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

\+ **W.P.(C) 11070/2025, CM APPL. 45562/2025 & CM APPL. 45563/2025**

SUNIL KUMAR MAHESHWARI PROPRIETOR TOSHNIWAL ELECTRICALS .....Petitioner

Through: Mr. A.K. Babbar, Adv.

versus

THE PRINCIPAL COMMISISONER OF CENTRAL GST DELHI NORTH & ORS. .....Respondents

Through: Ms. Vaishali Gupta, Panel Counsel (Civil), GNCTD

CORAM:
JUSTICE PRATHIBA M. SINGH
JUSTICE SHAIL JAIN

O R D E R

% 29.07.2025

1. This hearing has been done through hybrid mode.

CM APPL. 45562/2025/2025 (for exemption)

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

W.P.(C) 11070/2025 & CM APPL. 45563/2025

3. This petition challenges the impugned order dated 23rd February, 2025 by which a demand of Rs.1,13,534/- has been raised against the Petitioner. The demand arises out of a Show Cause Notice dated 7th June, 2024 issued to various Noticees.

4. The brief facts of the case are that the Directorate General of GST Intelligence, Meerut Zonal Unit, had conducted an investigation in respect of certain firms which were suspected of availing Input Tax Credit (hereinafter "*ITC*") fraudulently, based on invoices from non-existent or non-operational firms. Further, investigation was conducted by the CGST, Delhi North

Commission in respect of 1155 firms, including the Petitioner's firm, which had availed fake ITC from 75 firms.

5. The submission of Mr. A.K. Babbar, ld. Counsel is that the Petitioner had filed its reply to the Show Cause Notice on 18th July, 2024, however, the same has not been considered in the impugned order. Further, it is submitted that the Petitioner has not been granted personal hearing prior to issuance of the impugned order.

6. The ld. Counsel for the Petitioner has orally made a prayer for challenging the ***Notification No.56/2023-Central Tax*** dated 28th December, 2023, and ***Notification No. 56/2023-State Tax*** dated 11th July, 2024 (hereinafter "*the impugned notifications*").

7. Another contention raised by Mr. Babbar, ld. Counsel is that for this very Financial Year, the State CGST Department had already issued notice under Section 73 of the Act. Thus, multiple and overlapping notices cannot be issued for the same financial year by the Central Department.

8. Ld. Counsel for the Respondents raises a preliminary objection that the impugned order is an appealable order and the Petitioner ought to approach the Appellate Authority.

9. The Court has considered the matter. Unlike other cases where challenge to the impugned notifications have been raised, the present case arises out of notices issued by the CGST to the Petitioner amongst various other Noticees in respect of fake and fraudulent ITC.

10. It is noticed by the Court that petitions arising from the same Show Cause Notice involving 1155 firms, including in ***W.P.(C) 10405/2025*** titled ***Anita Gupta Proprietor RS Chemical Suppliers Vs. Additional Commissioner, Adjudication CGST Delhi North And Anr***, have been

considered by this Court. In each of the said petitions the Court has relegated the Petitioners therein to avail of the appellate remedy.

11. 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 ought to avail of its appellate remedy. Further, the grounds raised by the Petitioner can clearly be agitated before the Appellate Authority. This 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 it is clearly held that in case of fraudulent availment of ITC through bogus invoicing, writ petitions ordinarily are not to be entertained. The relevant findings 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.*
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> *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."

12. The Petitioner is accordingly directed to file an appeal by 31st August, 2025 along with the requisite pre-deposits. Along with the said appeal, all the averments of the Petitioner may be placed with the requisite documents irrespective of whether the same was available to the Adjudicating Authority or not. The said averments and documents shall be considered by the Appellate Authority and shall be adjudicated in accordance with law.

13. Needless to add that the Appellate Authority's order shall be subject to the challenge to the impugned notifications pending before the Supreme Court in ***S.L.P No 4240/2025*** *titled* ***M/s HCC-SEW-MEIL-AAG JV v. Assistant Commissioner of State Tax & Ors.***

14. Petition is disposed of in these terms. All pending applications, if any, are also disposed of.

PRATHIBA M. SINGH, J.

SHAIL JAIN, J.

JULY 29, 2025
Rahul/msh