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

Date of Decision: 12th September, 2025

\+ **W.P.(C) 14075/2025 & CM APPL. 57710/2025**

M/S RST BATTERIES & ANR. .....Petitioners

Through: Mr. R. P. Singh, Adv

versus

DIRECTORATE GENERAL OF GOODS AND SERVICE TAX INTELLIGENCE GURUGRAM ZONAL UNIT & ANR. .....Respondents

Through: Mr. Anuragh Ojha, SSC.

CORAM:
JUSTICE PRATHIBA M. SINGH
JUSTICE SHAIL JAIN

Prathiba M. Singh. J. (Oral)

1. This hearing has been done through hybrid mode.

CM APPL. 57711/2025 (for Exemption)

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

W.P.(C) 14075/2025 & CM APPL. 57710/2025

3. The present petition has been filed by the Petitioners - M/S RST Batteries and M/S RST Batteries Pvt. Ltd. under Article 226 of the Constitution of India, *inter alia*, challenging the impugned order dated 03rd February, 2025 passed by the Commissioner of CGST, Delhi West Commissionerate *(hereinafter 'impugned order')*,by which a demand of approximately Rs 18.83 crores has been raised against the Petitioner.

4. The matter relates to allegations of wrongful availment of ITC (*hereinafter "Input Tax Credit")* and passing on of ITC without actual supply of goods and services. The allegations against the Petitioners are that the

Petitioners had passed on ITC without actually carrying on any business activity. The same position is recorded qua M/S RST Batteries and M/S RST Batteries Pvt. Ltd. in the impugned order.

5. The Department's case is that the entire maze of passing of the fake/bogus invoices was revealed through intelligence. It was revealed that one Shri. Balaji Enterprises was wrongfully availing and utilizing ITC. A search was conducted on the premises of Shri. Balaji Enterprises and details of purchases of lead ingots were inspected. It was found that the purchases were from M/S RST Batteries and M/S RST Batteries Pvt. Ltd. Thereafter, the premises of M/S RST Batteries and M/S RST Batteries Pvt. Ltd. were also searched, and it was revealed that no business activity was being carried out.

6. Mr. R. P. Singh, ld.Counsel for the Petitioner submits that the Show Cause Notice was issued on 18th December, 2019 *(hereinafter 'impugned SCN').* Thereafter, a circular was issued on 06th July, 2022, by the Central Board of Indirect Taxes and Customs *(hereinafter 'circular')* providing clarification on various issues related to applicability of demand and penalty provisions under the Central goods and Service Act, 2017 *(hereinafter 'CGST Act')*, in respect of transactions involving fake invoices. It is submitted that if, however, the benefit of the said circular was given to the Petitioner, no tax/duty cess would have been imposed upon the Petitioner and only penalty under Sections 122 (1)(ii) and 122 (1)(vii) of CGST Act would be liable to be imposed.

7. Under these circumstances, it was further submitted that though the circular was cited before the Adjudicating Authority, the same was not taken into consideration.

8. Heard. The Court has perused the impugned order.The same shows that

there are a series of transactions relating to companies/entities against whom the allegations are that ITC has been passed on from one set of companies to another and so on, without actual goods and services being supplied.

9. In such a matter, this Court has already taken a view that writ jurisdiction ought not to be exercised ordinarily. 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.* ***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"

10. 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.... 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."

11. Under these circumstances, in cases involving fraudulent availment of ITC, writ jurisdiction usually ought not to be exercised.

12. According to the first Form GST DRC-07 dated 5th July 2025, the demanded amount is Rs 183,841,384/- out of which Rs 91,920,692/- is the tax and the identical amount was imposed as the penalty. In the second Form GST DRC-07 dated 5th July 2025, the total demanded amount is Rs 2,874/- out of which the tax is Rs 1,437/-, and equal amount for penalty has been imposed.

13. Since the impugned order is an appealable order, the Court is inclined to relegate the Petitioner to avail of the Appellate remedy pursuant to section 107 of the CGST Act.

14. The time for filing of an appeal is extended till 15th November, 2025, along with the pre-deposit. If the appeal is filed within the said timeline, the same shall not be dismissed on the ground of limitation and shall be adjudicated on merits.

15. Needless to add, the arguments in respect of the applicability of the circular to the Petitioner, is left open to be decided by the Appellate Authority.

16. The present petition along with the pending applications, if any stands disposed of.

PRATHIBA M. SINGH
JUDGE

SHAIL JAIN
JUDGE

SEPTEMBER 12, 2025/sk/sm