



2025:DHC:2541-DB



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

Date of decision: 9th April, 2025

+ **W.P.(C) 4383/2025 & CM APPL. 20162/2025**

SUNIL GULATI

.....Petitioner

Through: Mr. Abhishek Garg, Mr. Yash Gaiha,
Mr. Ranesh Singh Mankotia and Mr.
Naman Mehta, Advocates.

versus

ADDITIONAL COMMISSIONER CGST DELHI SOUTH
COMMISSIONERATE & ANR.Respondents

Through: Ms. Samiksha Godiyal, SSC with Mr.
Tenzing N Bhutia, Advocate.

CORAM:

JUSTICE PRATHIBA M. SINGH

JUSTICE RAJNEESH KUMAR GUPTA

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through hybrid mode.
2. The present petition has been filed by the Petitioner- Mr. Sunil Gulati under Article 226 and 227 of the Constitution of India, inter alia, assailing the impugned Order-in-Original bearing no. 26/RK/ADC/CGST/DSC/2024-25 dated 16th January, 2025 (hereinafter, '*impugned order*') by which the Central Goods and Service Tax Department (hereinafter, '*CGST Department*') has imposed a penalty to the tune of Rs.16,15,28,668/- on the Petitioner.
3. The case of the Petitioner is that he was working as an accountant in M/s XEL Infomatics, M/s NexGen Busicorp and G W Infotech Pvt. Ltd. An



investigation was conducted upon complaints received from the Ghaziabad Goods and Service Tax (hereinafter, 'GST') Commissionerate that one M/s Monga Iron and Steel Pvt. Ltd. was availing Input Tax Credit (hereinafter, 'ITC') fraudulently from fake/non-existing firms.

4. A visit to the premises of M/s Monga Iron and Steel Pvt. Ltd. is alleged to have revealed that the same was under the control of Mr. Yogesh Monga. During the investigation, various statements were recorded and a complete list of firms from whom the supplies were claimed to be received was also prepared.

5. On the ground of availment of ITC and on the basis of fake supplies, the Petitioner along with various other persons was even arrested by the CGST Department.

6. The statement of the Petitioner was also recorded on 16th March, 2023 and 17th March, 2023 under Section 14 of the Central Excise Act, 1944 as applicable to service tax and GST. Subsequently, a show cause notice bearing no. 09/2024-25 was also issued on 12th July, 2024 (hereinafter, 'SCN'). In the statements recorded on 16th and 17th March, 2023, the Petitioner had given his address and also explained his role as under:

“Q4. Explain your role as Accountant in M/s XEL Informatics, M/s NexGen Buslcorp, M/s G W Infotech Pvt Ltd?

*Ans. As Accountant in the above-named firms, **my job is to generate sale invoices, e-way bills, maintain purchase bills and ledger entry of sell and purchase invoices in Tally software.** The stock summary is also being maintained by me. I also prepare data to be provided to our Chartered Accountant for finalization of Balance Sheet and assisting them to conduct Internal*



Audit.”

7. The allegation in the SCN was that when the Respondent No. 1 - Additional Commissioner CGST, Delhi South Commissionerate was inspecting the premises of the entities where the Petitioner worked, it was seen that there was no physical stock of ferrous and non-ferrous items and the entire premises was only full of garments.

8. The role of the Petitioner, as the accountant, is set out in detail in the SCN. The Petitioner was fully aware of the proceedings that were commenced against him, the other related persons and the entities. The impugned order has thereafter been passed on 16th January, 2025.

9. In the impugned order, the CGST Department has raised a demand of inadmissible ITC to the tune of Rs.19,98,67,366/- which was wrongly availed by M/s Monga Iron and Steel Pvt. Ltd. Penalties have also been imposed on various firms which had enabled M/s Monga Iron and Steel Pvt. Ltd. to avail of the said ITC. The said impugned order is under challenge in this petition.

10. Mr. Abhishek Garg, Id. Counsel for the Petitioner has raised three points to justify maintainability of the present writ petition:

- (i) That the SCN was never served upon the Petitioner;
- (ii) That the provision under which penalty has been imposed *i.e.*, Section 122(1A) of the CGST Act came into effect only on 01st January, 2021 and therefore, the penalty for all the previous years would not be liable to be imposed on the Petitioner.
- (iii) In terms of 122(1A), the Petitioner being only an accountant, does not retain the benefit of a transaction and it is not at his instance that the transaction was executed.



11. Ld. Counsel for the Petitioner further submits that the Petitioner is willing to participate in the proceedings if he can be given an opportunity to appear before the appellate authority.

12. In response, Ms. Samiksha Godiyal, Id. Sr. Standing Counsel for the CGST Department submits that the SCN was served on the email address of the accounts department of GW Infotech Pvt. Ltd., where the Petitioner was working as an accountant. The said email address where the SCN was served is as under:

- accounts.gw.05@gmail.com

13. It is further submitted by the Id. Sr. Standing Counsel for the CGST Department that this email address was being used by the Petitioner. Secondly, the Id. Sr. Standing Counsel submits that in the statement which was recorded on 16th March, 2023 and 17th March, 2023, the address of the Petitioner is reflected as resident of 104, Parmarth Apartment, Vikas Puri, New Delhi, West Delhi, Delhi-110018 which has been signed by the Petitioner and no other address has been provided to the CGST Department. It is further urged on behalf of the Respondent that the impugned order is an appealable order.

14. The Court has considered the matter. A perusal of the SCN and the impugned order would show that there are various facts which are intricately connected to each other which has led to the finding by the adjudicating authority of the CGST Department that there was clear fraudulent availment of inadmissible ITC.

15. The total number of firms which are set out in the impugned order as also the SCN would show that there are multiple individuals and multiple firms who have allegedly colluded with each other in order to enable this large



scale allegedly fraudulent availment of ITC to the tune of almost Rs.20 crores.

16. The role of the Petitioner as stated in the SCN itself and would show that as per the SCN he along with Mr. Yogesh Monga and Mr. Sunil Srivastava was aware of all the transactions. In the statement dated 16th March, 2023 and 17th March, 2023 itself, the Petitioner has stated that his job was to generate sale invoices, E-way bills, maintain purchase ledgers, purchase bills, entry of sale and purchase invoices in Tally.

17. It is the case of the Petitioner that all these were maintained by him at the instance of his employers. Ld. Counsel for the Petitioner submits that the Petitioner has left the employment of the firm. However, on a specific query, it is informed that no specific date has been mentioned in the petition as to when he left the employment. Thus it cannot be presumed that the show cause notice was not served. Moreover, since his statement was also recorded, he had complete knowledge of the proceedings. Thus there is no jurisdictional error in the matter which warrants exercise of writ jurisdiction by this Court.

18. In the opinion of this Court, the role of the Petitioner cannot be delineated and adjudicated by this Court separately from the other entities and other individuals who are involved in the matter.

19. The impugned order dated 16th January, 2025 is clearly an appealable order under Section 107 of the Central Goods and Services Tax Act, 2017 (hereinafter, '*CGST Act*').

20. On a query from the Court, Ld. Counsel for the Petitioner submits that he is not aware as to whether Mr. Yogesh Monga and others have preferred an appeal or not.

21. The stand of other entities and individuals against whom demands have been raised and penalties have been imposed may also be necessary in the



adjudication in the present case. The appellate jurisdiction would be the appropriate jurisdiction to comprehensively adjudicate the matter.

22. In so far as the stand of the Petitioner that he has not retained the benefit of any transaction is concerned, the same would also be a factual issue which cannot be gone into in writ jurisdiction by this Court. The Petitioner would be free to raise this issue in appeal. Further, the argument that penalty could not have been imposed on the Petitioner for the Financial Years from 2017 can also be raised in appeal by the Petitioner.

23. Ld. Counsel for the Petitioner at this stage submits that in view of the fact that no pre-deposit is payable in respect of the penalty amount, the present writ petition has been preferred solely on the issue of jurisdiction.

24. Considering that all the issues which have been raised above can be clearly raised before the appellate authority, this is a fit case for directing the Petitioner to avail of his remedies under Section 107 of the CGST Act. Entertaining the present writ petition would in fact mean that all the factual issues would have to be gone into by this Court which would not be permissible. The Petitioner had full knowledge of the proceedings in the SCN.

25. Under such circumstances, this Court is not inclined to entertain the present writ petition.

26. The Petitioner is free to avail of his appellate remedy in accordance with law.

27. Considering the limitation period provided under Section 107 of the CGST Act, the Petitioner is given a further period of 30 days to enable him to file the appeal before the appellate authority. If the same is filed within 30 days from today, the same shall not be dismissed on the ground of being barred by limitation and shall be adjudicated on merits.



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28. Accordingly, the petition is disposed of. Pending applications, if any, are also disposed of.

**PRATHIBA M. SINGH
JUDGE**

**RAJNEESH KUMAR GUPTA
JUDGE**

APRIL 9, 2025

v/ck

(corrected & released on 15th April, 2025)