has, advisedly, conferred wide powers, on the learned Tribunal, to confirm, modify or annul the order before it. On principle, therefore, we are unable to discern any apparent illegality, or want of propriety, on the part of the learned Tribunal, in

directing provisional release and fixing the terms thereof, rather than remand in the matter to the ADG, to undertake the said exercise.

15. Similarly, in Sun Pharma Laboratories v. Union of India (Writ Petition. (C) No. 09 of 2020), the Appellate Authority, despite finding the grounds relied upon by the Adjudicating Authority to be erroneous, sustained the rejection of the refund claim on an alternate line of reasoning. Consequently, the Applicant/Petitioner had preferred the said writ petition challenging the decision of the Appellate Authority. The Division Bench of the Sikkim High Court upheld the Appellate Authority's power under Section 107(11) of the Act to re-examine the matter on merits. The relevant portions of the order are extracted below:

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

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

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

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

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

18. Having regard to the contour and ambit of section 107 (11) of CGST Act, in our considered opinion, the Appellate Authority cannot be faulted for undertaking an enquiry even after observing that the order of the Adjudicating Authority was erroneous because the Appellate Authority has to decide whether the petitioner has made out a case for grant of refund."

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

52. Under these circumstances, this Court is not inclined to entertain the present writ petition. However, considering the nature of the demand raised in the impugned order, since the order is an appealable order, the Petitioner is permitted to avail of the appellate remedy by 31st August 2025, along with the necessary pre-deposit mandated under Section 107 of the CGST Act, in which case the appeal shall be adjudicated on merits and shall not be dismissed on the ground of limitation.

53. Needless to add, the observations made in this case shall not affect the final adjudication of the appeal.

54. The writ petition is accordingly dismissed in the above terms. All pending applications are disposed of.

PRATHIBA M. SINGH JUDGE RAJNEESH KUMAR GUPTA JUDGE JULY 29, 2025 Rahul/ss