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

Date of Decision: 9th December, 2025

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+ **W.P.(C) 18673/2025, CM APPL. 77607/2025 & CM APPL. 77608/2025**

**BRAHAM PRAKASH PROP. OF M/S SHRI SHYAM
TRADING CO.**

.....Petitioner

Through: Mr. Puneet Rai and Ms. Srishti
Sharma, Advs.

versus

**ADDITIONAL COMMISSIONER, ADJUDICATION, CGST
DELHI NORTH AND ORS. & ORS.**

.....Respondents

Through: Mr. Shubham Tyagi, SSC CBIC &
Ms. Navruti Ojha, Adv.

CORAM:

JUSTICE PRATHIBA M. SINGH

JUSTICE SHAIL JAIN

JUDGMENT

Prathiba M. Singh, J.

1. This hearing has been done through hybrid mode.

CM APPL. 77608/2025 (for exemption)

2. Allowed, subject to all just exceptions. Application is disposed of.

W.P.(C) 18673/2025, CM APPL. 77607/2025

3. This is a petition filed by the Petitioner under Article 226 *inter alia* challenging the impugned order dated 21st January, 2025 by which the demand has been raised upon the Petitioner in the following terms:



5. Details of demand

(Amount in Rs.)										
Sr. No.	Tax rate(%)	Turnover	Plac. suppl.	Act	Tax/Cess	Interest	Penalty	Fee	Others	Total
1.		0.00	Delhi	CGST	1,241,58 1.00	0.00	1,241,58 1.00	0.00	0.00	2,483,16 2.00
2.	0	0.00	Delhi	SGST	1,241,58 1.00	0.00	1,241,58 1.00	0.00	0.00	2,483,16 2.00

4. The case of the Petitioner is that no personal hearing notice was served upon the Petitioner during the course of adjudication proceedings prior to passing of the impugned order and there was also a delay in uploading of the Show Cause Notice dated 23rd July, 2024 (*hereinafter* 'SCN') itself, since the same is stated to have been uploaded on 27th August, 2024 when the limitation period ended on 5th August, 2024.

5. Mr. Tyagi, Id. Senior Standing Counsel submits that the impugned order is an appealable order and it involves allegations of availment of fake Input Tax Credit (*hereinafter* 'ITC') by the Petitioner.

6. The Court has considered the matter. A perusal of the impugned order would show that the DGGI, Rohtak had commenced investigation against one Mr. Praveen Jain based in Sonapat, who is stated to have created various firms in Delhi with an intention to only obtain ITC. Various documents, etc. were seized during a search, including the electronic devices of Mr. Praveen Jain and it was discovered that a network of 18 fake firms was being operated by him.

7. Thereafter, a statement of Mr. Praveen Jain was also recorded. After recording the statement, it was also noticed that there were 374 entities who had purchased goods from these 18 firms, one of whom appears to be the Petitioner. In view thereof, the SCN dated 23rd July, 2024 was issued and the impugned order has been passed.



8. Mr. Rai, Id. Counsel submits that no personal hearing was granted to the Petitioner before passing the impugned order and hence, there is an infraction of the principles of natural justice.

9. The Court has heard the submissions made. 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.

10. 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*', 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”

11. 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.”

12. 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....**

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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.”

13. 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.”

14. 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.

15. Under such circumstances, the Petitioner is free to take all the contentions which he wishes to raise before the Appellate Authority. The time



for filing the appeal assailing the impugned order has already lapsed but since it is contended by the Petitioner that no personal hearing was granted and SCN was uploaded on the portal beyond the period of limitation, the said issues deserve to be looked into by the appellate authority. Thus, the Court is inclined to give the opportunity to the Petitioner to file an appeal.

16. Accordingly, if the appeal is filed by the Petitioner along with the requisite pre-deposit by 15th January, 2026, the same shall not be dismissed on the ground of limitation and shall be adjudicated on merits.

17. It is made clear that this order shall only apply to the case of the Petitioner and shall not apply to any of the other co-noticees.

18. All rights and remedies of the parties are left open.

19. The petition is disposed of. Pending applications, if any, are also disposed of.

**PRATHIBA M. SINGH
JUDGE**

**SHAIL JAIN
JUDGE**

DECEMBER 9, 2025

Rahul/ss