



\$~26

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

+ **W.P.(C) 12908/2025 & CM APPL. 52727/2025**

VMG FOODS PVT. LTD. THROUGH ITS DIRECTOR MR.
HARISH GOYALPetitioner

Through: Mr. Ashok Kumar Babbar, Mr.
Bharat Tripathi & Mr. Rahul
Chauhan, Advs. (9811115749)

versus

THE PRINCIPAL COMMISISONER OF CENTRAL TAX DELHI
NORTH & ANR.Respondents

Through: Ms. Arunima Dwivedi, SSC, CBIC
with Ms. Himanshi Singh, Ms.
Monalisha Pradhan & Ms. Priya
Khurana, Advs. (9810916537)
Mr. Varun Chugh, Mr. Shagun Shahi
Chugh & Ms. Kavya Roy Choudhury,
Advs. for UoI

CORAM:

JUSTICE PRATHIBA M. SINGH

JUSTICE SHAIL JAIN

ORDER

% **31.10.2025**

1. This hearing has been done through hybrid mode.
2. The present appeal has been filed challenging the impugned Order-in-Original dated 4th February, 2025 along with the accompanying impugned Form DRC-07 dated 22nd February, 2025. The Petitioner has also challenged the impugned Show Cause Notice dated 24th May, 2022.
3. The case is one wherein, *inter alia*, there are allegations of fraudulent availment of Input Tax Credit (ITC). The brief facts of the case are that



information was received by the Gurugram Zonal Unit of the Directorate General of GST Intelligence (hereinafter “DGGI”) that five exporter firms namely M/s. S.R. Impex, M/s. S.R. International, M/s. RK Enterprises, M/s. Vikas Impex, and M/s. SK Traders, were fraudulently availing Input Tax Credit (hereinafter “ITC”). An investigation and search was conducted in respect of the said exporters and their major suppliers which included the Petitioner.

4. In respect of the Petitioner, the allegations raised were that the Petitioner had issued invoices to one M/s. SM Enterprises, and the said firm on the basis of the said invoices availed ITC credit of Rs. 89 lakhs. However, upon conducting a search at the registered office of M/s. SM Enterprises it was found that the same was a non-existing firm. Further, the statement of the authorised representative of the Petitioner was also recorded during the course of investigation, wherein it was admitted that the invoices were issued to M/s. SM Enterprises, however, the goods were delivered to other locations.

5. Accordingly, tax demand on goods cleared clandestinely has been confirmed in the following terms and penalty has also been imposed:

*“(i) I confirm the demand of TAX OF CGST of Rs.44,36,218/- & SGST of Rs.44,36,218/- on goods cleared clandestinely and order to recover the same from them under proviso to Section 74(1) along with interest payable thereon under Section 50 of the CGST Act, 2017 read with relevant provisions of the IGST Act, 2017, the Delhi State GST Act, 2017 & Section 11 of the GST (Compensation to States Act).
(ii) Further, I impose penalty equivalent to the tax specified in (i) above upon them under Section 74 and Section 122 (1) of the CGST Act, 2017 read with relevant provisions of the IGST Act, 2017, the Delhi SGST Act, 2017 & Section 11 of the GST*



(Compensation to States Act).

(iii) Further, I impose penalty upon Sh. Vinod Kumar Goyal, Authorized Representative of VMG Foods Pvt. Ltd under Section 74, 122(1) and 122(3) of the CGST/SGST Act, 2017 read with relevant provisions of the IGST Act, 2017, the Delhi SGST Act, 2017 & Section 11 of the GST (Compensation to States Act) 2017.”

6. The order in fact records that in the case of various supplies, deposit of tax was not made or there was short payment, which would also debar availment of ITC to the extent of short payment in terms of Section 16 of the Central Goods and Services Tax Act, 2017. The Petitioner’s case falls in this category.

7. The Court notices that in respect of this very impugned order, various petitions have been decided by this Court in respect of co-noticees. The details of the said petitions are as under:

1.	W.P.(C) 6441/2025	M/s Sheetal and Sons v. Union of India and Anr.
2.	W.P.(C) 6443/2025	Sunny Jagga v. Union of India &Anr.
3.	W.P.(C) 6447/2025	Sunny Jagga v. Union of India &Anr.
4.	W.P.(C) 6449/2025	M/s. Vikas Traders v. Union of India &Anr.
5.	W.P.(C) 10921/2025	M/s DK Enterprises Through Proprietor, Deepak Mittal v. Union of India Represented Through Secretary Dept of Revenue Ministry of Finance

8. This Court has consistently taken the view that in cases involving fraudulent availment of ITC, ordinarily, the Court would not be inclined to



exercise its writ jurisdiction. It is routinely seen in such cases that there are complex transactions involved which require factual analysis and consideration of voluminous evidence, as also the detailed orders passed after investigation by the Department. In such cases, it would be necessary to consider the burden on the exchequer as also the nature of impact on the GST regime, and balance the same against the interest of the Petitioners, which is secured by availing the right to statutory appeal.

9. It would be apposite to refer to some of the cases which have been decided by the Supreme Court as also by this Court on these aspects. The Supreme Court in the context of Central Goods and Service Tax Act, 2017, 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’***, has 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. 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.

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”

10. Thereafter, this Court in **W.P.(C) 5737/2025** titled **Mukesh Kumar Garg v. Union of India & Ors.** dealing with a similar case involving fraudulent availment of ITC 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.”

11. This position was also followed in ***M/s Sheetal and Sons & Ors. v. Union of India &Anr., 2025: DHC: 4057-DB.*** The relevant portion of the said decision read 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 Article 226. 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....

XXXX

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. Recently, this Court in **W.P.(C) 5815/2025** titled **M/s MHJ Metal Techs v. Central Goods and Services Tax Delhi South** held as under:

“16. This Court, while deciding the above stated matter, has held 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, 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.

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.”

17. Under these circumstances, this Court is not inclined to entertain the present writ petition. However, the Petitioners are granted the liberty to file an appeal.

18. Accordingly, the Petitioners are permitted to avail of the appellate remedy under Section 107 of the



CGST Act, by 15th July, 2025, along with the necessary pre-deposit mandated, in which case the appeal shall be adjudicated on merits and shall not be dismissed on the ground of limitation.

19. Needless to add, any observations made by this Court would not have any impact on the final adjudication by the appellate authority.”

13. The decision in ***Metal Techs (supra)*** has also been carried to the Supreme Court in ***SLP(C) 27411/2025*** titled ***M/S Metal Techs v. Central Goods and Services Tax Delhi South***. In the said *SLP*, the Supreme Court *vide* order dated 22nd September, 2025 has merely extended the time for filing the appeal.

14. Under these circumstances, in cases involving large scale availment of ITC or evasion of payment of GST, the Court has not entertained writ petitions and has relegated the parties to the appellate remedy. Against this very impugned order, in the above writ petitions, the parties have been permitted to file appeals.

15. Considering that the Petitioner and similarly placed parties, who had challenged the impugned order, have already been relegated to the appellate remedy, this Court, in exercise of the writ jurisdiction, permits the Petitioner to file its appeal against the impugned order by 30th November, 2025 along with requisite pre-deposit in accordance with law.

16. If the appeal along with pre-deposit is filed by 30th November, 2025, the same shall not be dismissed on the ground of being barred by limitation and shall be adjudicated on merits.

17. It is made clear that the observations made in this order would not affect the final adjudication of the appeal, before the Appellate Authority.



18. The present writ petition is disposed of in the above terms. All the pending applications, if any, are also disposed of.

PRATHIBA M. SINGH, J.

SHAIL JAIN, J.

OCTOBER 31, 2025
kk/msh