



\$~37

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

Date of decision: 12th August, 2025

+ **W.P.(C) 12062/2025 & CM APPL. 49312/2025**

SD POLYMERS THROUGH ITS PROPRIETOR PROP.

HEM LATA GUPTA

.....Petitioner

Through: Mr. Parveen Kumar Gambhir, Mr.
Rakesh Kumar, Mr. Naveen and Mr.
Lakhvinder, Advs.

versus

COMMISSIONER OF CENTRAL GOODS AND SERVICE TAX
AND ANR

.....Respondents

Through: Mr. Shashank Sharma, SSC for R-1&2

CORAM:

JUSTICE PRATHIBA M. SINGH

JUSTICE SHAIL JAIN

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through hybrid mode.

CM APPL. 49311/2025

2. Allowed subject to all just exceptions. Accordingly, the application is disposed of.

W.P.(C) 12062/2025 & CM APPL. 49312/2025

3. The present petition has been filed by the Petitioner under Article 226 of the Constitution of India, *inter alia*, assailing the Show Cause Notice dated 5th August, 2024 (hereinafter, 'SCN') issued for the Financial Year 2017-18. The Petitioner further challenges the Order-in-Original dated 1st February, 2025 along with the Form DRC-07 dated 9th February, 2025 (hereinafter, 'impugned order'). *Vide* the impugned order a demand to the tune of Rs. 2,18,24,370/- has



been raised against the Petitioner.

4. On behalf of the Petitioner, two submissions have been made by the Id. Counsel. Firstly, the reply dated 27th August, 2024, which has been filed by the Petitioner to the SCN, which led to the passing of the impugned order has not been considered by the Central Goods and Service Tax Department (hereinafter, 'Department'). Secondly, it is submitted that no opportunity of personal hearing has been afforded to the Petitioner by the Department. In addition, the plea of limitation has also been raised by the Petitioner.

5. Coming to the plea of limitation, it is seen that the impugned order is dated 1st February, 2025, however, it appears that the Form DRC-07 was uploaded on 9th February, 2025 on the GST Portal of the Petitioner.

6. Mr. Shashank Sharma, Id. SSC submits that the impugned order was issued by the Department within the prescribed limitation period, however, due to a technical glitch, it may have been uploaded on the GST Portal on a later date.

7. Be that as it may, insofar as the reply dated 27th August, 2024, which has been filed by the Petitioner to the SCN dated 5th August, 2024 is concerned, the impugned order dated 9th February, 2025 itself records as under:

“4. SUBMISSIONS OF THE NOTICEES AND RECORDS OF PERSONAL HEARING:

Following the principle of natural justice, the noticees were granted personal hearings (PH) on 21.11.2024, 16.12.2024 & 26.12.2024. However, replies from Noticee No. 14, 70 and 86 were received whereas for rest of the noticees neither the noticees nor any of their authorized representatives appeared before the Adjudicating Authority for personal hearing on the said dates. Thus, on the basis of available facts and records, I proceed to examine the instant case.



5. DISCUSSION & FINDINGS:-

5.1 I have carefully gone through the facts of the case, available case records and the allegations as per the subject SCN. It is seen that the Noticees had not submitted any written submission and also did not appear for personal hearing. Personal Hearings were granted on 21.11.2024, 16.12.2024 & 26.12.2024. However, replies from Noticee No. 14, 70 and 86 were received which have been duly considered. As per reply of Noticee No. 70 & 86 the amount mentioned below has been deposited:

Notice No.	Name of the taxpayer	Tax (in Rs.)	Interest (in Rs.)	Penalty (in Rs.)	DRC-03 ARN no.
70	CREATIVE INDUSTRIES	2,94,658/ -	1,59,114/ -	44,198/ -	AD070221011382 T
86	AAR BEE ENGINEERING WORKS	1,31,406/ -	70,960/-	19,710/ -	ADO70221011376 N

For Noticee No. 86, I find that vide their reply dated 03/01/2025 received on 06/01/2025 to the DRC-01 in the matter, the taxpayer submitted various points i.e. that Section 74 was not applicable in case of records of the taxpayer as there was no suppression of facts, fraud, mis-statement of malafide intention to evade the tax by the taxpayer; that the taxpayer submitted various case laws in support of their above mentioned claims. Further, I find that the taxpayer submitted point-wise reply to the observations on merit. However, on going thoroughly through the reply/points submitted; case laws quoted by the noticee. In this regard I find that on going through the case laws/submissions made by the party, the provided case laws do not squarely cover all the four corners of this issue as each and every case has different facts and circumstances. In other words, I note that the decision is to be made on case to case basis and the reliance can be placed only when the case facts



*tally with the facts of the case. Therefore, the submissions/case laws/reply submitted by the noticee is neither relevant to this case nor tenable. On submissions made point-wise, also, I find that the taxpayers submissions are not in line with the audit observations and data available on portal, hence found not tenable. Whereas, for rest of the noticees neither the noticees nor any of their authorized representatives appeared before the Adjudicating Authority for personal hearing on the said dates. Hence, I am of the considered view that in the present case, Principle of Natural Justice as well as Principle of Adjudication has been duly followed and opportunities have been provided to the Noticees to put forth their defence in personal hearing. I find that the noticees had failed to avail the opportunity of personal hearing and therefore forfeit their claim in future related to violation of natural justice. I find it relevant to refer to the judgment of Hon'ble CESTAT in the case of *V.K. Thampy Vs. Collector of Customs and Central Excise, Cochin [1988 (033) ELT 0424]*, wherein Hon'ble Tribunal inter alia held at para 7 that "an adjudicating authority is entitled to proceed ex parte if the person concerned does not appear before it in response to a notice issued by it." Thus, I have no option but to adjudicate the present case ex-parte on the basis of records available in this case."*

8. From the paragraphs extracted hereinabove, it is clear that the replies to the SCN were given by some of the noticees and the same were considered. It is, however, unclear as to whether the Petitioner's reply was even dispatched or sent to the Adjudicating Authority within time or not. Ld. Counsel for the Petitioner, however, points out that there is a faint stamp on the reply dated 30th August, 2024, which shows that the same was received by the Department.
9. However, this Court is of the view that an important issue in this case is



that it involves allegation of fraudulent availment of Input Tax Credit (*hereinafter, 'ITC'*) by several parties. A perusal of the impugned order shows that there are several non-existing firms, which are stated to have raised goods-less invoices and passed on credit to 106 noticees. *Vide* the impugned order, demands have been raised against various parties along with penalties.

10. The Petitioner's name appears at serial no.12 in the list of noticees and the allegation raised upon the Petitioner is that the fraudulent ITC passed on is to the tune of Rs.1,45,49,580/-.

11. The total demand raised *qua* the Petitioner is as under:

5. Details of demand

(Amount in Rs.)

Sr. No.	Tax rate(%)	Turnover	State of	Tax	Tax/Cess	Interest	Penalty	Fee	Others	Total
1.	0	0.00	Delhi	CGST	7,274.79 0.00	0.00	14,549.5 80.00	0.00	0.00	21,824.3 70.00
2.	0	0.00	Delhi	SGST	7,274.79 0.00	0.00	14,549.5 80.00	0.00	0.00	21,824.3 70.00

12. A perusal of the SCN dated 5th August, 2024 reveals wrongful availment of ITC and its utilization by 106 noticees during FY 2017-18 on the basis of the goods-less invoices issued by non existent firms as under:

(b) Grounds: 'The Noticee(s) No. 10 to 106 are not eligible to avail and utilize the ITC received through goods less invoices. They are liable to pay the inadmissible Tax (ITC), under Section 74(1) of the CGST Act, 2017/ DGST Act, 2017 and IGST Act, 2017 along with interest under Section 50 and penalty under Section 74(1) of the Acts, *ibid*. The firms, as mentioned, in **Table-C below**, had been intentionally created only to pass-on ineligible ITC to the Noticee(s) No. 10 to 106, without actual supply of goods or services to gain monetary benefit in the form of Commission and, therefore, rendered themselves liable for penalty under Section 122 of CGST Act, 2017. *Further details are as per Show Cause Notice.*

13. Moreover, the allegation in the said SCN is that two individuals namely Mr. Rajesh Jindal and Mr. Adesh Jain had created, controlled and managed a large number of fake firms, which were opened in the names of different



individuals and were not genuine businesses or business persons.

14. Insofar as the SCN and the consequent impugned demand order dated 9th February, 2025 in respect of Mr. Adesh Jain and Mr. Rajesh Jindal are concerned, in a matter arising out of the same SCN being ***W.P.(C) 11906/2025*** titled ***Ganpati Polymers through its Proprietor Ankur Jain v. Commissioner of Central Goods and Service Tax & Anr.***, this Court has already relegated the parties to the appellate remedy in the following terms:

“11. Heard. It is a matter of practice of the GST Department that the notices for personal hearing and notices for replies to be filed are all uploaded on the GST Portal. The Petitioner was well aware of the complete investigation that was going on against him and such callous conduct on behalf of the Petitioner cannot be condoned by the Court where the Petitioner chooses not to even participate in the proceedings in any manner whatsoever. The matter relates to alleged fraudulent availment of ITC in respect of which the demand has been raised. The only argument being made on behalf of the Petitioner is that the impugned order has been passed belatedly.

12. A perusal of the impugned order would itself show that the same was signed by the Additional Commissioner, CGST (North) on 1st February, 2025 and has been dated 1st February, 2025. The DRC-07 may have been uploaded on 9th February, 2025. However, it cannot be held that the impugned order was passed outside the period of limitation.

13. Under these circumstances, the Court is not inclined to entertain the present writ petition.

14. Accordingly, the present writ petition, along with all pending applications is dismissed with a cost of Rs.50,000/- to be deposited with the Delhi High Court Bar Association within two weeks...”

15. In all these matters in case of availment of fraudulent ITC, there are



several factual issues, which would need to be looked into, which cannot be adjudicated in a writ petition. This view has already been taken by this Court in several matters. Further, 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”

16. 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.”

17. Hence, this Court does not deem it appropriate to delve into the facts of this case under writ jurisdiction as the concept of ITC by itself involves a series of transactions, which would have to be analyzed and, thereafter, the decision is to be taken.



18. Considering that these are cases of fraudulent avilment of ITC and there are a large number of noticees involved in the alleged transactions, this Court is of the opinion that the Petitioner ought to be relegated to avail of its appellate remedy, rather than entertaining a writ petition.

19. Insofar as the non-consideration of the reply filed by Petitioner is concerned, the Petitioner is free to file an appeal raising the said contention, along with any other documents it relies upon in support of its appeal.

20. Under these circumstances, the Court is not inclined to entertain the present writ petition. All rights and contentions of the Petitioner are left open.

21. The Petitioner shall file an appeal by 30th September, 2025, along with requisite pre-deposit.

22. If the appeal, along with the mandatory pre-deposit is filed by 30th September, 2025, the same shall not be dismissed as being barred by limitation and shall be decided on its own merits.

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

**PRATHIBA M. SINGH
JUDGE**

**SHAIL JAIN
JUDGE**

AUGUST 12, 2025/kp/ck