$~69

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

\+ **W.P.(C) 15425/2025 & CM APPL. 63159/2025**

LALIT BANSAL THROUGH PROPRIETOR OF KESHAV SALES CORPORATION .....Petitioner

Through: Mr. Prabhat Kumar, Mr. Utkarsh Kumar and Ms. Ritika Verma, Advs.

versus

UNION OF INDIA & ANR. .....Respondents

Through: Mr. Aditya Singla, SSC.

CORAM:
JUSTICE PRATHIBA M. SINGH
JUSTICE SHAIL JAIN

O R D E R

% 09.10.2025

1. This hearing has been done through hybrid mode.

2. The present writ petition has been filed by the Petitioner under Article 226 of the Constitution of India, *inter alia*, challenging the Order-in-Original dated 3rd February, 2025 (hereinafter, *'impugned order'*) passed by the Office of Commissioner, Central Tax (Delhi West). The impugned order has been passed pursuant to the Show Cause Notice (hereinafter, *'SCN'*) dated 19th July, 2024.

3. In terms of the impugned order, the Petitioner has been saddled with a penalty to the tune of Rs.1,99,82,401/- which according to the CGST Department was the Input Tax Credit (hereinafter, *'ITC'*) which was fraudulently passed on by the Petitioner without actual supply of goods. The legal submission made on behalf of the Petitioner is that since there is no tax demand which has been raised against the Petitioner, no penalty could have been imposed under Section 122 (1) of the Central Goods and Service Tax Act,

2017 (hereinafter, *'CGST Act'*) as the Petitioner has not been penalised under Section 122 (1A) of the CGST Act but under Section 122 (1) of the CGST Act.

4. The submission on behalf of the Petitioner further is that the appeal has already been filed challenging the impugned order.

5. Heard. This Court has taken a consistent view that when it comes to fraudulent passing on of ITC, writ jurisdiction ought not to be ordinarily exercised in as much as the same involves analysing the maze of transactions which are entered into by multiple parties with each other and passing on of ITC.

6. Moreover, the Supreme Court in the decision 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:</u>***
>
> ***<u>(i) a breach of fundamental rights;</u>***
> ***<u>(ii) a violation of the principles of natural justice;</u>***
> ***<u>(iii) an excess of jurisdiction; or</u>***
> ***<u>(iv) a challenge to the vires of the statute or delegated legislation.</u>***
>
> *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"

7. The said legal position has also been followed 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.”*

8. In view of the above and the fact that the Petitioner has already filed an appeal assailing the impugned order, the legal grounds which are raised in the present writ petition may be urged before the Appellate Authority who shall consider the matter in accordance with law.

9. Accordingly, the Appellate Authority shall afford a personal hearing to the Appellant and consider the documents filed by the Petitioner. Thereafter a reasoned order shall be passed, in accordance with law. The personal hearing notice shall be issued on the following mobile number and email address:

- ***Mobile No.: 9312315121***
- ***Email Address: office@rklegal.org***

10. The petition is disposed of in the above terms. Pending applications, if any are also disposed of.

PRATHIBA M. SINGH, J.

SHAIL JAIN, J.

OCTOBER 9, 2025/kp/ck