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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 5723/2025**

**BRAHAM DEV SHARMA** .....Petitioner

Through: Petitioner in person.

versus

**THE VAISH COOPERATIVE ADARSH BANK LTD AND  
OTHERS** .....Respondents

Through: Ms. Vaishali Gupta, Standing  
Counsel, GNCTD for RCS.

**CORAM:**

**JUSTICE PRATHIBA M. SINGH**

**JUSTICE RAJNEESH KUMAR GUPTA**

**ORDER**

% **01.05.2025**

1. This hearing has been done through hybrid mode.

**CM APPL. 26061/2025 (for exemption)**

2. Allowed, subject to all just exceptions. Application is disposed of.

**W.P.(C) 5723/2025**

3. Mr. Siddharth Sharma, son of the Petitioner– Mr. Braham Dev Sharma appears in person and submits that the Ld. Counsel for Petitioner, Mr. B.L. Gupta is travelling and is out of Delhi.

4. Accordingly, he prays for an adjournment.

5. In the meantime, let notice be issued in this matter to Respondent No. 1 – The Vaish Co-operative Adarsh Bank Ltd., Head Office: 3, Netaji Subhash Marg, Darya Ganj, New Delhi, as also to Respondent No. 11– The Registrar, Delhi Cooperative Societies ('RCS').



6. Ms. Vaishali Gupta, Id. Counsel for GNCTD who is present in Court accepts notice on behalf of RCS. Let a copy of the petition be provided to her.
7. List on 11<sup>th</sup> July, 2025.

**PRATHIBA M. SINGH, J.**

**RAJNEESH KUMAR GUPTA, J.**

**MAY 1, 2025/da/ss**



\$~86 CHECK ANY JUDGEMENT ON SECTION 6(2)(B) AND ALSO  
EXTRACT THE SECTION. PLEASE DISCUSS

\* IN THE HIGH COURT OF DELHI AT NEW DELHI  
+ W.P.(C) 5734/2025 & CM APPL. 26164/2025

M/S SUN AUTOMATION LIMITED

.....Petitioner

Through: Mr. Devendra Jain, Mr. Rajat Mittal,  
Ms. Priyanka & Mr. S. Negoi,  
Advocates.

versus

SALES TAX OFFICER CLASS II/AVATO & ORS. ....Respondents

Through: Mr. Anurag Ojha, Sr. SC with Mr.  
Subham Kumar & Mr. Dipak Raj,  
Advocates.  
Ms. Neha Malik, Sr. SC (CGST)

**CORAM:**

**JUSTICE PRATHIBA M. SINGH**

**JUSTICE RAJNEESH KUMAR GUPTA**

**ORDER**

% **01.05.2025**

1. This hearing has been done through hybrid mode.

**CM APPL. 26165/2025 & CM APPL. 26166/2025 (for exemption)**

2. Allowed, subject to all just exceptions. Applications are disposed of.

**W.P.(C) 5734/2025 & CM APPL. 26164/2025**

3. The present petition has been filed by the Petitioner –M/s Sun Automation Limited under Articles 226 & 227 of the Constitution of India challenging the show cause notice dated 27th November, 2024 (*hereinafter, 'the SCN'*) as also the consequent order dated 27<sup>th</sup> February, 2025 (*hereinafter, 'the impugned order'*) passed by the office of Sales Tax Officer Class II/AVATO Jurisdiction: Ward 71:Zone 6: Delhi, State/UT: Delhi



*(hereinafter, 'the DGST Department')* pertaining to the tax period April 2020 to March 2021.

4. *Vide* the impugned order, a demand of Rs.157,66,85,186/- has been raised, both, of tax and penalty in respect of certain transactions entered into between the Petitioner and two companies namely M/s Microlyte Energy Pvt. Ltd and M/s. Jetibai Grandsons Services India (P.) Ltd.

5. The submission of the Id. Counsel for the Petitioner is that the demand raised in the impugned order is not sustainable in view of Section 6(2)(b) of the Central Goods and Service Tax Act, 2017 (*hereinafter, 'the CGST Act'*), as the Central Goods and Service Tax Department (*hereinafter, 'the CGST Department'*) has already adjudicated the matter on the same issue and thus, the DGST Department does not have the power to adjudicate upon the same. The overlapping has been explained in the synopsis by way of table. The said table is extracted herein below:



Particulars	Proceedings before CGST authorities	Proceedings before SGST authorities	Remarks												
Department issuing Notices	Joint Commissioner (Adjudication), CGST Delhi North	Sales Tax Officer Class II /AVATO, Ward 71:Zone6:Delhi	Both CGST and SGST authorities have initiated the respective proceedings against the assessee regarding demand emanating from the same transactions.												
Date of Order	30.08.2024	27.02.2025													
Financial Year	2020-21	2020-21													
Name of Disputed Suppliers/ Cancelled dealers	M/s Microlyte Energy Private Limited &M/s. VV Infraspaces Private Limited	M/s Microlyte Energy Private Limited													
Name of Disputed Customer	M/s. Jetibai Grandsons Services India (P.) Ltd	M/s. Jetibai Grandsons Services India (P.) Ltd													
Demand of Tax and Penalty as per the said Orders	Amounting to Rs. 46,76,21,565/- of Penalty under section 122(1)(ii) of CGST Act, 2017 for issuing invoices or bills invoicing without supply of goods and services. (Page 230, Para 23 (C) (1))	Amounting to Rs. 38,98,17,404 /- of Tax demand alleged to be due to incorrect declaration of tax on outward supplies resulting from denial of ITC in GSTR-09. <table border="1" data-bbox="762 846 1070 1249"> <thead> <tr> <th>Particulars</th> <th>(in Rs.)</th> </tr> </thead> <tbody> <tr> <td>Total Outward Tax Liability :-</td> <td>46,76,21,564</td> </tr> <tr> <td>Less:- Paid through cash</td> <td>3,86,502</td> </tr> <tr> <td>Less:- Paid through ITC</td> <td>7,74,17,658</td> </tr> <tr> <td>Net Tax Payable</td> <td>38,98,17,404</td> </tr> <tr> <td>Already Paid by the assessee through ITC</td> <td>38,98,17,404</td> </tr> </tbody> </table>	Particulars	(in Rs.)	Total Outward Tax Liability :-	46,76,21,564	Less:- Paid through cash	3,86,502	Less:- Paid through ITC	7,74,17,658	Net Tax Payable	38,98,17,404	Already Paid by the assessee through ITC	38,98,17,404	Order dt. 30.08.2024 imposed penalty of Rs. 46,76,21,565/- u/s 122(1)(ii) on the ground that invoices were raised without actual supply of goods. Order dt. 27.11.2024 imposed tax demand of Rs. 38,98,17,404 /- on the short-payment of tax vide GSTR-9 which was paid by utilization of ITC. This ITC accrued on account of purchases from M/s Microlyte Energy Pvt. Ltd. And output tax liability towards sales to M/s Jetibai Grandsons Services (P) Ltd. Was discharged through this very ITC claimed. In other words, both the demands imposed pertain to the same transactions.
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Already Paid by the assessee through ITC	38,98,17,404														

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Demand of Tax and Penalty as per the said Orders	Amounting to Rs. 46,62,99,565/- of Penalty under section 122(1)(vii) of CGST Act, 2017 for taking ITC or utilising Input Tax Credit of CGST/SGST/IGST without supply of goods and services (Page 230, Para 23(C)(2))	Amounting to Rs. 46,48,63,774 /- of Tax demand due to ITC claimed from Cancelled dealers, return defaulters.	Order dt. 30.08.2024, under Para 23(C)(2), imposed penalty u/s 122(1)(vii) on the ground that the ITC utilized were pertaining to transactions without receipt of goods and services. Order dt. 27.02.2025 imposed tax demand on the ground that the suppliers whose ITC has been utilized by the assessee were cancelled dealers/ return defaulters. In other words, both the demands imposed pertain to the same transactions.										
	<table border="1"><thead><tr><th>Particulars</th><th>(in Rs.)</th></tr></thead><tbody><tr><td>Microlyte Energy Private Limited</td><td>46,48,63,774.68</td></tr><tr><td>VV Infraspaces Private Limited</td><td>14,35,791</td></tr></tbody></table>	Particulars		(in Rs.)	Microlyte Energy Private Limited	46,48,63,774.68	VV Infraspaces Private Limited	14,35,791	<table border="1"><thead><tr><th>Particulars</th><th>(in Rs.)</th></tr></thead><tbody><tr><td>Microlyte Energy Private Limited</td><td>46,48,63,774.68</td></tr></tbody></table>	Particulars	(in Rs.)	Microlyte Energy Private Limited	46,48,63,774.68
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6. The submission on behalf of the Petitioner is that neither the SCN nor the impugned order issued upon the Petitioner by the DGST Department is tenable.

7. Learned counsel for the Petitioner also submits that in so far as the demand by the CGST Department is concerned, the same was challenged before the Commissioner (Appeals-I), CGST and the appeal in respect of the said proceedings has also been decided vide Order-in-Appeal No.: 17-18/Commr./Central Tax/ Appeal-I/ Delhi/ 2025 dated 3<sup>rd</sup> April, 2025, wherein a penalty has been imposed on the Petitioner.

8. In view of the above, it is clear that the DGST Department shall be required to look at the order passed by the appellate authority dated 3<sup>rd</sup> April, 2025, and reconsider as to whether the SCN dated 27<sup>th</sup> November, 2024 as also the consequent impugned order dated 27<sup>th</sup> February, 2025 will sustain in view of Section 6(2)(b) of the CGST Act.

9. The impugned order is accordingly set aside. Let the order of the



Commissioner (Appeals-I), CGST dated 3<sup>rd</sup> April, 2025 be placed before the DGST Department so that the matter can be considered afresh. A personal hearing shall be afforded to the Petitioner, before taking any decision.

10. The petition is disposed of in said terms. Pending applications, if any, are also disposed of.

**PRATHIBA M. SINGH, J.**

**RAJNEESH KUMAR GUPTA, J.**

**MAY 1, 2025/da/ss**



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