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

Date of Decision: 23rd December, 2025

Uploaded on: 26th December, 2025

+ **W.P.(C) 14291/2025 & CM APPL. 58491/2025**

VDR COLORS AND CHEMICALS PVT. LTD.Petitioner

Through: Mr. Uday Gupta, Sr. Adv. with Mr.
S.B. Sharma, Mr. Ramesh Kumar, Mr.
Yashwant Gahlaut & Mr. Ankit
Sharma, Advs.

versus

COMMISSIONER OF DELHI & ANR.Respondents

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Through: Ms Vaishali Gupta Panel Counsel
GNCTD and Ms Ishita Gupta, Adv.
Mr. Hussain Taqvi, Senior Panel
Counsel

+ **W.P.(C) 18199/2025 & CM APPL. 75274/2025**

M/S A V METALS MARKETING PVT LTDPetitioner

Through: Mr. S.B. Sharma, Mr. Ramesh Kumar,
Mr. Yashwant Gahlaut & Mr. Ankit
Sharma, Advs.

versus

PRINCIPAL COMMISSIONER CGST AND ANR

.....Respondents

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Through:

+ **W.P.(C) 18280/2025 & CM APPL. 75639/2025**

M/S SURENDER KUMAR JAINPetitioner

Through: Mr. S.B. Sharma, Mr. Ramesh Kumar,
Mr. Yashwant Gahlaut & Mr. Ankit
Sharma, Advs.

versus

PRINCIPAL COMMISSIONER CGST AND ANRRespondents

Through: Ms. Sangita Malhotra, SPC for R-2.

CORAM:

JUSTICE PRATHIBA M. SINGH

JUSTICE SHAIL JAIN



JUDGMENT

Prathiba M. Singh, J.

1. This hearing has been done through hybrid mode.
2. The present petitions have been filed challenging the impugned order dated 29th January, 2025 passed by Assistant Commissioner(Adj.) CGST, Delhi North, pursuant to the Show Cause Notice (*hereinafter* 'SCN') dated 21st May, 2024.
3. The background giving rise to these petitions is that a DGARM report was generated in respect of verification of a firm called M/s Paramount Enterprises which is a sole proprietary concern of one Mr. Amit Kumar. The data of M/s Paramount Enterprises,, which was downloaded from their GST portal revealed that there were several inward transactions and purchases made exclusively from M/s A to Z Corporation, a proprietary concern of one Mr. Kuldeep. A further analysis of the data revealed that purchases were made from different firms including M/s Suman Enterprise, M/s Bhumi Traders, M/s Naveen Enterprises, M/s Tota Ram, etc.
4. The further analysis of the accounts of M/s Paramount Enterprises and M/s Tota Ram showed that credit was extended by them to several recipients, including M/s VDR Colors and Chemicals Pvt. Ltd., A.V. Metals Marketing Pvt. Ltd. and M/s Surender Kumar Jain, who are the Petitioners in these three cases.
5. Physical verification was conducted at various premises, including those of the Petitioners. The statement of Mr. Surender Kumar Jain was recorded which was, however, thereafter retracted. The said statement revealed that one Chartered Accountant by the name of Mr. C.K. Gupta was



looking after the accounts of the three Petitioner firms. He had met Mr. Mukesh, who had then entered into these transactions for availment of Input Tax Credit (*hereinafter*, 'ITC'). It was also admitted that there was no actual goods that had been dispatched, pursuant to the invoices. The allegation in the SCN leading to the impugned order was that there was availment of ITC to the following extent:

"15. As mentioned in Table G above, the total amount of fake Input Tax Credit (ITC) availed by all three firms of Sh. Surender Kumar Jain amounts to Rs. 6.74 Crore approx. Furthermore, based on the statements provided by Sh. Surender Kumar Jain and Sh. Satish, the accountant of Sh. Surender Kumar Jain, along with the non-existent status of several supplier firms, it has been concluded that the entire ITC availed by Sh. Surender Kumar Jain is ineligible and wrongly claimed. This is due to the fact that no goods were received by him; rather, he only received goods-less invoices from Sh. Mukesh. Details regarding the total inward ITC of all firms are provided below:

Table – H1

ITC available for M/s VDR Colors and Chemicals Private Limited	ITC available for M/s Surender Kumar Jain	ITC available for M/s A.V. Metals Marketing Private Limited	Total
As per GSTR 2A			
7,25,88,918	10,60,80,192	40,10,630	18,27,79,740

Table – H2

ITC passed on by M/s VDR Colors and Chemicals Private Limited	ITC passed on by M/s Surender Kumar Jain	ITC passed on by M/s A.V. Metals Marketing Private Limited	Total
As per GSTR 1M			
7,33,75,526	10,42,77,539	41,74,855	18,18,27,920



ITC Availed by M/s VDR Colors and Chemicals Private Limited	ITC Availed by M/s Surender Kumar Jain	ITC Availed by M/s A.V. Metals Marketing Private Limited	Total
As per GSTR 3B			
7,25,80,331	10,58,20,493	40,10,831	18,24,11,655

Table – H4

ITC utilized by M/s VDR Colors and Chemicals Private Limited	ITC utilized by M/s Surender Kumar Jain	ITC utilized by M/s A.V. Metals Marketing Private Limited	Total
As per GSTR 3B			
7,25,79,894	10,58,20,370	40,10,843	18,24,11,107

16. In light of the statements provide by Sh. Surender Kumar Jain and Sh. Satish, the accountant of Sh. Surender Jumar Jain, coupled with the no-existent status of the supplier firms, it has been determined that M/s VDR Colors and Chemicals Private Limited (GSTIN 07AAHCV1496PlZJ), M/s Surender Kumar Jain (GSTIN 07ADUPJ5030CIZQ), and M/s A.V. Metals Marketing Private Limited (07AASCA8813AIZP) have unlawfully availed fraudulent Input Tax Credit (ITC) amounting to Rs. 18,24,11,655/- from the non-existent firms. It is evident from the preceding paragraphs that these firms are under the operational control of Sh. Surender Kumar Jain, who serves as the proprietor or director in the aforementioned firms.”

6. On the basis of the above allegations, the SCN was issued on 21st May, 2024 and the reply was directed to be filed. In response to the SCN, a reply was filed on 30th August, 2024 by the Petitioners in which the various pleas in respect of the applicable legal provisions and relevant judgments were raised. However, the stand of the Petitioners is that the impugned order was passed without affording a personal hearing to them.

7. In these petitions, notice was issued firstly on the ground that there was non-grant of personal hearing and on this aspect, instructions were to be obtained by the Id. Counsel for the Respondent.



8. With respect thereto, Mr. Sharma and Ms. Narain, Id. Counsels submit that they are unable to obtain any details of personal hearing which had been afforded to the Petitioners or the details pertaining to transmission of notices. They only rely upon the statement in the impugned order where it is recorded as under:

“8.1 PH dated 10.12.2024, 20.12.2024 and 03.01.2024 were granted to the Noticees as mentioned in Tables, above, for providing them opportunities for the personal hearing. In response to the hearing notices, it has been observed that neither the Noticees nor their Authorized Representatives appeared for the personal hearing on any of the dates fixed for them. Therefore, I am compelled to decide the case ex-parte, for such non-responsive Noticees, on the basis of evidence(a) already available on record.

8.2 It is evident that the conduct of the Noticees is evasive. In my opinion, no purpose will be served to keep the adjudication proceedings pending in view of the non-cooperation from the Noticees in the matter. I observe that even though the basic requirement of Principles of Natural Justice has been legally and dutifully complied with, the Noticees have failed to avail the opportunity. I accordingly proceed further to decide the case on merits.”

9. Mr. Uday Gupta, Id. Senior Counsel appearing for the Petitioners submits that the non-grant of personal hearing would go to the root of the matter and therefore, the impugned order deserves to be set aside as no proof of issuance of notices for personal hearing has been placed on record.

10. On the other hand, Mr. Sharma, Id. Counsel for the Respondent further submits that the impugned order itself records that personal hearing notices were issued to the Petitioners. Only due to the fact that the proof of dispatch



could not be traced by the Department, the Petitioner cannot be given any advantage, considering the background of these matters where there has been a large defrauding of the exchequer.

11. This Court has perused the SCN, the reply filed by the Petitioners to the SCN and the impugned order. A perusal of the reply filed by the Petitioners dated 30th August, 2024 would show that the Petitioners have not stated anything on merits. No details have been given as to what were the nature of the goods that were supplied and how the Petitioners were having any *bonafide* transactions with the other entities to whom the SCN was issued. The reply filed by the Petitioners is ambiguous, to say the least and fails to deal with the allegations in the SCN.

12. There can be no doubt that usually, personal hearing has to be given in such matters. However, the Petitioners were all along aware of the investigation proceedings that were going on. The SCN was duly served to them and a reply was also filed by the Petitioners. Thereafter, the Petitioners have also gone to the extent of retracting the statements which were made by them. Thus, there has been overall compliance of the principles of natural justice by the Department while adjudicating upon the SCN. Just because the Department is unable to show that the personal hearing notice was properly dispatched through the dispatch register or through speed post or through email, it would not mean that the Court has to disbelieve the part of the impugned order which states that personal hearing opportunities were duly provided.

13. Be that as it may, this Court has consistently taken the view that in cases involving fraudulent avilment 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 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 relevant 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.***

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 avilment 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 avilment 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 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.”

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:

“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.”

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. At this stage, it is also relevant to note that the impugned order is stated to have been received by the Petitioners in the first week of February, 2025 itself. However, the writ petitions were filed sometime between August, 2025 to November, 2025, which is beyond the period of limitation available for filing an appeal. Despite this position, the Court has queried the Petitioners' counsels as to whether they wish to avail of the appellate remedy to approach the Commissioner (Appeals) in this matter. However, the Petitioner, who is present in Court, submits that he would not be able to make the pre-deposit for the purpose of filing an appeal.

20. Be that as it may, in the opinion of this Court, the Petitioners are free to take all the contentions which they wish to raise before the Appellate Authority. Given that the time for filing the appeal assailing the impugned order has already lapsed, the Court is inclined to give the opportunity to the Petitioners to file the appeal.

21. If the Appeal is filed by the Petitioners along with the requisite pre-deposit by 31st January, 2026, the same shall not be dismissed on the ground of limitation and shall be adjudicated on merits.

22. All rights and remedies of the parties, as also the contentions of both



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parties are left open.

23. These petitions are disposed of. Pending applications, if any, are also disposed of.

**PRATHIBA M. SINGH
JUDGE**

**SHAIL JAIN
JUDGE**

DECEMBER 23, 2025

Rahul/ss