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

\+ **W.P.(C) 11094/2025 & CM APPL. 45644/2025**

TECH PLAST THROUGH IT PROPRIETOR PROP. DEEPMANI JAIN .....Petitioner

Through: Mr. Rakesh Kumar, Adv.

versus

COMMISSIONER OF CENTRAL GOODS AND SERVICE TAX AND ANOTHER .....Respondents

Through: Mr. Harpreet Singh, SSC.

CORAM:
JUSTICE PRATHIBA M. SINGH
JUSTICE SHAIL JAIN

O R D E R

% 11.08.2025

1. This hearing has been done through hybrid mode.

2. The present petition has been filed by the Petitioner challenging the show cause notice dated 5th August, 2024 and the consequent order dated 8th February, 2025 *(hereinafter, 'impugned order')* wherein a demand of Rs. 2,87,95,167/- has been raised against the Petitioner.

3. On behalf of the Petitioner, certain submissions have been made by the ld. Counsel. Firstly, it is submitted that the ITC pertained to multiple years i.e 2017-18, 2018-19 and 2020-21 but a single SCN and order has been issued for AY 2017-18 only. In addition, the plea of limitation has also been raised by the Petitioner.

4. Coming to the plea of limitation, it is seen that the impugned order is dated 1st February, 2025, however, it appears that the DRC-07 was uploaded on 8th February, 2025 on the GST Portal of the Petitioner.

5. Mr. Harpreet Singh, ld. Sr. Standing Counsel submits that the impugned order was issued by the GST Department within the prescribed limitation

period, however, due to a technical glitch, they may have been uploaded on the GST Portal on a later date.

6. However, this Court is of the view that an important issue in this case is that it involves allegation of fraudulent availment of Input Tax Credit *(hereinafter, 'ITC')* by several parties. A perusal of the impugned orders show that there are several non-existing firms, which have claimed to have raised goods-less invoices and passed on credit to 106 noticees. The total amount, which is sought to be demanded from various parties, is to the tune of Rs. 16,23,78,863/- for financial year 2017-18. In addition, penalties have also been imposed on the noticees.

7. The Petitioner's name appears at serial no.10 in the list of noticees and the allegation raised upon the Petitioner is that the fraudulent ITC passed on is to the tune of Rs.1,91,96,778/-. In the SCN dated 5th August, 2024, the following grounds have been raised:

Summary of Show Cause Notice

(a) **Brief facts of the case:** 'Wrong availment of 'Input Tax Credit (ITC)' and its utilization by the above said **Noticee(s) No. 10 to 106** as mentioned in **Table-B** *above*, on the basis of the goods less invoices raised/ issued by **20** ***non-existent*** firms/ companies/ entities, as mentioned, in **Table-C** *below*, and, passing-on ineligible 'Input Tax Credit (ITC)' by the said Noticee(s) in contravention to Section 16(2) of the CGST Act, 2017 and therefore, rendered themselves liable for penalty under Section 122 of CGST Act, 2017. Out of **20** ***non-existent*** **Supplier** firms/ companies/ entities, a total of **09** firms, **Noticee(s) No. 1 to 9**, as given in **Table-A,** *above* are falling under the jurisdiction of **CGST Delhi North Commissionerate**. *Further details are as per Show Cause Notice.'*

(b) **Grounds:** 'The **Noticee(s) No. 10 to 106** are not eligible to avail and utilize the ITC received through goods less invoices. They are liable to pay the inadmissible Tax (ITC), under Section 74(1) of the CGST Act, 2017/ DGST Act, 2017 and IGST Act, 2017 along with interest under Section 50 and penalty under Section 74(1) of the Acts, *ibid*. The firms, as mentioned, in **Table-C** *below*, had been intentionally created only to pass-on ineligible ITC to the **Noticee(s) No. 10 to 106**, without actual supply of goods or services to gain monetary benefit in the form of Commission and, therefore, rendered themselves liable for penalty under Section 122 of CGST Act, 2017. *Further details are as per Show Cause Notice.*

(c) **Tax and other dues:** As per **Table-A & B**, *above*;

(d) **Details of Supplier firms:** As per **Table-C**, *below*;

8. Considering that these are cases of fraudulent availment of ITC and there are a large number of noticees involved in the alleged transactions, this Court is of the opinion that the Petitioner ought to be relegated to avail of its appellate remedy, rather than entertaining a writ petition.

9. Insofar as the contention of limitation is concerned, the Petitioner is free to file an appeal raising the said contentions, along with any other documents it relies upon in support of its appeal.

10. In all these matters in case of availment of fraudulent ITC, there are several factual issues, which would need to be looked into, which cannot be adjudicated in a writ petition. This view has already been taken by this Court in several matters. Further, the Supreme Court in the context of CGST Act, has, in ***Civil Appeal No. 5121/2021*** dated 3rd September, 2021 titled ***'The Assistant Commissioner of State Tax & Ors. v. M/s Commercial Steel Limited'***, held 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.* ***<u>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.</u>***
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> *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.

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"

11. The said legal position has also been reiterated by this Court in ***M/s Sheetal and Sons & Ors. v. Union of India & Anr., (2025: DHC: 4057- DB)*** and by the Allahabad High Court in ***Writ Tax No. 753 of 2023*** titled ***'Elesh Aggarwal v. Union of India'*** wherein the Allahabad High Court has held that no ground is made for interference on merits in exercise of extra ordinary jurisdiction. The relevant portion of the decision in ***M/s Sheetal and Sons & Ors. (Supra)*** reads as under:

"15. The Supreme Court in the decision in Civil Appeal No 5121 of 2021 titled 'The Assistant Commissioner of State Tax & Ors. v. M/s Commercial Steel Limited' discussed the maintainability of a writ petition under Article226. In the said decision, the Supreme Court reiterated the position that existence of an alternative remedy is not absolute bar to the maintainability of a writ petition, however, a writ petition under Article 226 can only be filed under exceptional circumstances....

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16. In view of the fact that the impugned order is an appealable order and the principles laid down in the abovementioned decision i.e. The Assistant Commissioner of State Tax & Ors. (Supra), the Petitioners are relegated to avail of the appellate remedy."

12. Hence, this Court does not deem it appropriate to delve into the facts of this case under writ jurisdiction as the concept of ITC by itself involves a series of transactions, which would have to be analysed and, thereafter, the decision is to be taken.

13. Under these circumstances, the Court is not inclined to entertain the present writ petition. All rights and contentions of the Petitioner are left open.

14. The Petitioner is free to avail its remedies in accordance with law. The Petitioner shall file an appeal by 30th September, 2025, along with requisite pre-deposit.

15. If the appeal, along with the mandatory pre-deposit is filed by 30th September, 2025, the same shall not be dismissed as being barred by limitation and shall be decided on its own merits.

16. The present petition is disposed of in the said terms. Pending applications, if any, are also disposed of.

PRATHIBA M. SINGH, J.

SHAIL JAIN, J.

AUGUST 11, 2025/*dk/ss*