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* IN THEHIGH COURTOF DELHIAT NEW DELHI

Date of Decision: 01st December, 2025

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\+ W.P.(C) 15853/2025 & CM APPL. 64911/2025

INDER BAHADUR SINGH PROP. OF M/S YAMINI BEARING ENTERPRISES .....Petitioner

Through: Mr. Wahaj Ahmad Khan, Adv.

versus

ADDITIONAL COMMISSIONER WARD 24-ZONE 1, ...Respondent

Through: Mr. Ruchesh Sinha, SSC, CGST with Ms. Upasna Vashistha, Adv.

CORAM:
JUSTICE PRATHIBA M. SINGH
JUSTICE RENU BHATNAGAR

JUDGMENT

Prathiba M. Singh, J.

1. This hearing has been done through hybrid mode.

2. The present petition has been filed by Shri Inder Bahadur Singh, who is stated to be the proprietor of Petitioner-M/s. Yamini Bearing Enterprises, under Article 226 of the Constitution of India, *inter alia,* challenging the impugned order dated 01st February, 2025 passed by the Additional Commissioner, Adjudication, CGST Delhi North *(hereinafter, 'impugned order')* by which certain demands have been imposed upon the Petitioner in respect of Input Tax Credit *(hereinafter, 'ITC')* which was availed of by the Petitioner.

3. A brief background of the Petitioner's case is that, a Show Cause

Notice *(hereinafter, 'SCN')* was issued on 29th July, 2024 by Additional Commissioner, CGST Delhi North to one M/s SK Sales & Ors which was in respect of fraudulent availment of ITC.

4. Upon further scrutiny, it was found that one M/s Mishra Enterprises had issued 87 e-way bills in October 2023 with the total assessable value of more than Rs.19.71 crores, which was found to be suspicious.

5. Additionally, M/s Mishra Enterprises had also availed of inward supplies from various suspicious firms. The name of the Petitioner-M/s Yamini Bearing Enterprises appears at Serial No. 65 of Table No.28 of the impugned order. The Petitioner firm was one of the parties who were recipients of ITC from 10 non-existent firms.

6. Specifically, insofar as Petitioner is concerned, the 3 firms which were found to be non-existent are:

- Rolta Industries
- Ayka International
- Renee Overseas

7. The total amount of ITC alleged to have been availed of by the Petitioner is to the tune of Rs.2,19,518/- as CGST and the same amount of SGST, which totals to a sum of Rs.4,39,036/-.

8. The case of the Petitioner is that no Show Cause Notice*(hereinafter, 'SCN')* was issued to the Petitioner in this matter and therefore the impugned order is bad in law. Additionally, ld. Counsel relies upon the word '*shall*' in Section 73 read with Rule 142(1A) of the Central Goods and Services Tax Act, 2017.

9. On behalf of the Respondent, Mr. Sinha, ld. SSC for the Respondent

has handed over a compilation of documents to show that the SCN was indeed issued on 01st August, 2024 to all the noticees. It is submitted that SCN has been mailed to the Petitioner on yaminibearing@gmail.com.The same is the registered email address of the Petitioner.

10. Pertinently, the SCN is for the year 2023-24. However, for whatever reason, in the DRC-07, which was issued with the impugned order, the Financial Year is inadvertently mentioned as 2017-18. Thus, the main submission is that the Financial Year is wrongly mentioned in the DRC-07.

11. Heard. The Court has seen the email dated 01st August, 2024 *(hereinafter 'email')* sent at 10:24:45 A.M. The same has been addressed by Mr. Ravi Kant aenorth-group7@gov.in.

12. It is evident from the email that one of the recipients of the email is yaminibearing@gmail.com. However, there is no disclosure in the present petition as to whether this email was received by the Petitioner or not. Moreover, no proper reply has also been filed to this by the Petitioner. However, at this stage, ld. Counsel for the Petitioner has handed over a copy of the reply dated 10th August, 2024.

13. 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.

14. 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 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'***,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.***
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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"

15. 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."

16. 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 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."*

17. 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:*
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> > *"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***

<u>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.</u>

<u>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.</u>

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.

<u>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</u>

<u>Authority.</u>
<u>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.</u>
<u>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.</u>
<u>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."</u>

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."

18. 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.

19. It is not in dispute that the email dated 01st August, 2024 was received by the Petitioner. The Petitioner had a duty to appear and to also participate in the proceedings fully. The SCN is also stated to have been uploaded on the GST portal but the same has not been placed on record. Ld. Counsel for the Respondent has placed it on record.

20. Under these circumstances, while there could be an error in the DRC-07, the same cannot be held to be a fatal error. It would only be an inadvertent error.

21. In the light of the facts and circumstances of the present case, this Court is of the view that the Petitioner can only be permitted to file an appeal challenging the impugned order and DRC-07. Similarly, this Court in ***W.P(C) 11906/2025*** titled ***M/S Ganpati Polymers v. Commissioner of Central Goods and Service Tax and Anr.*** had extended time for filing an appeal under Section 107 of the Central Goods and Services Tax Act, 2017. The relevant portion of order dated 8th August, 2025 reads as under:

15. At this stage, ld. Counsel for the Petitioner submits *that the Petitioner may be permitted to avail of appellate remedy as the present writ petition was filed within the period of limitation prescribed under Section 107 of the Central Goods and Service Act, 2017. Accordingly, the Petitioner is granted time till 31st August, 2025 to avail of its appellate remedy*

16. If the appeal is filed by 31st August, 2025 along with the requisite predeposit, the same shall not be dismissed being barred by limitation and the same shall be decided on merits.

22. Thereafter, the Supreme Court in ***SLP(C) No. 27867/2025*** titled ***M/s Ganpati Polymers v. Commissioner of Central Goods and Services Tax &Anr.*** had upheld the same in following terms:

> *"2. The High Court while rejecting the Writ Petition filed by the petitioner – herein, has observed in Para No. 15 of its impugned order as under:-*
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> > *"15. At this stage, ld. Counsel for the Petitioner submits that the Petitioner may be permitted to avail of appellate remedy as the present writ petition was filed within the period of limitation prescribed under Section 107 of the Central Goods and 2 Service Act, 2017. Accordingly, the Petitioner is granted time till 31st August, 2025 to avail of its appellate remedy.*
>
> *3. Thus, the High Court has reserved liberty in favour of the petitioner to prefer appropriate statutory appeal.*
>
> ***4. If any statutory appeal is preferred by the petitioner, the issue of delay may be considered accordingly, more particularly keeping in mind that the petitioner was pursuing its remedy before the High Court and thereafter before this Court.***

<u>5. We grant the petitioner time upto 31-10-2025 to prefer the statutory appeal as provided in law.</u>

6. With the aforesaid, the Special Leave Petition stands disposed of.

7. Pending applications, if any, also stand disposed of.

23. Accordingly, the Petitioner is permitted to file an appeal, challenging the impugned order dated 01st February, 2025 along with the DRC-07 dated 18th February, 2025.

24. The appeal, if filed by 15th January, 2026, shall be adjudicated on merits and shall not be dismissed on the ground of limitation.

25. The petition is disposed of in these terms. All pending applications, if any, are also disposed of.

PRATHIBA M. SINGH, J.

RENU BHATNAGAR, J.

DECEMBER 1, 2025/*pd/sm*