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

*Date of Decision: 10<sup>th</sup> October, 2025*

+ **W.P.(C) 15612/2025, CM APPL. 63899/2025 & CM APPL. 63900/2025**

**M/S RAJESH METALS THROUGH ITS PROPRIETOR RAJESH KAKAR**

.....Petitioner

Through: Mr. Aman Sinha, Mr. Anant Vijay, Mr. Nirmal Dixit, Mr. Yash Raj and Ms. Himani Kaushik, Advs.

versus

**OFFICE OF THE COMMISSIONER CGST DELHI NORTH THROUGH ITS COMMISSIONER**

.....Respondent

Through: Mr. Shubham Tyagi, SSC, CBIC with Ms. Navruti Ojha, Adv. (M: 9650049869).

**CORAM:**

**JUSTICE PRATHIBA M. SINGH**

**JUSTICE SHAIL JAIN**

**Prathiba M. Singh, J. (Oral)**

1. This hearing has been done through hybrid mode.
2. This petition has been filed by the Petitioner challenging the show cause notice dated 11th July, 2024 (*hereinafter, 'the SCN'*) issued by the Respondent Department, as also the consequent order dated 3rd February, 2025 (*hereinafter, 'the impugned order'*).
3. The SCN was issued to the Petitioner on 11<sup>th</sup> July, 2024, proposing to raise certain demands in respect of fraudulent availment of input tax credit (ITC) through one M/s Sun Corporation. The allegation in the SCN was that through the said M/s Sun Corporation, the Petitioner has availed of fraudulent ITC.



4. The Petitioner had filed a reply to the SCN on 16<sup>th</sup> December, 2024 (*hereinafter, 'the reply to SCN'*) and had stated that it had received goods from its supplier through proper invoices and e-way bills. However, this position is disputed by the Department on the ground that all the invoices were goods-less invoices and the firms were itself fake.

5. Notices for personal hearing were also issued for 17<sup>th</sup> December, 2024, 7<sup>th</sup> January, 2025 and 17<sup>th</sup> January 2025. However, the Petitioner did not attend the same and eventually, the impugned order was passed on 3<sup>rd</sup> February, 2025.

6. The submission on behalf of the Petitioner is that the reply to the SCN filed by them has not been considered by the Department before passing the impugned order and hence, the impugned order deserves to be set aside.

7. Heard. The Court notices that apart from the 16 allegedly fake firms, notices were issued to other 122 entities in this matter. Insofar as the Petitioner itself is concerned, the impugned order specifically records that notices for personal hearing were issued for hearing on 17<sup>th</sup> December, 2024, 7<sup>th</sup> January, 2025 and 17<sup>th</sup> January, 2025. However, there was no appearance on behalf of the Petitioner. The relevant portion is set out below:

55	M/s Rajesh Metal	Not Attended	Personal hearing in the matter was granted on 17.12.2024, 07.01.2025 & 17.01.2025. <b><u>However neither any person appear nor any correspondence received in this regard.</u></b>
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8. A perusal of the above extracted portion of the impugned order would show that there is no mention of the reply filed by the Petitioner here. However, the reply filed by the Petitioner has been briefly mentioned in the



impugned order in the following manner:

55	07AKVPK5792LIZ5	M/s Rajesh Metal	3,85,291	19.09.2022
In response of the summon, a reply was received from M/s Rajesh Metals. In their reply they stated that they have purchased the copper scrap from M/s Sun International and claimed the input tax credit and they have all the proofs in this regard. They also submitted copies of invoices and bank statement.				

9. The Court notes that the reply to the SCN filed by the Petitioner seems to be lengthy and detailed in nature and the same has not been fully dealt with in the impugned order.

10. The matter relates to allegations of fraudulent availment of ITC. This Court has, in the past, made clear its opinion in several judgments, that writ jurisdiction ought not to be ordinarily exercised in matters that contain such allegations of availment of fraudulent ITC.

11. In *W.P.(C) 5737/2025* titled **Mukesh Kumar Garg vs. Union of India & Ors.** the Court has held that ordinarily, a writ petition would not be maintainable. The said observations 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.”*

12. The said decision in **Mukesh Kumar Garg (supra)** was challenged before the Supreme Court in **SLP(C) No. 018178 /2025** titled Mukesh Kumar Garg v. Union of India. The following order was passed by the Supreme Court in the said case on 4<sup>th</sup> August, 2025:

*“1. Two primary contentions have been raised. First, Section 122(1) of the Central Goods and Services Tax Act, 2017 (for short ‘the Act’) would not be applicable to the petitioner as he is a non-taxable person.*



*Secondly, the provisions of Section 122 (1A) of the Act which came into force w.e.f. 01.01.2021 cannot be applied retrospectively for the Assessment Years 2017-2020.*

*2. Leave granted.*

**3. In the meanwhile, there shall be stay on the recovery of the amount directed to be deposited provided the appellant deposits 25% of the demand before the GST Department either through Electronic Ledger or through Cash Ledger.”**

The Supreme Court has, thus, merely granted a stay on the recovery of the amount directed to be deposited on the condition that the Appellant deposits 25% of the demand before the GST Department.

12. Moreover, the Supreme Court in the decision in *Civil Appeal No. 5121/2021* dated 3<sup>rd</sup> 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”*

13. The said legal position has also been reiterated by this Court in ***M/s Sheetal and Sons & Ors. v. Union of India & Anr., 2025: DHC: 4057-DB*** and by the Allahabad High Court in ***Writ Tax No. 753 of 2023*** titled ‘***Elesh Aggarwal v. Union of India***’ wherein the Allahabad High Court has held that no ground is made for interference on merits in exercise of extra ordinary jurisdiction. The relevant portion of the decision in ***M/s Sheetal and Sons & Ors. (Supra)*** reads 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.”*

14. However, considering the fact that there is a possibility of infraction of the principles of natural justice, as the reply to the SCN filed by the Petitioner may not have been fully considered before passing the impugned order, the Court is inclined to permit the Petitioner to avail of its appellate remedy under Section 107 of the Central Goods and Service Tax Act, 2017.

15. For the reason stated hereinabove, let the appeal be filed by the Petitioner against the impugned order dated 3<sup>rd</sup> February 2025, by 30<sup>th</sup> November, 2025 along with the requisite pre-deposit.

16. This liberty is being granted subject to payment of costs of Rs. 10,000/- to be paid to the Department.

17. If the appeal is filed by the Petitioner within the stipulated time period, the same shall be decided on merits and shall not be dismissed on ground of limitation. A reasoned order shall be passed by the Appellate Authority.

18. The petition is disposed of in these terms. Pending applications, if any, are also disposed of.

**PRATHIBA M. SINGH  
JUDGE**

**SHAIL JAIN  
JUDGE**

**OCTOBER 10, 2025/dj/ss**