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* **IN THE HIGH COURT OF DELHI AT NEW DELHI*****Date of Decision: 21st May, 2025***

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W.P.(C) 6786/2025**M/S AUSHTA ENTERPRISES**

.....Petitioner

Through: Mr. Sanjeev Anand, Sr. Adv. with Ms. Madhumita Singh & Ms. Monica, Advs.

versus

UNION OF INDIA & ORS.

.....Respondents

Through: Mr. Vinay Yadav, SPC with Ms. Kamna Behrani, Mr. Ansh Kalra & Mr. Divyanshu Sinha, Advs. for UOI. Mr. Anurag Ojha, SSC with Mr. Dipak Raj, Mr. Subham Kumar & Ms. Garima Kumar, Advs.

CORAM:**JUSTICE PRATHIBA M. SINGH****JUSTICE RAJNEESH KUMAR GUPTA****Prathiba M. Singh, J. (Oral)**

1. This hearing has been done through hybrid mode.
2. The present petition has been filed under Article 226 of the Constitution of India challenging the order dated 4th February, 2025 (hereinafter '*impugned order*'). The petition has been filed by M/s Aushta Enterprises through Mr. Manish Kapil who is the Manager of the Petitioner. The challenge is on the grounds that there has been a breach of the Principles of Natural Justice as:
 - i) the Show Cause Notice (hereinafter '*SCN*') has not been served upon the Petitioner;
 - ii) No hearing notices have been served upon the Petitioner.
3. Yesterday i.e., 20th May, 2025 the matter was listed, and the same was



adjourned for today to enable the Id. Counsel for the Department to obtain instructions as to the manner in which and the hearing notices have been served.

4. Mr. Anurag Ojha, Id. Senior Standing Counsel has handed over the email and the communications which have been sent to the Petitioner both *qua* the SCN and also *qua* the hearing notices. According to Mr. Ojha, the emails have been sent to the Petitioner not at one email address but in fact at two email addresses i.e., chaudharymanish11@gmail.com and mkapil80@gmail.com on 26th May 2022 at 7:46 a.m. He also submits that all the three hearing notices have been issued to the Petitioners after duly generating the DIN. The said hearing notices were issued on 9th January, 2025, 15th January, 2025 and 16th January, 2025.

5. Mr. Anand, Id. Senior Counsel appearing for the Petitioner, however, disputes this and submits that the email which was received by the Petitioner had gone to the junk box and was received from dggstigzuggn@gmail.com. Screenshot of the email in the junk of the Petitioner's email id is relied upon in this regard.

6. The SCN in the present case relates to availment of Input Tax Credit (hereinafter '*ITC*') in a fraudulent manner by several traders after generating fake invoices without supply of goods. In respect of these very SCNs and impugned Orders-in-Original, this Court has already dealt with five writ petitions. The details of which are as under:

- ***W.P.(C) 6441/2025 titled M/s Sheetal and Sons v. Union of India and Anr.***
- ***W.P.(C) 6443/2025 titled Sunny Jagga v. Union of India and Anr.***
- ***W.P.(C) 6447/2025 titled Sunny Jagga v. Union of India and Anr.***



- ***W.P.(C) 6449/2025 titled M/s Vikas Traders v. Union of India and Anr.***

7. In the said writ petitions, the Court has held that in cases of this nature, writ petitions would not be maintainable considering the nature of the allegations and the Petitioners were permitted to approach the Appellate Authority under Section 107 of the Central Goods and Services Tax Act, 2017.

8. A perusal of the SCN in this case too would show that there were five firms against whom investigation was started:

“The said five firms against whom the Directorate General of GST Intelligence (hereinafter, ‘DGGI’) started an investigation are as under:

- *M/s S R Impex;*
- *M/s S R International;*
- *M/s R K Enterprises;*
- *M/s Vikas Impacts;*
- *M/s SK Traders.*

4. The allegation against the said firms was to the effect that a substantial amount of ITC was availed of by these firms without supply of any goods or services. The amount of ITC availed of is set out below:

- *M/s S R Impex-47.49 Crores*
- *M/s S R International-50.66 Crores*
- *M/s R K Enterprises-11.39 Crores*
- *M/s Vikas Impacts- 10.45 Crores*
- *M/s SK Traders-2.82 Crores”*

9. The allegation against the Petitioner-M/s Aushta Enterprises (which is listed at serial number 55 of the list in the impugned order) is captured in the impugned order as under:

“6.6 M/s Aushta Enterprises (07AASFA1075B1ZP], on whose invoices M/s Joles Trado Pvt. Ltd. have availed Input Tax Credit of Rs.7.66 Crore as mentioned in table-



2 above, was visited on 19.09.2019 on the basis of authorization for search dated 18.09.2019 and panchnama was drawn on the spot and documents were resumed. Summons dated 19.09.2019 were issued to them, and Shri Manish Kapil, their Manager and husband of Smt. Reetu Verma Kapil, Partner of the said firm, appeared and his Statement dated 25.09.2019 was recorded under section 70 of the CGST Act, 2017. He stated that these invoices were issued by them to M/s Joles Trado Pvt. Ltd. and Sh. Ritesh Aggarwal had contacted them for the said orders. On being queried as to the actual transportation of said goods declared on the invoices, he stated that the consignee own transportation. However, there were no particulars provided of the same.

6.6.1 On verification of GSTR-2A M/s Joles Trado Pvt. Ltd, it was found that they had availed input tax credit of Rs.7,65,51,6331-(CGST of Rs.87,00,771/-+ SGST of Rs.87,00,771/-+ Cess of Rs.5,91,50,091/-) on the invoices issued by M/s Aushta Enterprises. However, neither M/s Joles Trado Pvt. Ltd. nor M/s Aushta Enterprises could provide any proof of actual transport of said goods and delivery thereof. As such, it appears that M/s Joles Trado Pvt. Ltd., which was found to be a dummy company only on paper as its rent agreement was fake and its Director's were fake / unaware of their Directorship, availed an illicit input tax credit on the said goods, which is recoverable from them. Further, as M/s Aushta Enterprises could not provide the transport particulars or delivery proof, it appears that they cleared these goods into the market in cash sales and passed on invoices to facilitate input tax credit to said dummy company. As such, GST of Rs.7,65,51,633/- (CGST of Rs.87,00,771/-+ SGST of Rs.87,00,771/-+ Cess of Rs.5,91,50,091/-) is recoverable from them on this clandestine clearance.”

10. A perusal of the same would show that on the basis of invoices



generated by the Petitioner, M/s Joles Trado P. Ltd. had availed of ITC to the tune of Rs.7.66 crores. The Petitioner's premises was also searched and the Manager – Mr. Manish Kapil and Mrs. Reetu Verma Kapil were present at the time when the search was conducted. Statements were also recorded on 25th September, 2019 under Section 70 of the CGST Act.

11. As per the above allegations, neither the Petitioner nor the M/s Joles Trado P. Ltd. could provide any actual proof of transport of goods and it was only a dummy company. The rent agreement was also alleged to be fake. The delivery proofs were also not forthcoming. It is in this background that the demands have been raised against the Petitioner.

12. The two contentions of the Petitioner are that the SCN was not communicated to the Petitioner and hearing notices were not issued. When the matter was listed yesterday along with the writ petition, the only screenshot placed before the Court was of an email dated 25th May, 2022, sent at 11:55 p.m. from the address dggstigzuggn@gmail.com, containing the Show Cause Notice (SCN), which was stated to have been located in the junk folder of an email account. However, today, an additional email has also been shown by the Id. Counsel for the GST Department which was sent on 26th May, 2022 at 7:46 a.m. to two email addresses i.e., chaudharymanish11@gmail.com and mkapil80@gmail.com. The email contained the SCN along with the RUDs which were relied upon. Whenever there are multiple noticees who are alleged to be in collusion with each other to defraud the Exchequer by availing fraudulent ITC, the Department has to serve several notices to all parties. Usually the same are sent by email which is a recognised mode of service.

13. The Petitioner was well-aware of the search and the investigation that



was going on. The Petitioner did not choose to file any reply to the notice or give any explanation as to the manner in which the sales were made including any justification to show that the invoices were not goods-less or that there was actual supply of goods. Even the hearing notices have been issued repeatedly and this fact is captured in paragraph 8.1 and 8.2 of the impugned order which read as under:

*“8.1 **PH** dated 14.01.2025; 15.01.2025; 17.01.2025; 20.01.2025 & 21.01.2025 were granted to the Noticees as mentioned in Table, above, for providing them opportunities for the personal hearing. However, some of them appeared and made their Oral as well as Written submission which have been duly considered. Further, w.r.t. to remaining Noticees, it has been observed that neither the Noticees nor their Authorized Representatives appeared for the personal hearing on any of the dates fixed for them. Therefore, I am compelled to decide the case **ex-parte**, for such non-responsive Noticees, on the basis of evidence(s) already available on record.*

8.2 It is evident that the conduct of the Noticees is evasive. In my opinion, no purpose will be served to keep the adjudication proceedings pending in view of the non-cooperation from the Notices in the matter. I observe that even though the basic requirement of Principles of Natural Justice has been legally and dutifully complied with, the Noticees have failed to avail the opportunity. I accordingly proceed further to decide the case on merits.”

14. Considering the above circumstances, this Court, therefore, is satisfied that the Principles of Natural Justice have been sufficiently complied with. Moreover, in the cases of similarly placed Petitioners, the said parties have already been relegated to the Appellate remedy.



15. The Supreme Court in *Assistant Commissioner of State Tax & Ors. v. M/s Commercial Steel Limited (Civil Appeal No. 5121/2021)*, has held that it is only in extra-ordinary circumstances that writ petitions are to be entertained. The relevant portion of the said judgment is extracted below:

“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.”

16. This Court, in **Mukesh Kumar Garg**, has also held that in cases involving fraudulent availment of Input Tax Credit (ITC), particularly where the evasion runs into crores of rupees causing substantial loss to the Revenue, the invoking of writ jurisdiction would be uncalled for and unwarranted. The relevant portion of the said judgment is also extracted below:

“11. The Court has considered the matter under Article 226 of the Constitution of India, which is an exercise of extraordinary writ jurisdiction. The allegations against the Petitioner in the impugned order are extremely serious in nature. They reveal the complex maze of transactions, which are alleged to have been carried out between various non-existent firms for the sake of enabling fraudulent availment of the ITC.

12. The entire concept of Input Tax Credit, as recognized under Section 16 of the CGST Act is for enabling businesses to get input tax on the goods and services which are manufactured/supplied by them in the chain of business transactions. The same is meant as an incentive for businesses who need not pay taxes on the inputs, which have already been taxed at the source itself. The said facility, which was introduced under Section 16 of the CGST Act is a major feature of the GST regime, which is business friendly and is meant to enable ease of doing business.

13. It is observed by this Court in a large number of writ petitions that this facility under Section 16 of the CGST Act has been misused by various individuals, firms, entities and companies to avail of ITC even when the output tax is not deposited or when the entities or individuals who had to deposit



the output tax are themselves found to be not existent. Such misuse, if permitted to continue, would create an enormous dent in the GST regime itself.

16. Insofar as exercise of writ jurisdiction itself is concerned, it is the settled position that this jurisdiction ought not be exercised by the Court to support the unscrupulous litigants.

17. Moreover, when such transactions are entered into, a factual analysis would be required to be undertaken and the same cannot be decided in writ jurisdiction. The Court, in exercise of its writ jurisdiction, cannot adjudicate upon or ascertain the factual aspects pertaining to what was the role played by the Petitioner, whether the penalty imposed is justified or not, whether the same requires to be reduced proportionately in terms of the invoices raised by the Petitioner under his firm or whether penalty is liable to be imposed under Section 122(1) and Section 122(3) of the CGST Act.

18. The persons, who are involved in such transactions, cannot be allowed to try different remedies before different forums, inasmuch as the same would also result in multiplicity of litigation and could also lead to contradictory findings of different Forums, Tribunals and Courts.”

17. A perusal of the above makes it clear that the Court need not entertain Petitioners under writ jurisdiction -

(i) if they approach the Court with unclean hands and

(ii) if the disputes require the writ Court to adjudicate on factual issues.

18. In the present case, the second email which has been produced by the Department was not even placed on record in the writ petition. It is evident that the Petitioner must have received these emails, and there *prima facie* appears to be no reason to disbelieve the assertion of the GST Department that the said notice was duly issued. The Petitioner, having chosen not to file any reply and having not attended the hearing or taken any steps to place its stand



on record after the search and investigation having been conducted, has clearly not demonstrated *bona fides*.

19. Accordingly, this Court is not inclined to entertain the present writ petition, as both the grounds (i) lack of clean hands and (ii) the need for factual adjudication stand clearly established. However, the Petitioner is free to avail of its remedies in accordance with law under Section 107 of the CGST Act.

20. In line with the liberty given to the Petitioners in the other writ petitions, Petitioner in the present petition is also free to approach the Appellate Authority by 15th July, 2025 along with the requisite pre-deposit. If the said appeal is filed within the stipulated time along with the pre-deposit, the same shall be adjudicated on merits and shall not be dismissed on the ground of being barred by limitation.

21. Petition is disposed of in these terms. All pending applications, if any, are also disposed of.

PRATHIBA M. SINGH
JUDGE

RAJNEESH KUMAR GUPTA
JUDGE

MAY 21, 2025

Rahul/Ar.