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

\+ **W.P.(C) 10406/2025 & CM APPL. 43251/2025**

GURBANI EXPORTS .....Petitioner

Through: Dr. G.K. Sarkar, Adv.

versus

PRINCIPAL COMMISSIONER OF CGST DELHI NORTH .....Respondent

Through: Mr. Gibran Naushad, SSC with Mr. Suraj Shekhar Singh and Mr. Harsh Singhal, Advs.

CORAM:
JUSTICE PRATHIBA M. SINGH
JUSTICE RAJNEESH KUMAR GUPTA

O R D E R

% 22.07.2025

1. This hearing has been done through hybrid mode.

2. The present petition has been filed by the Petitioner challenging the impugned order-in-original dated 1st February, 2025 *(hereinafter, 'the impugned order')* by which various demands have been raised against more than 400 entities/individuals.

3. The case relates to availment of input tax credit *(hereinafter, ITC)* by 23 fake firms. There were allegations of existence of a total of 408 buyers/recipients from the said 23 fake firms which resulted in an investigation revealing that approximately Rs. 63.83 crores was availed as ITC.

4. Upon receiving notices, some of the parties, in fact, paid the ITC by reversing the same, including the interest and penalty charges. The Petitioner was one of the noticees. The case of the Petitioner is that a sum of Rs. 5,97,223/-, with the tax amount being Rs. 2,98,611/-, has been demanded from the Petitioner. A perusal of the impugned order would show that the

invoice amount which was raised by the Petitioner was to the tune of Rs. 5,97,223/-.

5. This being a case where allegations of fraudulent availment of ITC has been raised, in view of the decision in ***W.P.(C) 5737/2025*** titled ***Mukesh Kumar Garg vs. Union of India & Ors.,*** the writ petition ordinarily would not be entertainable.

6. 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.*
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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 reliance is placed upon the decision of Supreme Court in ***Civil Appeal No. 5121 of 2021*** titled ***The Assistant Commissioner of State Tax and Others vs. M/s Commercial Steel Limited*** wherein it has been 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;

(iii) an excess of jurisdiction; or

(iv) a challenge to the vires of the statute or delegated legislation.

> *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. 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.*
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> *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. Mr. Sarkar, ld. Counsel for the Petitioner submits that a personal hearing was fixed in this matter on 13th December, 2024 and the Petitioner got the notice for the same only on 12th December, 2024.

9. Thereafter, a reply was filed on behalf of the Petitioner on 10th December, 2024, however, the same has not been considered while passing the impugned order. A perusal of the impugned order would show that some of the parties have in fact appeared in the matter. Relevant portion of the impugned order is extracted herein below:

> *"**8.1 PH dated 09.12.2024; 19.12.2024 and 03.01.2025** were granted to the Noticees as mentioned in Table,*

above, for providing them opportunities for the personal hearing. However, some of them appeared and made their ***Oral as well as Written submission*** *which have been duly considered. Further, w.r.t. to remaining Noticees. it has been observed that neither the Noticees nor their Authorized Representatives appeared for the personal hearing on any of the dates fixed for them. Therefore, I am compelled to decide the case* ***ex-parte****, for such non-responsive Noticees, on the basis of evidence(s) already available on record.*

8.2 *It is evident that the conduct of the Noticees is evasive. In my opinion, no purpose will be served to keep the adjudication proceedings pending in view of the non-cooperation from the Noticees in the matter. I observe that even though the basic requirement of Principles of Natural Justice has been legally and dutifully complied with, the Noticees have failed to avail the opportunity. I accordingly proceed further to decide the case on merits."*

10. In view of the above circumstances, this Court is of the view that an opportunity can be granted to the Petitioner to avail of the appellate remedy under Section 107 of the Central Goods and Service Tax Act, 2017.

11. Let the appeal be filed by the Petitioner by 31st August, 2025 along with the relevant pre-deposit. If the same is filed within the stipulated time, it shall not be dismissed on the ground of limitation and shall be adjudicated on merits.

12. 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 22, 2025*dj/ss*