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

\+ **W.P.(C) 13979/2025 & CM APPL. 57251/2025**

GIFTCO EXPORTS .....Petitioner

Through: Ms. Tabassum Firdause, Mr. M. A. Ansari, Mohd. Ikram & Mr. Imran Ahmad, Advs. (9718503000)

versus

THE PRINCIPAL COMMISISONER OF CENTRAL TAX & ORS. .....Respondents

Through: Mr. Shashank Sharma, SSC with Ms. Malika Kumari, Adv. for R-1 & 4 (8826900757)
Mr. Ashish Goyal, SPC with Mr. Anurag Singhal, Adv. for R-2 (9811029221)

**CORAM:**
**JUSTICE PRATHIBA M. SINGH**
**JUSTICE SHAIL JAIN**

**ORDER**

**% 11.09.2025**

1. This hearing has been done through hybrid mode.

**CM APPL. 57252/2025**

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

**W.P.(C) 13979/2025 & CM APPL. 57251/2025**

3. The present petition has been filed by the Petitioner under Article 226 of the Constitution of India, *inter alia*, challenging three Orders-in-Original, which relates to demands arising out of Input Tax Credit *(hereinafter, 'ITC')* that has been availed by the Petitioner.



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4. The details of the three Orders-in Original are as under:

(i) Order-in-Original dated 29th January 2025 passed by the Prinicpal Commissioner of CGST, Delhi North *(hereinafter OIO-1)*

(ii) Order-in-Original dated 1st February 2025 passed by the Superintendent (Adjudication) CGST Delhi North *(hereinafter OIO-2)*

(iii) Order-in-Original dated 4th February 2025 passed by the Superintendent (Adjudication) CGST Delhi North *(hereinafter OIO-3)*

5. The grounds for challenge are that, OIO-1 was passed without any Show Cause Notice being served to the Petitioner, neither on his registered address, nor uploaded on the GST portal of the Petitioner. OIO-2 was passed without considering the reply of the Petitioner to the Show Cause Notice dated 5th August,2024 *(hereinafter 'SCN-2')*. OIO-3 was passed with only a gap of seven days between the Show Cause Notice dated 23rd January, 2025, *(hereinafter 'SCN-3)* and the final order.

6. Ld. Counsel for the Petitioner submits that all the three Orders-in-Original are passed by the same Additional Commissioner and there are various illegalities in these orders, hence, the present writ petition is maintainable.

7. Further, ld. Counsel for the Petitioner also submits that a sum of Rs.30 lakhs has already been deposited by the Petitioner with the GST Department as a pre-deposit.

8. On the other hand, ld. Counsel for the Respondent submits that multiple Orders-in-Original cannot be challenged in this manner, in the same writ petition, as the fact situation is different in each of the cases. He further submits that these three Orders-in-Original are appealable orders, and the limitation for



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filing the same has already expired.

9. A brief background of the three Orders-in-Original is set out below :

(1) **OIO-1:** OIO-1 was passed on 29th January 2025. The same arises out of SCN No.59/2024-25 *(hereinafter SCN-1)* issued to one M/s Reema Polychem Pvt. Ltd. Prior to issuance of SCN-1, an alert was received in respect of an investigation against M/s Choudhary Metals and M/s Kavita Metals operated by proprietor *i.e.,* Mr. Laxman Chaudhary. During the investigation, it was revealed that these two entities had availed of ITC using invoices from non-existent firms in Delhi. Thereafter, the proprietor of these two entities was, in fact, arrested. There were a total of 23 non-existing/ fake firms and invoices were issued without actual supply of goods. An investigation into the 23 non-existing/ fake firms was conducted, and it was found that these firms had 408 recipients of ITC. The Petitioner appears at Serial No. 185 of Table-A of OIO-1. A demand has, therefore, been raised against the Petitioner.

(2) **OIO-2**: OIO-2 was passed on 1st February 2025. There are a total of 650 parties to whom notice has been issued. The Petitioner's name appears at Serial No. 220 of Table-A of OIO-2. The investigation in this case had revealed that there were several fake companies and entities which had passed on fraudulent ITC, all within the Delhi West Commissionerate. Search warrants were issued against M/s Dev Sales Corporation, and there were a maze of firms which were found to have been incorporated for passing of ITC, without any goods or services being rendered.

(3) **OIO-3:** OIO-3 was passed on 4th February 2025. There are a total of 670 parties to whom notice has been issued and thereafter, OIO-3 has been passed. Investigation is stated to have revealed that there are premises in



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Sitaram Bazar and Naya Bazar which have been used for generating bogus invoices. A total of 55 non-existing bogus supplier firms were found and more than Rs.553 crore as inadmissible ITC was passed on to 5,962 recipients/beneficiary firms. The Petitioner's name also appears in this list at Serial No. 95 of Table-A of OIO-3.

10. The above facts would show that the background facts and circumstances as also the demands in each of the three Orders-in-Original, are completely distinct and different. The Petitioner may be one common thread, but there are various other parties which are involved and thus, these three Orders-in-Original are not common orders relating only to the Petitioner qua the same financial year. These are independent orders which have been passed after a detailed investigation.

11. In cases involving 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 various decisions. 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.* ***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.***



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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"*

12. 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*



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*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."*

13. Under these circumstances, in cases involving fraudulent availment of ITC, writ jurisdiction usually ought not to be exercised. Thus, the Court is not inclined to entertain the present writ petition.

14. The Petitioner is permitted to file separate appeals challenging each of the three Orders-in-Original. If any amount has already been deposited, adjustment thereof be given to the Petitioner in respect of the pre-deposits.

15. Upon the appeals being filed by 31st October 2025, the same shall be adjudicated by the Appellate Authority on merits with a reasoned order being passed.

16. Needless to add, nothing observed in this order shall have a bearing on the final order(s).

17. The petition along with the pending application is disposed of in the above terms.

**PRATHIBA M. SINGH, J.**

**SHAIL JAIN, J.**

**SEPTEMBER 11, 2025**
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