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

\+ **W.P.(C) 18647/2025 & CM APPL. 77533/2025**

SURJEET KUMAR .....Petitioner
Through: Mr. Nikhil Goyal, Adv.

versus

UNION OF INDIA AND ORS .....Respondents
Through: Mr. Aditya Singla, SSC, CBIC with Mr. Dhananjay Gautam, Mr. Arya Suresh Nair, Mr. Akhil Sharma, Advs.

\+ **W.P.(C) 18674/2025 & CM APPL. 77609/2025**

GAURAV .....Petitioner
Through: Mr. Nikhil Goyal, Adv.

versus

UNION OF INDIA AND ORS .....Respondents
Through: Mr. Aditya Singla, SSC, CBIC with Mr. Dhananjay Gautam, Mr. Arya Suresh Nair, Mr. Akhil Sharma, Advs.

CORAM:
JUSTICE PRATHIBA M. SINGH
JUSTICE SHAIL JAIN

O R D E R

% 09.12.2025

1. This hearing has been done through hybrid mode.

2. The present petitions have been filed by the Petitioners under Articles 226 and 227 of the Constitution of India, *inter alia*, assailing the DRC-01 dated 26th June, 2025 and the Show Cause Notice dated 26th June, 2025 issued by the Superintendent, (Anti-Evasion), CGST Delhi West *(hereinafter, 'impugned SCN')*.

3. In ***W.P.(C) 18647/2025,*** the Petitioner is Mr. Surjeet Kumar, who is the proprietor of *M/s Chawla Steels* and in ***W.P.(C) 18674/2025***, the Petitioner is Mr. Gaurav, who is the proprietor of *M/s Allied Plus Industries*. In fact, the Petitioners are related to each other as they are father and son.

4. *Vide* the impugned SCN, the tax demand in respect of wrongful availment of Input Tax Credit *(hereinafter, 'ITC')* from a bogus supplier has been raised against the Petitioners, in the following terms:

In ***W.P.(C) 18647/2025:***

Tax Period	Act	Tax/Cess	Interest	Penalty	Cess	Fees	Others	Total
2018-19	CGST	695104	0	0	0	0	0	695104
2018-19	IGST	0	0	0	0	0	0	0
2018-19	SGST	695104	0	0	0	0	0	695104
2018-19	CESS	0	0	0	0	0	0	0
Total (Act wise)	CGST	695104	0	0	0	0	0	695104
	IGST	0	0	0	0	0	0	0
	SGST	695104	0	0	0	0	0	695104
	CESS	0	0	0	0	0	0	0
Total		1390208	0	0	0	0	0	1390208

In ***W.P.(C) 18674/2025:***

Tax Period	Act	Tax/Cess	Interest	Penalty	Cess	Fees	Others	Total
2018-19	CGST	11819512	0	0	0	0	0	11819512
2018-19	IGST	0	0	0	0	0	0	0
2018-19	SGST	11819512	0	0	0	0	0	11819512
2018-19	CESS	0	0	0	0	0	0	0
Total (Act wise)	CGST	11819512	0	0	0	0	0	11819512
	IGST	0	0	0	0	0	0	0
	SGST	11819512	0	0	0	0	0	11819512
	CESS	0	0	0	0	0	0	0
Total		23639024	0	0	0	0	0	23639024

5. The submission on behalf of ld. Counsel for the Petitioners is that the impugned SCN is itself defective as there was an inter state supply and not an intra state supply, so the demand could have been of IGST and not of CGST/SGST.

6. It is further submitted by ld. Counsel for the Petitioners that the supplier for whom the ITC is stated to have been wrongfully availed, is located in Haryana.

7. Additionally, it is also submitted by ld. Counsel for the Petitioners that

request was also made for cross-examination of the Petitioner's supplier, which has not been considered by the Adjudicating Authority.

8. Issue notice in ***W.P.(C)18674/2025***. Mr. Aditya Singla, ld. SSC who is present in Court is requested to accept notice.

9. Mr. Aditya Singla, ld. SSC submits that the challenge to the impugned SCN is premature and in any event, the case involves fraudulent availment of ITC.

10. The Court has considered the matter. 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.

11. 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.* ***<u>But</u>***

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"

12. 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."

13. 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****....*
> *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."*

14. 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 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."*

15. The decision in ***Metal Techs (Supra)*** has also been challenged before 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.

16. Moreover, the Petitioners have already filed a detailed reply dated 24th July, 2025 to the impugned SCN. The Petitioners are at liberty to raise the ground in respect of defective SCN before the Adjudicating Authority itself, which shall be considered by the Adjudicating Authority.

17. Additionally, it is the settled legal position as held even by this Court in ***W.P.(C) 4576/*2026** titled ***M/s Vallabh Textiles vs. Additional Commissioner Central Tax GST, Delhi East and Ors.*** that the right to cross examination is not an unfettered right. Prejudice has to be shown which would lead to a conclusion that without cross examination substantial justice cannot be done. The relevant portion of the said decision in ***M/s Vallabh Textiles (Supra)*** reads as under:

"18. ***A perusal of the above decisions reveals that while cross-examination would be required in certain cases, it need not be given as a matter of right in all cases. The provision of the opportunity to cross-examine depends on the facts and circumstances of each case and is warranted only when the party seeking such an opportunity is able to demonstrate that prejudice would be caused in the absence thereof.***

19. The Court is of the considered view that parties cannot, by praying for cross-examination, cannot convert Show-cause Notice proceedings into mini-trials. ***Persons seeking cross-examination ought to give specific reasons why cross-examination is needed in a particular situation and that too of specific witnesses. A blanket request to cross-examine all persons whose statements have been recorded by the Department, many of whom are typically employees, sellers, purchasers, or other persons connected to the entity under investigation, cannot be sustained.*** *If a prayer for cross-examination is made, the Authority has to consider the same fairly and if the need is so felt in respect of a particular person, the same ought to be permitted. If not, the Authority can record the reasons and proceed in the case. Moreover, cross examination need not also be of all persons whose statements are recorded. It could be permitted by the Authority in case of some persons and not all."*

18. Thus, insofar as the prayer for cross-examination is concerned, although the same is not an unfettered right, the Adjudicating Authority ought to take a decision on this issue, and afforded or rejected the request for cross-examination, either of which has not been done in the present case.

19. Accordingly, let a date be fixed before the Adjudicating Authority for personal hearing and if the Adjudicating Authority deems it appropriate, let the opportunity for cross-examination be provided to the Petitioners in accordance with law.

20. Needless to add, giving the opportunity for cross-examination would not be mandatory, however, since the Petitioners have been issued the impugned SCN on the basis of the fact that one of the transactions involving the supplier *qua* third dealer, whose registration was cancelled, is the ground for impugned SCN, the Adjudicating Authority shall consider the same in accordance with law.

21. All rights and remedies of the parties, against the said order that may be passed by the Adjudicating Authority, are left open. This Court has not considered the merits of the matter.

22. Accordingly, the present petitions, along with pending application(s), if any, are disposed of.

PRATHIBA M. SINGH, J.

SHAIL JAIN, J.

DECEMBER 9, 2025/*tg/sm*