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

Date of Decision: 31st October, 2025

+ **W.P.(C) 6271/2025&CM APPL. 28650/2025**

**HIGH SPIRIT COMMERCIAL VENTURES PRIVATE
LIMITED**Petitioner

Through: Mr. Rachit Agarwal & Mr. Vikas
Baisya, Advs.

versus

**ADDITIONAL COMMISSIONER CGST DELHI WEST
COMMISSIONERATE**Respondent

Through: Ms. Monica Benjamin, SSC with Ms.
Nancy Jain, Adv.

CORAM:

**JUSTICE PRATHIBA M. SINGH
JUSTICE SHAIL JAIN**

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through hybrid mode.
2. The present petition has been filed, *inter alia*, assailing the impugned Show Cause Notice dated 24th July, 2024 and the impugned Order-in-Original dated 4th February 2025.
3. *Vide* the impugned order, various demands have been raised against the Petitioner on the ground of availment of fraudulent Input Tax Credit (hereinafter “ITC”) from non-existing entities.
4. On 13th May, 2025, ld. Counsel for the Respondent was to check up as to whether there are any connected writ petitions and thereafter the matter has been taken up for hearing today.
5. Submissions have been heard on behalf of the parties.



6. A perusal of the impugned order would show that the matter involves hundreds of firms which are stated to be fraudulently availing and passing on ITC. There were a total of 53 firms which were found to be bogus entities set-up by one Mr. Mukesh Jain. Out of these 53 firms, 21 firms were in the jurisdiction of the West Commissionerate out of which, the Petitioner is one of them.

7. The Petitioner is stated to have availed ITC of Rs.3,98,98,262/- and passed on ITC of Rs.4,75,08,348/- which is ineligible.

8. The case of the Petitioner is that it is based in Maharashtra and is not connected with M/s Mukesh Jain.

9. However, on the other hand, the case of the Department is that the inspection was conducted at the registered place of business of the Petitioner and the Petitioner was found to be non-existent.

10. In the present case, it is seen that some of the facts, which have been pleaded, would also show that the persons who were summoned had made statements before the Department. For example, *M/s Sardar Ji Di Hatti Departmental Store Pvt. Ltd.* had stated as under:

“M/s Sardar Ji Di Hatti Departmental Store Pvt. Ltd. (GSTIN:O7AAPCS4937G1ZX), was summoned again on 31.01.2024. The taxpayer submitted its reply on 15.02.2024, wherein they submitted that they made transactions only with M/s High Spirit Commercial Venture Pvt. Ltd. from 2017-18 to 2019-20. However, as far as the tax liability is concern, the taxpayer failed to reverse the ineligible ITC along with applicable interest and penalty.”

11. Similar statements have also been made by other entities, which were investigated.



12. Ms. Monica Benjamin, ld. SSC in fact submits that out of 22 entities, 9 have in fact reversed the ITC which proves that the allegations made cannot be brushed aside. Proper demands have been raised against the Petitioner which can be challenged by way of an appeal and this is not a fit case for entertainment of writ petition.

13. Under such circumstances, in the opinion of this Court, this involves factual matters which ought to be taken up in Appeal and not in writ jurisdiction. Moreover, in case of the availment of ITC, which is fraudulently availed, this Court has already taken a view in several matters that the writ jurisdiction ought not to be ordinarily exercised, including in **W.P.(C) 5815/2025 in M/s MHJ Metal Techs v. Central Goods and Services Tax Delhi South**, wherein it was 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.”*

14. The decision in ***Metal Techs (supra)*** was challenged before the Supreme Court in ***SLP(C) 27411/2025*** titled ***M/S Metal Techs v. Central Goods and Services Tax Delhi South***. The Supreme Court *vide* order dated 22nd September, 2025 has dismissed the SLP and only extended the time for filing the appeal. The same order reads as under:

“ORDER

1. *Delay condoned.*
2. *Having heard learned counsel for the petitioner, we are not satisfied that it is a fit case to exercise our discretion under Article 136 of the Constitution of India.*
3. *The present petition is, accordingly, dismissed.*
4. *The time period for filing the appeal granted by the High Court till 15.07.2025 is extended upto 15.10.2025.*
5. *Pending application(s), if any, shall stand disposed of.”*

15. Under these circumstances, since this Court has already considered the same very issue involving fraudulent availment of ITC, in several matters, the Court is not inclined to entertain the present writ petition.

16. Accordingly, the Petitioner is permitted to file an appeal by 30th November, 2025 along with the requisite pre-deposit upon which the appeal shall be entertained and adjudicated on merits and should not be dismissed on



the ground of limitation.

17. At this stage, after the order has been dictated in open court, ld. Counsel for the Petitioner has submitted that the Petitioner company is no way connected with the company which was investigated. However, the said submission is untenable insofar as GST cases are concerned, as the identification of an entity is by the GSTIN number and the said number is not in dispute. The said submission has also not been raised by the Petitioner in its reply dated 04th September, 2024 to the Show Cause Notice.

18. In the above terms, the petition is disposed of. All the pending applications, if any, are also disposed of.

PRATHIBA M. SINGH
JUDGE

SHAIL JAIN
JUDGE

OCTOBER 31, 2025/pd/msh