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

\+ **W.P.(C) 7286/2025 & CM APPL. 32812/2025**

M/S PANKAJ POLYMERS THROUGH ITS PROP. PANKAJ GUPTA .....Petitioner

Through: Mr. Vineet Bhatia, Mr. Sidhnat Garg, Ms. Aamnaya Jagannath Mishra, Mr. Parvesh Bansal, Ms. Anu Aggarwal, Mr. Rahul Bansal, Mr. Bipin Punia & Mr. Keshav Garg, Advs.

versus

COMMISSIONER OF CGST, DELHI NORTH AND ORS. .....Respondent

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

CORAM:
JUSTICE PRATHIBA M. SINGH
JUSTICE RAJNEESH KUMAR GUPTA

O R D E R

% 27.05.2025

1. This hearing has been done through hybrid mode.

2. The present petition has been filed by the Petitioner under Articles 226 & 227 seeking setting aside of order dated 3rd February, 2025 *(hereinafter, 'the impugned order').*

3. The present petition challenges the impugned order passed vide DIN 20250151ZI0000444B8 which has been passed against a large number of persons who are stated to have wrongfully availed Input Tax Credit *(hereinafter, 'ITC')* and have enabled utilisation of the same on the basis of goods-less invoices.

4. According to the show cause notice dated 3rd August, 2024 *(hereinafter, 'the SCN'),* issued by the Central Goods and Service Tax

Department *(hereinafter, 'CGST Department'),* the noticees were not eligible to avail of the ITC and the same has been availed and utilized by the noticees on the basis of the goods less invoices raised/ allegedly issued by a non-existent firm, i.e., Noticee No. 1, namely one M/s ML Traders. The Petitioner, being one of the noticees is at serial no. 5 in the SCN.

5. The SCN has been issued by the CGST Department in respect of such tax payers who have passed on ITC above the threshold of Rs. 1 crore and a total of 1552 tax payers are stated to have been identified with respect to transactions involving a total ineligible ITC of Rs. 7309 crores. According to the SCN, this amount is stated to have been passed on to 42,406 recipients.

6. The case of the Petitioner herein is that the SCN was not issued to them and the consequent personal hearing notice was also not issued.

7. A reading of the impugned order reveals that all the noticees in the SCN were connected to Noticee No. 1– M/s M L Traders, who created invoices without supply of goods. Ld. Counsel for the CGST Department has handed over the personal hearing notice dated 22nd November, 2024 issued to the Petitioner herein which has come back unserved with the remark *"no such person"*. Let the same be taken on record. The impugned order, in respect of the SCN records as under:

> *"5.1 I have carefully gone through the Show Cause Notice alongwith RUDs, available records in file, submissions/reply made by the noticee(s) and records of personal hearings.*
> *5.2 Before proceeding with my findings on main issues, I would like to discuss the reservations expressed by main noticee M/s ML Traders in their written submission dated 08.11.2024. M/s ML Traders has contested the contents of SCN on the following grounds: that they have filed GSTR 1 and GSTR 3B returns upto*

January, 2021 and their GST registration was cancelled w.e.f. 31.01.2021 on the basis of application made by them and the jurisdictional GST authority, being satisfied, had not brought out any inconsistency while approving their application for cancellation of GST registration; there was no reason or occasion for the noticee to remain present at the declared registered premises to receive the summon issued on 02.09.2022 after surrender of their GST registration and lack of proper Inquiry as neither any, statement has been recorded from the buyers nor any transport enquiry has been conducted. The noticee has raised serious concerns on the quality of Investigation where demand of ITC has been raised or penalty provisions have been invoked without examining a single piece of paper but has been issued on the basis of DGARM Report."

8. A further perusal of the impugned order shows that some of the noticees had in fact filed a reply to the SCN, including M/s M L Traders, M/s Puneet Electricals through its proprietor Mr. Satish Chand Gupta and M/s Guru Dev Electronics through its proprietor Mr. Arun Kumar. The impugned order, in paragraph 3.2 to 3.4 records as under :

"3.2 M/s Puneet Electricals (Prop Sh. Satish Chand Gupta) GSTIN: 07AIHPG7016K1Z8, one of the noticee/recipient of wrong ITC submitted their written submission on 14.12.2024 against the SCN. Vide their reply, the noticee submitted that the tax liability against transactions with ML Traders during the FY 2019-20 and FY 2020-21 has already been paid through DRC-03 along with interest and penalty, hence, requested to drop the proceedings initiated against them vide the SCN.

3.3 M/s Guru Dev Electronics (Prop. Shri Arun Kumar) GSTIN: 07ANNPK6441R1Z7 filed written submission on 04.09.2024 and informed:

"the assesse purchased the goods from M/s M . Traders against the invoices no. (738, 744, 747) copy of all invoice are enclosed. That the selling dealer filled his GSTR-3B and GSTR-1 and the same transaction has been reflected in GSTR-2A. That the tax amount is very low in order to avoid confrontation with department for the peace of mind the dealer has voluntary deposited total sum of Rs.33,370/- (the tax Rs. 6846+6846, Interest @18% Rs.8127+8127 & penalty @25% Rs.1712+1712). Capy of the Form GST DRC 03 is enclosed. You are requested to please vacate the DRC 01 and drop the proceedings and oblige."

3.4 Other noticee(s) except as mentioned above neither submitted their written reply to the SCN nor informed anything after issuance of the SCN."

9. In addition, insofar as personal hearing is concerned, it is recorded as under:

*"**4. Records of personal hearing**:*

In this matter, personal hearings were granted to all the noticees on 09.12.2024; 26.12.2024 and 03.01.2025. Shri Anand Ballabh Nainwal, Tax consultant and authorized representative of M/s Puneet Electricals (Prop Sh. Satish Chand Gupta) GSTIN: 07AIHPG7016K1Z8 appeared in the personal hearing held on 16.12.2024. He submitted that they have deposited the tax along with interest and penalty as applicable through DRC-03 dated 12.11.2022 and 25.07.2024. None except M/s Puneet Electricals appeared for personal hearing on given dates."

10. Thus, the allegation that the SCN was not issued properly and that the personal hearing notice was also not issued appears to be clearly belied by the fact that some of the noticees to the SCN have, in fact, filed replies and some

have also appeared for the personal hearing.

11. Moreover, the address of the Petitioner is also correctly mentioned in the SCN as the same matches with the address mentioned in the memo of parties in the present petition. Further, since the endorsement on the delivery report dated 9th December, 2024 bears the seal of the Delhi GPO, stating that there is *"no such person"* at the said address of the Petitioner, there is no reason for the endorsement to be disbelieved.

12. Under these circumstances, in the opinion of this Court, the Petitioner, having been given adequate notice and the nature of the matter being fraudulent availment of ITC, the Court is not inclined to entertain a writ petition.

13. The contentions that the Petitioner wishes to raise can always be raised in appeal, in terms of this Court's view in ***W.P.(C) 5737/2025*** titled ***Mukesh Kumar Garg vs. Union of India & Ors.***

14. This Court, while deciding the above stated matter, has already taken a view in this regard that where cases involving fraudulent availment of ITC are concerned, considering the burden on the exchequer and the nature of impact on the GST regime, the 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.*
>
> ***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.

<u>Mr. Anuj Garg, has already appealed before the Appellate Authority.</u>

<u>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.</u>

<u>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.</u>

<u>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."</u>

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

16. Accordingly, the Petitioner is permitted to avail of the appellate remedy by 15th July, 2025, along with the necessary pre-deposit mandated under Section 107 of the Central Goods and Service Tax Act, 2017, in which case the appeal shall be adjudicated on merits and shall not be dismissed on the ground of limitation.

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

18. 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 27, 2025
dj/ss