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

\+ **W.P.(C) 10955/2025 & CM APPL. 45161/2025 CM APPL. 45162/2025**

M/S DK ENTERPRISES THROUGH PROPRIETOR, DEEPAK MITTAL .....Petitioner

Through: Mr. S. Jaikumar, Mr. Kartik Jindal, Ms. Palak Gupta, Ms. Supriya Udey, Advs.

versus

UNION OF INDIA REPRESENTED THROUGH SECRETARY DEPT OF REVENUE MINISTRY OF FINANCE & ANR. .....Respondents

Through: Ms. Anushree Narain, Adv.

CORAM:
JUSTICE PRATHIBA M. SINGH
JUSTICE SHAIL JAIN

O R D E R

% 28.07.2025

1. This hearing has been done through hybrid mode.

2. The present petition has been filed by the Petitioner under Article 226 of the Constitution of India, *inter alia*, assailing the Order-in-Original dated 29th January 2025 (hereinafter, '*impugned order*') passed by the Office of Principal Commissioner of CGST, Delhi North as also the Show Cause Notice dated 29th July, 2022 (hereinafter, '*SCN*') issued by the Directorate General of GST Intelligence (hereinafter, '*DGGI*').

3. The impugned order has been passed in a case where there is an allegation of fraudulent availment of Input Tax Credit (hereinafter, '*ITC*') by one M/s. A.S. Traders. The Petitioner was one of the suppliers to the said firm and had made certain supplies in 2018. The firm had availed of ITC in the

year 2019. There are a total of 146 noticees in the present case.

4. The allegation in the impugned order is that all the invoices raised by the Petitioner were for goods-less invoices and there is fraudulent availment of ITC.

5. Mr. S. Jaikumar, ld. Counsel for the Petitioner submits that the reply of the Petitioner has not been considered by the Adjudicating Authority. Moreover, according to the ld. Counsel for the Petitioner, absence of the said firm *i.e.* M/s. A.S. Traders on 09th November 2019 would not mean that the firm was not in existence in 2018, when the sales were made by the Petitioner.

6. Ms. Narain, ld. SCC for the Respondent submits that the impugned order is an appealable order under Section 107 of the Central Goods and Service Tax Act, 2017.

7. Heard. In so far as the personal hearing and the reply not being considered is concerned, the Adjudicating Authority records as under:

> *"I find that some of the Noticees herein, have filed their replies and the same have been considered during the proceedings. Some of the Noticees, as detailed in Table-I below, have deposited tax amount and some amount towards interest and penalty liabilities and the same shall be appropriated vide this order. Most of the Noticees did not appear before the proper officer in respect of the Summons and also did not deposit their pending dues while other Noticees deposited their liabilities or sub mitted some documents that were not in consonance to the justification of their act of availing/utilization or passing-on of the bogus ITC. Conclusively, the deposits made by some of the Noticees further strengthened the case of the department that admissible/fake ITC was availing/utilization or passing-on during the transaction made by them, initially."*

8. One of the noticees who had filed the reply was the Petitioner - M/s

D.K. Enterprises and is mentioned at serial no.20 of the list in Section B of the impugned order.

9. The impugned order further reveals that some of the noticees also appeared for personal hearing which was fixed on 20th September 2024, 04th October 2024 and 13th January 2024. The record of personal hearing reads as under:

> *"Following the principles of natural justice, Personal Hearing (PH) opportunities were provided to the Noticees on 20.09.2024, 04.10.2024 and 13.01.2025 by the adjudicating authority. In response to the hearing noticees, it has been observed that some of the noticees or their authorised representatives appeared for the personal hearing on the dates fixed for them. However, some of the noticees or their Authorised Representatives did not turned-up for the dates fixed for PH. 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."*

10. The perusal of above two paragraphs would in fact show that some of the parties acknowledged their lapse and also deposited the ITC. Moreover, some of the noticees contested the matter and in fact, appeared for hearing and a detailed order has thereafter been passed by the Adjudicating Authority. The demand raised against the Petitioner is to the tune of Rs.56,26,764/-.

11. The Court is of the opinion that various factual aspects would have to be considered in this matter and the appellate remedy ought to be availed of. Moreover, this case would not be a fit case for entertaining a writ petition as none of the factors has laid down in decision in ***Civil Appeal No. 5121/2021*** dated 3rd September, 2021 titled ***'The Assistant Commissioner of State Tax & Ors. v. M/s Commercial Steel Limited'*** are satisfied. The relevant portion of the said decision reads 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. Accordingly, the Petitioner is relegated to the appellate remedy. If the appeal is filed by 31st August 2025, the same shall not be dismissed on the ground of limitation and shall be adjudicated on merits.

13. The present petition is accordingly disposed of in these terms. All pending applications, if any, are also disposed of.

PRATHIBA M. SINGH, J.

SHAIL JAIN, J.

JULY 28, 2025/*pd/ck*