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

\+ **W.P.(C) 7195/2025 & CM APPL. 32389/2025**

VAB APPAREL LLP .....Petitioner

Through: Mr. Puneet Rai, Mr Sanjay Sharma and Ms. Srishti Sharma, Advs. (M: 9910502001)

versus

ADDITIONAL COMMISSIONER, ADJUDICATION(DGGSTI) CGST DELHI NORTH & ORS. .....Respondents

Through: Ms. Naincy Jain, Jr. Standing Counsel for CBIC.

CORAM:
JUSTICE PRATHIBA M. SINGH
JUSTICE RAJNEESH KUMAR GUPTA

<u>O R D E R</u>

% 28.05.2025

1. This hearing has been done through hybrid mode.

2. The present petition has been filed by the Petitioner-Vab Apparel LLP under Article 226 of the Constitution of India, challenging the order dated 17th December, 2024 and corresponding summary orders dated 4th February, 2025 and 12th February, 2025 on various grounds.

3. The case of the Petitioner is that it has two units - one in Delhi and another in Gurgaon. In the Delhi unit, no Input Tax Credit (hereinafter '*ITC*') has even been availed of by the Petitioner in the year 2017-18 and in 2018-19. It is further submitted that the Show Cause Notice dated 2nd August, 2024 from which the impugned orders arise, are in relation to the Financial Years 2018-19, however, the impugned summary orders dated 4th February, 2025 and 12th February, 2025 have raised a demand for the Financial Year 2017-

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18. Hence, it is the contention of the Petitioner that the impugned order is not sustainable in law.

4. On the last date of hearing, the Court upon suggesting that the order was appealable under Section 107 of the Central Goods and Services Tax Act, 2017 (hereinafter *'the Act'*), the Petitioner had orally sought for a waiver of pre-deposit. The Court had issued notice on 26th May, 2025 and had requested ld. Counsel for the Department to seek instructions in the matter.

5. Today, it is submitted by Ms. Jain, ld. Counsel for Respondent-CGST Department (hereinafter *'Department'*) that the present matter would be covered by the decision of this Court in ***Impressive Data Services v. Commissioner (Appeals)*** where the Court has taken a position that waiver of pre-deposit cannot be entertained in such matters.

6. In response to the same, Mr. Puneet Rai, ld. Counsel for the Petitioner has vehemently urged before the Court that if the Delhi entity has not availed of any ITC, it ought not to be punished in this manner by imposing demand of tax and penalty. Ld. Counsel submits that the fact as to whether ITC was availed or not can be decipherable from the returns. He submits that considering that no ITC has been availed, the Delhi entity at the least must be exempted from pre-deposit.

7. Heard. The Court has also perused the records. It is noticed that the impugned order dated 17th December, 2024 is a detailed order, which has set out the entire mechanism, which has been adopted by the entities therein including the Petitioner, for fraudulently passing on and availing of ITC on goods-less transactions. The submission of the Respondent is that in fact, M/s Fortune Graphics Limited, which is a supplier firm from which the Petitioner firm has availed ITC, is not even traceable and it has passed on crores worth

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of ITC to various entities including the Petitioner. The investigation, as per the impugned order, also reveals that Mr. Sumit Tandon, the director of M/s Fortune Graphics Limited, from whom the Petitioner is stated to have received the ITC, has admitted that no goods were supplied by Fortune Graphics. Even the e-way bill analysis reveals that the entire movement of goods itself was bogus and fake.

8. Further, the Petitioner was given an opportunity to appear. In fact, Ms. Jain clarifies that it is wrongly recorded in one portion of the order (i.e., at page 98) that the Petitioner had not appeared. The officer had, in fact, considered the forms GSTR-2A and GSTR-3B and has held that M/s Vab Apparel has fraudulently availed of ITC passed on by M/s Fortune Graphics. A perusal of the record would also show that the statement of Shri Nikhil Tandon, who is the authorized person of the Petitioner has also been recorded in this matter. In the cases of availment of fraudulent ITC, this Court has already taken a view in ***Mukesh Kumar Garg v. Union of India & Ors. (W.P.(C) 5737/2025, decided on 9th May, 2025)*** that writ petitions would not be liable to be entertained, especially when there is compliance of the principles of Natural Justice.

9. The question, as to whether which of the entities of the Petitioner *i.e.*, the Delhi entity or Gurgaon entity availed of the ITC and what would be the impact of the same, would be a factual analysis, which would require a closer scrutiny. The returns filed by the various firms, which have issued the invoices and have passed on the ITC to the Petitioner as also the Petitioner's own documents would be needed to be looked into. The said analysis would be beyond the scope of writ jurisdiction.

10. Accordingly, this Court is not inclined to entertain the present writ

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petition. However, the Petitioner is permitted to avail of its appellate remedies under Section 107 of the Act in accordance with law by making the requisite pre-deposit by 15th July, 2025. If such an appeal is filed along the requisite pre-deposit, the same shall be decided on merits and shall not be dismissed on the ground of being barred by limitation.

11. Insofar as the second aspect of the challenge to the cancellation order dated 15th April, 2024 where the retrospective cancellation has been challenged is concerned, the Petitioner is free to file a separate writ petition in this regard.

12. It is also clarified that none of the observations made in this order would affect the final decision of the Appellate Authority.

13. The petition, along with pending applications, is disposed with liberty as above.

PRATHIBA M. SINGH, J.

RAJNEESH KUMAR GUPTA, J.

MAY 28, 2025/*dk/Ar.*

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