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

\+ **W.P.(C) 6789/2025 & CM APPLs. 30777/2025, 30778/2025**

SUPERB INDUSTRIES THOUGH PROPRIETOR SANJEEV KUMAR .....Petitioner

Through: Mr. Vaibhav Jain, Advocate.

versus

ADDITIONAL COMMISSIONER CGST DELHI NORTH C R BUILDING IP ESTATE NEW DELHI 110019 .....Respondent

Through: Mr. Akash Verma, SSC, CBIC with Ms. Aanchal Uppal, Advocate.

CORAM:
JUSTICE PRATHIBA M. SINGH
JUSTICE RAJNEESH KUMAR GUPTA

ORDER

% 20.05.2025

1. This hearing has been done through hybrid mode.

2. The present writ petition has been filed by the Petitioner under Articles 226 and 227 of the Constitution of India challenging the impugned dated 04th February, 2025 *(hereinafter, 'the impugned order')* passed by the Additional Commissioner, Delhi North, which is stated to have been uploaded on the Goods and Service Tax Portal *('hereinafter, GST Portal')* on 20th February, 2025.

3. The contention raised by the Petitioner in support of the present writ petition is that the show cause notice *(hereinafter, 'SCN')* which led to the passing of the consequent impugned order was not received by the Petitioner and hence no reply was filed to the SCN. It is further submitted that no notice

for personal hearing was issued upon the Petitioner.

4. A perusal of the record would show that the impugned order has been passed against 428 parties, raising allegations of fraudulent availment of Input Tax Credit *(hereinafter, 'ITC')*.

5. In similar cases, this Court has already taken a view that when there is an allegation of fraudulent availment of ITC, writ jurisdiction ought not to be exercised by this Court. The said decisions include - ***W.P. (C) 5737/2025*** titled ***Mukesh Kumar Garg v. Union of India & Ors.*** as also in ***W.P. (C) 6443/2025*** titled ***Sunny Jagga v. Union of India & Ors.***

6. This Court, while deciding the above stated matter being ***Mukesh Kumar Garg (supra)***, has already taken a view in this regard that where cases involving allegations of fraudulent availment of ITC are concerned, considering the burden on the exchequer and the nature of impact on the GST regime, writ jurisdiction ought not to be exercised in such cases. The relevant portions of the said judgment are set out 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.*
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> ***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.

14. As is seen in the present case, the Petitioner and his other family members are alleged to have incorporated or floated various firms and businesses only for the purposes of availing ITC without there being any supply of goods or services. The impugned order in question dated 30th January, 2025, which is under challenge, is a detailed order which consists of various facts as per the Department, which resulted in the imposition of demands and penalties. The demands and penalties have been imposed on a large number of firms and individuals, who were connected in the entire maze and not just the Petitioner.

15. The impugned order is an appealable order under Section 107 of the CGST Act. One of the co-noticees, who is also the son of the Petitioner i.e. Mr. Anuj Garg, has already appealed before the Appellate Authority.

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."

7. Further, the Supreme Court, in ***Civil Appeal No. 5121 of 2021*** titled ***The Assistant Commissioner of State Tax and Others vs. M/s Commercial Steel Limited*** has held that a writ petition can be entertained under exceptional circumstances only which are set out in the said judgment 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;

<u>(iii) an excess of jurisdiction; or</u>

<u>(iv) a challenge to the vires of the statute or delegated legislation.</u>

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. ***<u>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.</u>***

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.

Under these circumstances, this Court is not inclined to entertain the present writ petition.

8. However, the Petitioner is at liberty to avail of the appellate remedy under Section 107 of the Central Goods and Service Tax Act, 2017. Accordingly, the Petitioner is permitted to file an appeal by 15th July, 2025, along with the necessary pre-deposit mandated under Section 107 of the Central Goods and Service Tax Act, 2017. If the appeal is filed within the said time period, the appeal shall be adjudicated on merits and shall not be

dismissed on the ground of limitation.

9. Needless to add, any observations made by this Court would not have any impact on the final adjudication by the appellate authority.

10. The petition is disposed of in said terms. Pending application(s), if any, also stand disposed of.

PRATHIBA M. SINGH, J.

RAJNEESH KUMAR GUPTA, J.

MAY 20, 2025/*MR/ss*