$~22 to 25, 28-30

* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ **W.P.(C) 5644/2025 & CM APPL. 25703/2025**

M/S AVIK POLYMERS .....Petitioner

Through: Mr. Kunal Jha, Adv.

versus

ADDITIONAL COMMISSIONER, CGST, DELHI NORTH .....Respondent

Through:

23 WITH

+ **W.P.(C) 5657/2025 & CM APPL. 25781/2025**

M/S KAMDHENU PLASTIC INDUSTRIES .....Petitioner

Through: Mr. Kunal Jha, Adv.

versus

ADDITIONAL COMMISSIONER, CGST, DELHI NORTH CR BUILDING, ...Respondent

Through: Ms. Anushree Narain, SSC and Mr. Naman Choula, Adv.

24 WITH

+ **W.P.(C) 5658/2025 & CM APPL. 25789/2025**

M/S SHRI BALAJI PLASTIC .....Petitioner

Through: Mr. Kunal Jha, Adv.

versus

ADDITIONAL COMMISSIONER, CGST, DELHI NORTH .....Respondent

Through: Ms. Anushree Narain, SSC and Mr. Naman Choula, Adv.

25 WITH

+ **W.P.(C) 5997/2025 & CM APPL. 27465/2025**

M/S SHRIRAM ENTERPRISES .....Petitioner

Through: Mr. Kunal Jha, Adv.

versus

ADDITIONAL COMMISSIONER, CGST, DELHI NORTH .....Respondent

Through: Ms. Anushree Narain, SSC and Mr. Naman Choula, Adv.

28 WITH

+ **W.P.(C) 6724/2025 & CM APPL. 30542/2025**

M/S MANSI PLASTICS .....Petitioner

Through: Mr. Kunal Jha, Adv.

versus

ADDITIONAL COMMISSIONER, CGST, DELHI NORTH .....Respondent

Through: Ms. Anushree Narain, SSC and Mr. Naman Choula, Adv.

WITH

29

\+ **W.P.(C) 6839/2025 & CM APPL. 31003/2025**

M/S SANJAY ENTEPRISES .....Petitioner

Through: Mr. Kunal Jha, Adv.

versus

ADDITIONAL COMMISSIONER, CGST, DELHI NORTH .....Respondent

Through: Ms. Anushree Narain, SSC and Mr. Naman Choula, Adv.

30 AND

\+ **W.P.(C) 7051/2025 & CM APPL. 31831/2025**

M/S R.V ENTERPRISES .....Petitioner

Through: Mr. Kunal Jha, Adv.

versus

ADDITIONAL COMMISSIONER, CGST, DELHI NORTH .....Respondent

Through: Ms. Anushree Narain, SSC and Mr. Naman Choula, Adv.

CORAM:
JUSTICE PRATHIBA M. SINGH
JUSTICE SHAIL JAIN

O R D E R

% 20.08.2025

1. This hearing has been done through hybrid mode.

2. The present petitions have been filed by the Petitioners under Article 226 of the Constitution of India, *inter alia*, assailing the Show Cause Notice dated

23rd July, 2024 (hereinafter, '*SCN*') as also the Order-in-Original dated 27th January, 2025 (hereinafter, '*impugned order*').

3. One major ground that is raised in the present petitions is that demands for multiple years have been raised and considered in one SCN and impugned order.

4 However, this issue has already been considered by this Court in the decision of ***Ambika Traders Through Proprietor Gaurav Gupta V. Additional Commissioner, Adjudication DGGSTI, CGST Delhi North, 2025: DHC:6181-DB.*** The relevant portion of the said decision reads as under:

> *"<u>Consolidated SCN for Multiple Financial Years</u>*
> *43. Insofar as the issue of consolidated notice for various financial years is concerned, a perusal of Section 74 of the CGST Act would itself show that at least insofar as fraudulently availed or utilized ITC is concerned, the language used in Section 74(3) of the CGST Act and Section 74(4) of the CGST Act is "for any period" and "for such periods" respectively. This contemplates that a notice can be issued for a period which could be more than one financial year. Similar is the language even in Section 73 of the CGST Act. The relevant provisions read as under:*
>
> > *"**73. Determination of tax [, pertaining to the period up to Financial Year 2023-24,] not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for any reason other than fraud or any wilful-misstatement or suppression of facts.—***
> >
> > *XXXX*
> >
> > *(3) Where a notice has been issued **<u>for any period under</u>** sub-section (1), the proper officer may serve a statement, containing the details of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for such periods other than those covered under sub-section*

(1), on the person chargeable with tax.

*(4) The service of such statement shall be deemed to be service of notice on such person under sub-section (1), subject to the condition that the grounds relied upon **for such tax periods** other than those covered under sub-section (1) are the same as are mentioned in the earlier notice.*

XXXX

74. Determination of tax [, pertaining to the period up to Financial Year 2023-24,] not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised by reason of fraud or any wilful misstatement or suppression of facts.—

XXXX

*(3) Where a notice has been issued **for any period** under sub-section (1), the proper officer may serve a statement, containing the details of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised **for such periods** other than those covered under sub-section (1), on the person chargeable with tax.*

(4) The service of statement under sub-section (3) shall be deemed to be service of notice under sub-section (1) of section 73, subject to the condition that the grounds relied upon in the said statement, except the ground of fraud, or any wilful-misstatement or suppression of facts to evade tax, for periods other than those covered under sub-section (1) are the same as are mentioned in the earlier notice."

44. Some of the other provisions of the CGST Act, which are relevant, include Section 2(106) of the CGST Act, which defines "tax period" as under

"2.[…] (106) "tax period" means the period for which the return is required to be furnished"

45. Thus, Sections 74(3), 74(4), 73(3) and 73(4) of the

CGST Act use the term "for any period" and "for such periods". This would be in contrast with the language used in Sections 73(10) and 74(10) of the CGST Act where the term "financial year" is used. The said provisions read as under:

> *"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* ***<u>financial year</u>*** *to which the tax not paid or short paid or input tax credit wrongly availed or utilised relates to or within three years from the date of erroneous refund"*
>
> *"74.[…] 10) The proper officer shall issue the order under sub-section (9) within a period of five years from the due date for furnishing of annual return for the* ***<u>financial year</u>*** *to which the tax not paid or short paid or input tax credit wrongly availed or utilised relates to or within five years from the date of erroneous refund."*

The Legislature is thus, conscious of the fact that insofar as wrongfully availed ITC is concerned, the notice can relate to a period and need not to be for a specific financial year.

46. The nature of ITC is such that fraudulent utilization and availment of the same cannot be established on most occasions without connecting transactions over different financial years. The purchase could be shown in one financial year and the supply may be shown in the next financial year. It is only when either are found to be fabricated or the firms are found to be fake that the maze of transactions can be analysed and established as being fraudulent or bogus.

47. A solitary availment or utilization of ITC in one financial year may actually not be capable of by itself establishing the pattern of fraudulent availment or utilization. It is only when the series of transactions are analysed, investigated, and enquired into, and a consistent pattern is established, that the fraudulent *availment and utilization of ITC may be revealed. The language in the abovementioned provisions i.e., the word `period' or `periods' as against `financial year' or `assessment year' are therefore, significant."*

5. The above decision has thus, decided the issue of consolidated notice for multiple years.

6. In all these matters in case of availment of fraudulent Input Tax Credit (hereinafter, '*ITC*'), there are several factual issues, which would need to be looked into, which cannot be adjudicated in a writ petition. This view has already been taken by this Court in several matters. Further, the Supreme Court in the context of Central Goods and Service Tax Act, 2017, has, in ***Civil Appeal No. 5121/2021*** dated 3rd September, 2021 titled ***'The Assistant Commissioner of State Tax & Ors. v. M/s Commercial Steel Limited'***, held 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 (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"

7. The said legal position has also been reiterated by this Court in ***M/s Sheetal and Sons & Ors. v. Union of India & Anr., (2025: DHC: 4057- DB)*** and by the Allahabad High Court in ***Writ Tax No. 753 of 2023*** titled ***'Elesh Aggarwal v. Union of India'*** wherein the Allahabad High Court has held that no ground is made for interference on merits in exercise of extra ordinary jurisdiction. The relevant portion of the decision in ***M/s Sheetal and Sons & Ors. (Supra)*** reads as under:

"15. The Supreme Court in the decision in Civil Appeal No 5121 of 2021 titled 'The Assistant Commissioner of State Tax & Ors. v. M/s Commercial Steel Limited' discussed the maintainability of a writ petition under Article226. In the said decision, the Supreme Court reiterated the position that existence of an alternative remedy is not absolute bar to the maintainability of a writ petition, however, a writ petition under Article 226 can only be filed under exceptional circumstances....

xxx xxx

16. In view of the fact that the impugned order is an appealable order and the principles laid down in the *abovementioned decision i.e. The Assistant Commissioner of State Tax & Ors. (Supra), the Petitioners are relegated to avail of the appellate remedy."*

8. Thus, this Court is of the opinion that the Petitioners deserve to be relegated to the Appellate remedy and no interference is needed under writ jurisdiction.

9. Accordingly, the present petition is disposed of with liberty given to the Petitioner to file an appeal under Section 107 of the Central Goods and Service Tax Act, 2017, before the Appellate Authority by 30th September, 2025, along with the requisite pre-deposit.

10. The access to the portal shall be made available to the Petitioner within one week to download any documents which he may require. If the appeal is filed by 30th September, 2025, it shall not be dismissed on the ground of limitation and shall be adjudicated on merits.

11. The present petition is disposed of. Pending applications, if any, are also disposed of.

PRATHIBA M. SINGH, J.

SHAIL JAIN, J.

AUGUST 20, 2025
Rahul/Ck