

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

CWP No. 6990 of 2025

Date of decision: 19.06.2025

Shyama Power India Ltd.	...Petitioner
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Versus

State of H. P. & Ors.	...Respondents
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Coram

The Hon'ble Mr. Justice Tarlok Singh Chauhan, Judge.

The Hon'ble Mr. Justice Sushil Kukreja, Judge.

Whether approved for reporting? Yes.

For the Petitioner: Mr. Rakesh Sharma and Ms. Sakshi Gautam, Advocates.

For the Respondents: Mr. Anup Rattan, A. G. with Mr. I. N. Mehta, Mr. Y. W. Chauhan, Sr. Addl. A.Gs., Mr. Ramakant Sharma, Mr. Navlesh Verma, Ms. Sharmila Patial, Mr. Sushant Keprate, Addl. A.Gs. and Mr. Raj Negi, Dy. A.G.

Tarlok Singh Chauhan, Judge (Oral)

The instant writ petition has been filed for grant of the following substantive reliefs:-

- a) That the order under Section 74 of HP GST Act, 2017, dated 02.12.2023, passed by the respondent No. 4, charging interest of Rs. 1,32,34,923/- and levying penalty of Rs. 1,11,45,134/-, be quashed.
- b) The respondent No. 4 be directed to issue a fresh DRC-07 incorporating only the disputed amount of tax of Rs. 1,11,45,134/-, on account of alleged wrong availment of Input Tax Credit (ITC), so as to enable the

petitioner agitate the same by way of First Appeal, before Appellate Authority.

c) Petitioner, in alternate to the relief, made at point (a) & (b), prays, the entire proceedings and held the ITC availed by the petitioner as valid and legal in accordance with the provisions of HP GST Act, 2017 and petitioner be refunded the ITC deposited/reversed on 31.03.2023 by way of DRC-03.

2. At the outset, it needs to be observed that since we *prima facie* found the impugned order to be totally perverse, therefore, on 23.05.2025, we issued notice of the petition and at the same time directed respondents No. 2 and 3 to personally appear before this Court alongwith the relevant record. Later on, it was pointed out that it was respondent No. 4, who had passed the impugned order, therefore, called for her appearance so that she could explain how she had passed the impugned order. However, she failed to satisfy the Court. Accordingly, we directed the respondents to file their reply(ies), but for obvious reasons, especially, in view of the nature of the impugned order, the respondents have not chosen to file reply. Today, therefore, with the consent of the parties, the case has been taken up for final hearing.

3. The minimal facts as are required for the determination of the case are that the petitioner is a limited company having its registered office in Nagaland. The petitioner

is engaged in conducting survey, design & construction of transmission lines for hydro-electric projects and also building sub-stations for rural electrification. The petitioner is operating in this State and has its office at Shimla.

4. As observed above, the petitioner is engaged in supply of services i.e. construction of transmission lines for hydro-electric projects falling under Chapter 99 of GST Tariff having Services Accounting Code (SAC) 9954, 9987 etc. and is duly registered under the HP Goods and Service Tax Act, 2017 vide GSTIN:02AAHCS6024LIZE.

5. On 30.05.2022, the Deputy Commissioner State Taxes & Excise, Shimla issued notice to the petitioner in form ADT-01, informing it about initiation of audit under Section 65 the HPGST/CGST Acts, 2017, for the years 2017-18 and 2018-19. The detailed reply dated 04.07.2022 alongwith the requisite information was submitted by the petitioner, however, nonetheless respondent No. 2 issued audit memo and observation dated 11.10.2022 informing the petitioner about the wrong availment of Input Tax Credit (ITC) to the tune of Rs. 1.11 crores in respect of purchases made from three different suppliers namely:-

- a) M/s Metrix Industries, Delhi
- b) M/s Nikunj Enterprises, UP State
- c) M/s Shyama Trading Co. Delhi

6. In response to the said memo and audit observation, the petitioner submitted a detailed reply on 15.12.2022. Later on vide email dated 19.12.2022, respondent No. 2 forwarded the mail of the Assistant Commissioner State Taxes and Excise (Respondent No. 3) calling upon the petitioner to submit following additional information:-

- a) Details of E-declaration in Form-XXVI-A of all the goods imported from three suppliers alongwith toll payment receipts.
- b) Payment details to all these three suppliers alongwith ledger accounts.
- c) Purchase orders to these parties.

7. According to the petitioner, vide its email dated 21.12.2022, the following requisite information alongwith physical copies:-

- a) Annexure 1: Reconciliation of GSTR 2A value with ITC claimed in GSTR 3B
- b) Annexure 2: Reconciliation of GSTR 2A for complete 2017-18 month wise
- c) Annexure 4: ITC available but not availed in GSTR 3B
- d) Annexure 5: ITC of 2017-18 claimed in 2018-19
- e) Metric Ledger Bank Statement Purchase Order
- f) Nikunj Ledger Bank Statement Purchase Order
- g) Reply audit memo – 21.12.2022

- h) Return 17-18 Quarter 1
- i) Sharma Trading Ledger Bank Statement Purchase Order.

8. Thereafter, respondent No. 3 issued discrepancy notice under Rule 101(4) of HP Goods & Services Tax Rules, 2017 on 18.01.2023 pointing out the alleged discrepancies with suspected amount of tax evasion to the tune of Rs. 1,11,45,134/-. Further, respondent No. 3 directed the petitioner to reverse the alleged wrong availed ITC alongwith interest and penalty under Section 74 of the Act.

9. The petitioner filed a detailed response on 16.02.2023 alongwith which it annexed copies of affidavits of transporter verifying on oath the factum of transportation of goods from Delhi and its delivery at Totu, Shimla. However, despite this, the petitioner received final audit report on 15.03.2023 from respondents No. 2 and 3. It also received Audit Report in Form ADT-02, under Section 65(6) on 25.03.2023 whereby it has been confirmed that no short payment of tax as well as no SGST, CGST or CESS was payable.

10. According to the petitioner, on account of continuous pressure being exercised by the respondents, it decided to reverse the alleged wrongly availed ITC while continuing exercising its legal remedies and accordingly on 31.03.2023, consciously under protest reversed the ITC as mentioned in the

audit to the tune of Rs. 1,11,45,134/- by depositing Rs. 18,76,280/- by cash and Rs. 92,68,854/- by way of Input Tax Credit through DRC-03.

11. However, shockingly respondent No. 4 i.e. Commissioner, State Taxes and Excise passed an order under Section 74 of the Act on 02.12.2023, whereby an interest of Rs. 1,32,34,923/- and penalty of Rs. 1,11,45,134/- was levied on petitioner without determining the tax demand on account disallowance of alleged wrong availed ITC and by treating the amount deposited '*under protest*' to be an admitted liability.

12. Aggrieved by the aforesaid action, the petitioner accordingly prepared appeal but the portal only allowed to dispute penalty and interest as aforesaid with no option to challenge the basic demand of Rs. 1,11,45,134/- that had been demanded and even deposited by the petitioner under protest. Therefore, the petitioner was not able to file appeal against the main demand. The petitioner left with no other option but to submit the rectification application under Section 161 of the HP GST Act, 2017, whereby a request was made to rectify the order dated 02.12.2023 passed under Section 74 restricting the liability only to the extent of interest and penalty. The petitioner categorically pleaded that the amount in question was deposited under protest without admitting the liability. The petitioner

further stated in the application that the appeal could not be filed in the case of *nil basic demand*.

13. Respondent No. 4 refused to rectify order dated 02.12.2023 on the ground that there was no mis-match between show cause notice dated 30.09.2023 and DRC-07 dated 02.12.2023. Respondent No. 4 did not address the basic point raised by the petitioner in rectification application questioning the creation of tax liability so as to enable the petitioner agitate before the Appellate Authority.

It is in this background, the instant petition has been filed.

14. We have heard learned counsel for the parties and have gone through the records of the case.

15. At the outset, it needs to be observed that the manner in which respondent No. 4 has acted in this case cannot be countenanced and leaves a lot to be desired.

16. Once the petitioner had deposited the amount '*under protest*', the same could not have been considered to be an admission of liability because the necessary corollary of deposit under protest is that the amount towards the alleged liability has been deposited without admitting the liability and inherent therein is his right to challenge the order.

17. 'Under protest' has been defined in *Black's Law Dictionary Tenth Edition, Page 1419* as "3. A formal statement, *usu.* in writing disputing a debt's legality or validity but agreeing to make payment while reserving the right to recover the amount at a later time. *The disputed debt is described as '*under protest*'. 4. *Tax.* A taxpayer's statement to the collecting officer that payment is being made unwillingly because the taxpayer believes the tax to be invalid.

18. Furthermore, the adjudicating authority completely erred and failed to take note that Input Tax Credit to the tune of Rs. 1,11,45,134/- could not have been reversed, merely on the basis of the suspicion without carrying out any independent investigation coupled with other evidence. Respondent No. 4 was required to conduct an impartial inquiry regarding the aforesaid amount and could not have based its decision solely on summary of show cause notice in Form DRC-01.

19. We need not go to the other points raised in this petition given the fact that respondent No. 4 had decided the case solely on the basis of the payment made by the petitioner of Rs.1,11,45,134/- under protest by treating as an admission of liability which cannot be termed to be voluntary payment so as to give a licence or permit the respondents to treat this amount

as admitted liability and thereafter impose penalty and interest thereupon in a manner done in this case.

20. In view of the aforesaid discussion, the writ petition is allowed. The order under Section 74 of the HP GST Act, 2017, dated 02.12.2023, charging interest of Rs. 1,32,34,923/- and levying penalty of Rs. 1,11,45,134/- are quashed and set aside. Further, respondent No. 4 is directed to issue fresh DRC-07 incorporating only the disputed amount of tax of Rs. 1,11,45,134/- on account of alleged wrong availment of Input Tax Credit (ITC), so as to enable the petitioner to agitate the same by filing an appeal before the Appellant authority.

21. However before parting, it is made clear that it shall be open to the petitioner to raise all grounds before respondent No. 4 including and not restricted to the grounds as raised in this petition and in addition to the grounds already taken before it.

Pending application, if any, shall also stand disposed of.

(Tarlok Singh Chauhan)
Judge

(Sushil Kukreja)
Judge

19th June, 2025
(sanjeev)