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

\+ **W.P.(C) 9893/2025**

MAGICON IMPEX PVT. LTD. THROUGH ITS DIRECTOR GURDEEP SINGH SUDDAN .....Petitioner

Through: Mr. Rajesh Mahna, Mr. Ramanand Roy, Ms. Silky Wadhwa, Mr. Shiva Narang, Mr. Mukesh Yadav, Mr. Mayank Kouts & Ms. Ridhi Mahna, Advs. (9650050457)

versus

COMMISSIONER OF CENTRAL GOODS AND SERVICE TAX & ORS. .....Respondents

Through: Ms. Monica Benjamin, SSC with Ms. Nancy Jain, Adv. (8882573792)

CORAM:
JUSTICE PRATHIBA M. SINGH
JUSTICE RAJNEESH KUMAR GUPTA

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

% 15.07.2025

1. This hearing has been done through hybrid mode.

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2. Allowed, subject to all just exceptions. The application is disposed of.

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3. The present petition challenges the impugned order dated 31st January, 2025 passed by the Assistant Commissioner, Central Goods and Service Tax, Delhi West, by which a demand has been raised to the tune of Rs.11,78,736/- against the Petitioner Firm.

4. The impugned order has been passed in respect of the Input Tax Credit (hereinafter "*ITC*") availed by the Petitioner Firm from a specific supplier namely M/s Shivoy Enterprises, whose GST registration was cancelled *w.e.f.* the date of registration which is prior to the date of invoices issued by the said

firm. The said firm had raised 192 invoices *qua* the Petitioner Firm and therefore, the ITC is sought to be reversed in this case.

5. The submission of Mr. Mahna, ld. Counsel appearing for the Petitioner Firm is that the impugned order has been passed in respect of the Financial Year 2017-18, and for this very financial year *qua* availment of fITC, a specific order has already been passed by the concerned authority on 7^{th} January, 2025. It is submitted that against the said order the Petitioner has already filed an appeal before the Appellate Authority. Mr. Mahna, ld. Counsel further submits that the amount demanded in the impugned order would be overlapping with the amounts already demanded in the earlier order dated 7^{th} January, 2025.

6. This position is disputed by Ms. Benjamin, ld. SSC who submits that there is no overlap between the two orders. The earlier order dated 7th January, 2025 relates to the IGST demand, however, the present order relates to CGST & SGST demands.

7. The Court has heard the parties and perused the documents placed on record. In the opinion of the Court, since the present matter relates to fraudulent availment of ITC and the impugned order is an appealable order, the Petitioner Firm should avail of its appellate remedy. The said view is also supported by the decision of this Court in ***W.P.(C) 5737/2025*** titled ***Mukesh Kumar Garg vs. Union of India & Ors.,*** wherein in respect of exercise of writ jurisdiction under Article 226 of the Constitution of India *qua* cases involving fraudulent availment of ITC, the Court had held 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."

8. In view of the above, the Petitioner Firm is relegated to avail its appellate remedy before the Appellate Authority against the impugned order.

9. At this stage, Mr. Mahna, ld. Counsel, submits on the basis of paragraph no. 15 of the impugned order, that the ITC amount of Rs. 21,19,728/- has

already been reversed by the Petitioner Firm. Hence, the pre-deposit for filing the appeal against the impugned order be waived.

10. Considering the two facts *i.e.*, that appeal against order dated 7th January, 2025 has already been filed and the reversal of ineligible ITC has been done by the Petitioner Firm, let the appeal against the impugned order be filed, manually, within a period of one month from the date of this order, with an application for waiver of the pre-deposit.

11. The Appellate Authority will take a decision on the prayer for waiver of pre-deposit in accordance with law, after considering whether the said reversal can be adjusted qua the Petitioner.

12. Since the limitation period for filing the appeal against the impugned order has already expired, if the appeal is filed within a period of one month from the date of this order, the same shall not be disposed of on the ground of limitation and shall be decided on merits.

13. The petition is disposed of in the aforesaid terms. Pending application, if any, is also disposed of.

PRATHIBA M. SINGH, J

RAJNEESH KUMAR GUPTA, J

JULY 15, 2025
kk/msh