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

\+ **W.P.(C) 8200/2025, CM APPL. 35890/2025 &CM APPL. 35891/2025**

M/S SOHAM INDUSTRIES .....Petitioner

Through: Mr. R.P. Singh and Mr. Rahul Ranjan, Advs.

versus

CENTRAL GOODS AND SERVICE TAX, DELHI WEST .....Respondent

Through: Mr. Aakarsh Srivastava, SSC.

CORAM:
JUSTICE PRATHIBA M. SINGH
JUSTICE RAJNEESH KUMAR GUPTA

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

% 14.07.2025

1. This hearing has been done through hybrid mode.

2. The present petition challenges the impugned order dated 31st December, 2024 issued by the Assistant Commissioner, Central Goods and Service Tax, arising out of Show Cause Notice dated 2nd August, 2024 (hereinafter "*the SCN*"), by which a demand has been raised in the following terms:

> "*ORDER*
> *(i) I hereby denied Input Tax Credit (ITC) amounting to Rs. 26,95,895/- wrongly availed and utilized by the taxpayer and confirm the demand of inadmissible ITC ineligible Input Tax Credit amounting to Rs. 26,95,895/- from the taxpayer under Section 74 (1) of the CGST Act, 2017 read with Section 20 of IGST Act, 2017;*
> *(ii) I hereby confirm the demand of Interest on aforementioned inadmissible availed ITC demanded in point (i) from the taxpayer at applicable rate(s) under Section 50 of CGST Act 2017 read with the DGST Act, 2017 and IGST Act, 2017*
> *(iii) I hereby confirm the equivalent penalty of Rs.*

26,95,895/- from the taxpayer under Section 122 (1) (vii), (x) and (xvi) and Section 122 (2)(b) read with Section 74, 89, 90 of the CGST Act, 2017, and further read with Section 20 of the IGST Act, 2017 and the corresponding provisions of the Delhi SGST Act 217;"

3. The allegation is that the Petitioner firm was one of the recipients from 18 firms which were found to be non-existent. Even the Petitioner firm itself was found to be non-existent and no operations were being undertaken at the registered premises. The Petitioner firm was issued the SCN and personal hearing was also afforded on three specific dates. The same is recorded in paragraph 11 of the impugned order and is extracted below:

> *"**RECORD OF PERSONAL HEARING:-***
> *11 The Personal Hearing in respect of the said SCN was accorded on 29.10.2024, 13.11.2024 & 4.12.2024 by the department. However, neither the taxpayer nor the authorized representative attended the personal hearing in the said matter."*

4. However, the Petitioner firm did not attend the said hearings. The submission on behalf of the Petitioner firm is that the SCN was not served upon the Petitioner firm.

5. Mr. Srivastava, ld. SSC was requested to accept notice in the morning as he was present in the Court and he has urged vehemently that the Petitioner firm should be relegated to the appellate remedy.

6. Considering that the impugned order is an appealable order, this Court is not inclined to entertain the present writ petition in view of the decision in ***W.P.(C) 5737/2025*** titled ***Mukesh Kumar Garg vs. Union of India & Ors.*** The relevant portion of the said judgement reads as under:

> *"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. 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. Considering the above, in the opinion of the Court the present writ would not be maintainable. However, since the Petitioner firm alleges that it does not have a copy of the SCN, the same may be furnished to the Petitioner firm within a week on the following email address:

Name: Mr. R P Singh

Mobile No: 9990174008

Email Id: usrlegaladvisors@gmail.com

8. The Petitioner firm may avail of its appellate remedy in accordance with law by filing an appeal before the appellate authority under Section 107 of the Central Goods and Services Act, 2017 by 14th August, 2025. The appeal shall be filed along with the requisite pre-deposit.

9. The petition is disposed of in these terms. Pending applications, if any, are also disposed of.

PRATHIBA M. SINGH, J

RAJNEESH KUMAR GUPTA, J

JULY 14, 2025
dj/msh