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

Date of Decision: 23rd April, 2025

+ **W.P.(C) 5083/2025**

GURUDAS MALLIK THAKUR

.....Petitioner

Through: Mr. Rajesh Mahna, Mr. Ramand Ray,
Ms. Silky Wadhwa and Ms. Ridhi
Mahna, Advocates.

versus

COMMISSIONER OF CENTRAL GOODS AND
SERVICE TAX & ANR.

.....Respondents

Through: Mr. Aakash Verma, Advocate.

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AND

+ **W.P.(C) 5133/2025 & CM APPL. 23413/2025**

DINESH KUMAR RAGHAV

.....Petitioner

Through: Mr. Rajesh Mahna, Mr. Ramand Ray,
Ms. Silky Wadhwa and Ms. Ridhi
Mahna, Advocates.

versus

COMMISSIONER OF CENTRAL GOODS AND SERVICE TAX &
ANR.

.....Respondents

Through: Mr. Aakash Verma, Advocate.

CORAM:

JUSTICE PRATHIBA M. SINGH

JUSTICE RAJNEESH KUMAR GUPTA

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through hybrid mode.

CM APPL. No. 23413/2015 in WP(C) 5133/2025

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

W.P.(C) 5083/2025 and 5133/2025

3. The present two petitions have been filed by the Petitioners- Gurudas Mallik Thakur and Dinesh Kumar Raghav under Article 226 of the



Constitution of India, *inter alia*, challenging the impugned Order-in-Original bearing no. 44/RK/ADC/CGST/DSC/2024-25 dated 23rd January, 2025 (hereinafter, '*impugned order*') passed by Respondent No. 1- Commissioner of Central Goods and Service Tax. The said order arises out of a show cause notice bearing no. 03/2023-24 dated 21st April, 2023 (hereinafter, '*SCN*').

4. The Petitioners are stated to be the directors of one M/s Planman HR Private Limited (hereinafter, '*company*') which was engaged in the business of manpower recruitment. An investigation was conducted against the company wherein it was revealed that CENVAT credit to the tune of Rs.22,41,07,389/- had been availed by the Petitioners which was inadmissible.

5. The Petitioner- Gurudas Mallik Thakur was at that time arrested for making false entries in the Service Tax Returns on 21st August, 2020 under the Finance Act, 1994. Thereafter, the SCN was issued and in addition, the Goods and Service Tax (hereinafter, '*GST*') Returns were also thoroughly enquired into.

6. The case of the Central Goods and Service Tax Department (hereinafter, '*Department*') is that the company had not filed proper returns. Under GSTR-1M, returns were only filed till February, 2019 and GSTR-3B was filed only till December, 2018. Further, the returns were then called upon to be filed by the company. Subsequently, the Department found that both the directors took a position that one Mr. Arindam Chaudhary who was the promoter and 90% shareholder of the company was the decision maker in the company.

7. After recording the statements of both the Petitioners, the company was called upon to produce documentary evidence. The balance sheets of the



company were also reviewed by the Department.

8. The stand of the Department is that there was a short payment of GST to the tune of Rs.40,61,37,843/- by the company and the same was liable to be recovered under Section 74 of the Central Goods and Service Tax Act, 2017 (hereinafter, 'CGST Act'). Inadmissible Input Tax Credit (hereinafter, 'ITC') was also alleged to be availed of by the company. Moreover, copies of tax invoices and debit notes were not supplied to the Department. The persons who were investigated by the Department included the two Petitioners, Mr. Arindam Chaudhary and Mr. Varun Khanna.

9. According to the impugned order, none of the directors owned up to the responsibility of filing GST Returns for the company. The Petitioners claimed that they have resigned from the company in 2020 and that Mr. Arindam Chaudhary was the main person running the company. The Petitioners have also stated that Mr. Varun Khanna was the Chief Executive Officer of the company. The replies filed by the Petitioners were also considered by the adjudicating authority.

10. Finally, the adjudicating authority *vide* passing the impugned order held that the demands were liable to be paid by the company as also its directors *i.e.* the Petitioners. Further, penalties were also imposed on the Petitioners. The operative portion of the impugned order reads as under:-

“
ORDER
(i) **I hereby confirm the demand of Short payment of GST(CGST+SGST+IGST) amounting to Rs.40,61,37,843/-** (Rupees Forty Crore Sixty One Lakhs Thirty Seven Thousand Eight Hundred Forty Three Only)(as per Table B&E above)from M/s Planman HR Private Limited (GSTIN:07AAFCP0981K1Z5)under Section 74(9) of the CGST Act, 2017 read with similar



provisions of Delhi GST Act, 2017 and Section 20 of the IGST Act, 2017.

(ii) **I hereby confirm the demand of Inadmissible ITC availed/utilized amounting to Rs.35,42,492/-** (Rupees thirty five lakh forty two thousand four hundred ninety two only) (as per Table-F) from M/s Planman HR Private Limited (GSTIN:07AAFCP0981K1Z5) under Section 74 (9) of CGST Act, 2017 read with Section 122 (1) (vii) of the CGST Act, 2017 and relevant provisions of Delhi GST Act, 2017 and IGST Act, 2017.

(iii) I hereby confirm the demand of interest on the amount confirmed in Point (i & ii) above, under the provisions of Section 50 of the CGST Act, 2017 read with relevant provision of Delhi GST Act, 2017 and IGST Act, 2017.

(iv) I hereby confirm the demand of Interest amounting to Rs.17,23,763/- (Rupees seventeen lakh twenty three thousand seven hundred sixty three only) for the period FY 2017-18 (Jul-Mar) to 2018-19 (upto Dec) from M/s Planman HR Private Limited (GSTIN:07AAFCP0981K1Z5) under Section 50 of CGST Act, 2017 read with relevant provisions of Delhi GST Act, 2017 and IGST Act, 2017.

(v) I impose a penalty of Rs. Rs.40,61,37,843/- (Rupees Forty Crore Sixty One Lakhs Thirty Seven Thousand Eight Hundred Forty Three Only) in respect of demand mentioned at point (i) on M/s Planman HR Private Limited, (GSTIN No.07AAFC0981K1Z5) under Section 74(9) of CGST Act, 2017 read with relevant provisions of the DGST Act, 2017 and IGST Act, 2017.

(vi) I impose a penalty of Rs.35,42,492/- (Rupees thirty five lakh forty two thousand four hundred ninety two only) in respect of confirm demand mentioned at point (ii) above on M/s Planman HR Private Limited, (GSTIN No.07AAFCP0981K1Z5) under Section 74 of CGST Act, 2017 read with relevant provisions of the



DGST Act, 2017 and IGST Act, 2017.

*(vii)- I impose penalty of Rs.25,000/- (Rupees Twenty five thousand only) on **Sh. Arindam Chaudhary** (promoter and majority shareholder of company) vof M/s Planman HR Private Limited, (GSTIN No.07AAFCP0981K1Z5) under Section 125 of CGST Act, 2017 read with relevant provisions of the DGST Act, 2017 and IGST Act, 2017 and CGST Rules, 2017; and*

*(viii)- I impose penalty of Rs.25,000/- (Rupees Twenty five thousand only) on **Sh. Gurdas Mallik Thakur (Director of M/s Planman HR Pvt. Ltd.) of M/s Planman HR Private Limited,** (GSTIN No.07AÁTCP0981K1Z5) under Section 125 of CGST Act, 2017 read with relevant provisions of the DGST Act, 2017 and IGST Act, 2017 and CGST Rules, 2017; and*

*(ix) I impose penalty of Rs.25,000/- (Rupees Twenty five thousand only) on **Sh. Dinesh Kumar Raghav (Director of M/s Planman HR Pvt. Ltd.) of M/s Planman HR Private Limited,** (GSTIN No.07AAFCP0981K1Z5) under Section 125 of CGST Act, 2017 read with relevant provisions of the DGST Act, 2017 and IGST Act, 2017 and CGST Rules, 2017:*

*(x) I impose penalty of Rs.25,000/- (Rupees Twenty five thousand only) on **Sh. Varun Khanna** (CEO of M/s Planman HR Pvt. Ltd.) of M/s Planman HR Private Limited, (GSTIN No.07AAFCP0981K1Z5) under Section 125 of CGST Act, 2017 read with relevant provisions of the DGST Act, 2017 and IGST Act, 2017 and CGST Rules, 2017*

*(xi) I impose penalty of Rs. 35,42,492 (Rupees Thirty Five Lakhs Forty Two Thousand Four Hundred Ninety Two only) on **Sh. Arindam Chaudhary** (Promoter and majority shareholder of company of M/s Planman HR Private Limited, (GSTIN No.07AAFCP0981K1Z5)*



under Section 122(1A) of CGST Act, 2017 read with relevant provisions of the DGST Act, 2017 and IGST Act, 2017 and CGST Rules, 2017.

(ix) I impose penalty of Rs. 35,42,492 (Rupees Thirty Five Lakhs Forty Two Thousand Four Hundred Ninety Two only) on Sh. Gurdas Mallik Thakur (Director of M/s Planman HR Pvt. Ltd.) of M/s Planman HR Private Limited, (GSTIN No.07AAFCP0981K1Z5) under Section 122(1A) of CGST Act, 2017 read with relevant provisions of the DGST Act, 2017 and IGST Act, 2017 and CGST Rules, 2017.

(x) I impose penalty of Rs. 35,42,492 (Rupees Thirty Five Lakhs Forty Two Thousand Four Hundred Ninety Two only) on Sh. Dinesh Kumar Raghav (Director of M/s Planman HR Pvt. Ltd.) of M/s Planman HR Private Limited, (GSTIN No.07AAFCP0981K1Z5) under Section 122(1A) of CGST Act, 2017 read with relevant provisions of the DGST Act, 2017 and IGST Act, 2017 and CGST Rules, 2017.

(xi) I impose penalty of Rs. 35,42,492 (Rupees Thirty Five Lakhs Forty Two Thousand Four Hundred Ninety Two only) on Sh. Varun Khanna (CEO of M/s Plan man HR Pvt. Ltd.) of M/s Planman HR Private Limited, (GSTIN No.07AAFCP0981K1Z5) under Section 122(1A) of CGST Act, 2017 read with relevant provisions of the DGST Act, 2017 and IGST Act, 2017 and CGST Rules, 2017.”

11. Mr. Mahna, Id. Counsel appearing for the two Petitioners, who were the directors of the company, submits that the Petitioners are not taxable persons under Section 122 of the CGST Act or 122 (1A) of the CGST Act and, therefore, no liability can be fastened on the Petitioners.

12. Ld. Counsel for the Petitioners relies upon the decision of the Bombay



High Court in **WP No. 5001 of 2025** titled '**Amit Manilal Haria V. The Joint Commissioner of CGST & CE & Ors.**'. In the said case, the Court while basing its reasoning on the judgment of **Shantanu Sanjay Hundekari V. Union of India; (2024) 132 GSTR 346** observed in respect of the Petitioner therein that considering the fact that the said Petitioner being the Chief Financial Officer (hereinafter, '**CFO**') of one M/s Shemaroo Entertainment Limited, a *prima facie* case was made out for grant of interim relief. Mr. Mahna, also relies upon the decision of the Bombay High Court in **Shantanu Sanjay Hundekari (Supra)**, which was also upheld by the Supreme Court in **SLP (Civil) No. 55427/2024** titled '**Union of India v. Shantanu Sanjay Hundekari & Anr.**'. Ld. Counsel thus submits that since the Petitioners are not taxable persons, the impugned order *qua* the Petitioners is not sustainable.

13. On a query from the Court as to whether either the company or Mr. Arindam Chaudhary or Mr. Varun Khanna have challenged the impugned order, the submission of Ld. Counsel for the Petitioners in this regard is that only Mr. Varun Khanna has filed a writ petition challenging the impugned order.

14. On the other hand, on behalf of the Department, the submission of Mr. Aakash Verma is that the Petitioners are active directors in the company. It is his submission that the Supreme Court has kept the questions of law open in the decision of **Shantanu Sanjay Hundekari (Supra)**.

15. Reliance is also placed by Mr. Mudit Gupta on behalf of the Department on the decision of the Bombay High Court in **Bharat Parihar V. State of Maharashtra & Connected Matters; 2023 SCC Online BOM 1310** to argue that the language used in Section 122(1A) of the CGST Act is '*any person*' which is also the language used in Section 83 of the CGST Act. The



term any '*any person*' is used in contradictory distinction with '*taxable person*' and in the said judgment of the Bombay High Court has clearly held that the phrase '*any person*' would include a non-taxable person.

16. Mr. Verma, has also handed over a note to extend the manner in which the directors could also obtain benefits of non-filing of GST returns or availment of fake ITCs.

17. The Court has heard the Id. Counsels for the parties.

18. The question as to whether and in what manner the Petitioners benefitted from availing the fake ITC or from the non-filing of GST returns cannot be gone into in the present writ petition.

19. Clearly, there is no doubt that the Petitioners were directors of the company. The exact role that the Petitioners played in the said company, the control and management that the Petitioners exercised as also whether they derived any benefit would be a question that would have to be factually ascertained on the basis of the records which would be placed before the Appellate Authority. The impugned order is clearly an appealable order under Section 107 of the CGST Act.

20. Mr. Mahna, Id. Counsel for the Petitioners submits that the Petitioners not being *taxable persons*, would face difficulty in appealing the impugned order.

21. Section 107 of the CGST Act starts with the expression '*any person*'. Thus, the filing of appeal is permissible by *any person* and not merely by a *taxable person*.

22. The statements which have been recorded by the directors *i.e.*, the Petitioners show that each of them is trying to shrug off their responsibility. In the opinion of this Court, the matter requires closer scrutiny on facts by the



Appellate Authority as to who was responsible for running the company and who was taking decisions including relating to generation of invoices, making payments, etc. However, the same is beyond the scope of a writ petition.

23. Insofar as the question as to whether the penalty could have been imposed on any person under Section 122 and 122(1A) of the CGST Act is concerned, a perusal of the definition of ‘*any person*’ under Section 2(84) of the CGST Act would show that the same includes an individual without any limitations. Section 2(84) of the CGST Act defines *person* as under:

“2 (84) “*person*” includes—

- (a) *an individual;*
- (b) *a Hindu Undivided Family;*
- (c) *a company;*
- (d) *a firm;*
- (e) *a Limited Liability Partnership;*
- (f) *an association of persons or a body of individuals, whether incorporated or not, in India or outside India;*
- (g) *any corporation established by or under any Central Act, State Act or Provincial Act or a Government company as defined in clause (45) of section 2 of the Companies Act, 2013 (18 of 2013);*
- (h) *any body corporate incorporated by or under the laws of a country outside India;*
- (i) *a co-operative society registered under any law relating to co-operative societies;*
- (j) *a local authority;*
- (k) *Central Government or a State Government;*
- (l) *society as defined under the Societies Registration Act, 1860 (21 of 1860);* (m) *trust; and*
- (n) *every artificial juridical person, not falling within any of the above;”*

24. The Statute makes a clear distinction between the *taxable person* and *any person*.

25. Section 83 of the CGST Act also uses the language ‘*taxable person*’ in



contra distinction with ‘any person’. The said provision is also reproduced below:

*“83. Provisional attachment to protect revenue in certain cases.—1 [(1) Where, after the initiation of any proceeding under Chapter XII, Chapter XIV or Chapter XV, the Commissioner is of the opinion that for the purpose of protecting the interest of the Government revenue it is necessary so to do, he may, by order in writing, attach provisionally, any property, including bank account, belonging to the **taxable person or any person** specified in sub-section (1A) of section 122, in such manner as may be prescribed.] (2) Every such provisional attachment shall cease to have effect after the expiry of a period of one year from the date of the order made under sub-section (1).”*

26. Insofar as Section 122 of the CGST Act is concerned Section 122(1) of the CGST Act relates to a ‘taxable person’. However, Section 122 (1A) of the CGST Act clearly relates to ‘any person’ who retains the benefit of a transaction which is covered under Clauses (i), (ii), (vii) or (ix) of Section 122 (1) of the CGST Act. The relevant provisions are set out below:

*“122. Penalty for certain offences.—(1) Where a **taxable person** who—*

(i) supplies any goods or services or both without issue of any invoice or issues an incorrect or false invoice with regard to any such supply;

(ii) issues any invoice or bill without supply of goods or services or both in violation of the provisions of this Act or the rules made thereunder;

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(vii) takes or utilises input tax credit without actual receipt of goods or services or both either fully or partially, in contravention of the provisions of this Act or the rules made thereunder;

XXXX



(ix) takes or distributes input tax credit in contravention of section 20, or the rules made thereunder;

XXXX

*[(1A) **Any person** who retains the benefit of a transaction covered under clauses (i), (ii), (vii) or clause (ix) of sub-section (1) and at whose instance such transaction is conducted, shall be liable to a penalty of an amount equivalent to the tax evaded or input tax credit availed of or passed on.]”*

27. The purpose of Section 122(1A) of the CGST Act is clearly to make persons who may be responsible for having created bogus invoices and having utilised ITC without the receipt of goods and services and for distributing ITC in contravention of Section 20 of the CGST Act. It can be seen that the manner in which companies function is that there is a management who would be taking the decisions on behalf of taxable persons. These companies being inanimate, the responsibility has, by the wisdom of the legislature, been fixed under Section 122(1A) of the CGST Act upon any person who retains the benefits of a transaction.

28. The question as to which person has retained the benefit and who has not would again be a factual issue. Directors of a company and others who manage such companies owe a responsibility to ensure that companies do not engage in such fraudulent activity for availment of ITC without actual supply of goods, distribution of ITC to persons who have raised fake invoices and non-filing of GST returns.

29. Such activities would have a greater financial impact on society in general and the economy in particular, therefore Section 122 (1A) of the CGST Act has been enacted to also make such persons liable under these circumstances.



30. The impugned order clearly reveals that in various places the Petitioners as also the other two persons *i.e.* Mr. Arindam Chaudhary and Mr. Varun Khanna are clearly not owning up the responsibility as to who took the decisions in respect of the avilment of ITC and non-filing of the GST returns.

31. Under such circumstances, this Court is of the view that the impugned order can be clearly appealed against by the Petitioners, who were directors of the company.

32. Moreover, Mr. Mahna has submitted that by the time 122 (1A) of the CGST Act was enacted and had come into effect *i.e.* 1st January 2021, the Petitioners were no longer directors of the company.

33. In the opinion of this Court, this submission can be canvased before the Appellate Authority by establishing as to when the Petitioners exited the company and whether they continued to exercise any managerial control even thereafter or not.

34. The decision in ***Bharat Parihar (Supra)*** is clearly applicable in the present case. The relevant extract is set out below:

“17. Sub-section (1) of Section 83 empowers the Commissioner for the purpose of protecting the interest of the revenue to provisionally attach any property, including bank account belonging to the taxable person or "any person" specified in Section 122(1-A) in such manner as may be prescribed.

18. The two persons referred to in Section 83(1) are (i) taxable person or ii) any person specified in Section 122(1-A) of the Act.

Therefore, in second limb the phrase "any person" would include non-taxable person.

19. Section 122(1-A) provides that any person, who retains the benefit of a transaction covered under



clauses (i)(ii) (vii) or (ix) of subsection (1) and, at whose instance such transaction is conducted shall be liable to a penalty of a sum equivalent to the tax evaded or input tax credit availed of or passed on. In our view, thus the powers conferred under Section 83(1) of the Act can be exercised in respect of a person, who may not be within the territorial jurisdiction of the Maharashtra GST Authorities. The allegation against the Petitioner is that he is the beneficiary of the GST refund claimed fraudulently. The Petitioner has also failed to comply with the summons under Section 70 of the GST Act. The Petitioner has not produced any document before the authorities in support of its written submission that the amount received is on account of the sale of crypto currency. In these facts and on a true and proper construction of Section 83(1) r/w Section 122(1-A), it cannot be said that the authorities do not have the jurisdiction over a person situated in other State. If the contention as canvassed by the Petitioner is accepted then it would lead to a situation where a person who stays outside the State and who is a beneficiary/part of any transaction involving tax evasion or violation of the Act would have total immunity in as much as in such a situation, such person would never be examined nor any proceedings could be taken by the State in which the transaction is executed and the State in which he is located would also not take any action since the transaction has not happened in the State where he is located. In our view, such an interpretation cannot be accepted. **Furthermore, Section 122(1-A), refers to "any person", who has retained benefit of a transaction and in whose presence transaction is conducted.** It does not contemplate of a situation where the person should be located within the State in which the transaction is carried out. Therefore, in our view, the Respondents have the jurisdiction to resort to the provisions of Section 83 of the Act with respect to the Petitioner located in Chennai.”



35. In the decision on which the Petitioners rely upon *i.e. Amit Manilal Haria (Supra)*, there is a clear finding to the effect that the Petitioner was an employee of the company and was not a director who may have taken any benefit. Moreover, the said order is merely an interim order.

36. Insofar as the order passed by the Supreme Court in *Shantanu Sanjay (Supra)* is concerned, the Supreme Court clearly observes that the Petitioner therein was also only an employee and he could not have been fastened with the liability of Rs.3731 Crores. Moreover, the questions of law were left open by the Supreme Court in the said case.

37. In the present case, the penalties have been imposed on various directors of the company who were having an active role as per impugned order. The correct remedy for the Petitioners would be to approach the Appellate Authority in accordance with law.

38. Mr. Mahna further submits that for a non-taxable person it is not possible to file an appeal through the portal. Since the Petitioners are stated to be non-taxable persons and have been imposed penalties by the impugned order, a mechanism would have to be created or made available by the Department to enable the Petitioners to file the appeals.

39. Accordingly, let the Department communicate to the Petitioners within two weeks the mechanism in which they can avail of their appellate remedies.

40. Upon receiving the intimation, the Petitioners shall file the appeal within 30 days.

41. The appeal, if so filed as directed above, shall not be dismissed on the ground of limitation and shall be adjudicated on merits.

42. If within 15 days, no communication is received by the Petitioners from



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the Department, the Petitioners may file the appeal manually and in physical copies.

43. The details for communication of the mechanism for filing of the appeal be communicated to Mr. Mahana's office on the email: rajeshmahna@yahoo.co.in.

44. Both the petitions are disposed of in the above terms. Pending applications, if any, are also disposed of.

**PRATHIBA M. SINGH
JUDGE**

**RAJNEESH KUMAR GUPTA
JUDGE**

APRIL 23, 2025/SV/ck