



\$~77

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

Date of Decision: 16th April, 2025

+ **W.P.(C) 4776/2025 & CM APPL. 22003/2025**

VIPIN KUMAR MITTALPetitioner
Through: Mr. Bhwesh Bholra, Mr. Udit Bakshi
and Mr. Piyush Kumar, Adv.
versus
COMMISSIONER OF CENTRAL GOODS AND SERVICES TAX
(CGST), DELHI NORTHRespondent
Through: Mr. Akash Verma, SSC with Ms.
Aanchal Uppal, Adv.

CORAM:
JUSTICE PRATHIBA M. SINGH
JUSTICE RAJNEESH KUMAR GUPTA

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through hybrid mode.

CM APPL. 22003/2025 (for exemption)

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

W.P.(C) 4776/2025

3. The present writ petition has been filed by the Petitioner – Mr. Vipin Kumar Mittal (proprietor of M/s Kunj Behari Enterprises) under Article 226 of the Constitution of India, *inter alia*, challenging the impugned order dated 21st January, 2025 bearing reference number 63/ADC/2024-25 passed by the Assistant Commissioner, CGST Delhi North. The Petitioner further seeks directions to the Respondent to club the proceedings of order dated 10th January, 2025 bearing reference number 55/2024-25 passed by the above officer along with those pertaining to the impugned order.



Order No. 63/ADC/2024-25 dated 21st January, 2025

4. The brief background is that the Directorate General of GST Intelligence (hereinafter 'DGGI') had received an incident report alleging the fraudulent availment of Input Tax Credit (hereinafter 'ITC') by M/s Skylark Infra Engineering Pvt. Ltd to the tune of Rs.5.89 Crores using fake invoices without actual receipt of goods and services. The said Skylark Infra had allegedly received invoices issued by six fake firms, which were found to not be operating at their listed addresses. One among the said six firms was M/s Nivaran Enterprises which is alleged to have further passed on the fraudulently claimed ITC to 47 firms including the Petitioner's firm *i.e.*, M/s Kunj Behari Enterprises. Accordingly, the Petitioner's firm was attached as a co-noticee in the concerned Show Cause Notice dated 1st July, 2024.

5. *Vide* the impugned order dated 21st January, 2024 demand to the tune of Rs.55,15,012/- was confirmed against the Petitioner's firm along with an equivalent amount of penalty.

Order No. 55/2024-25 dated 10th January, 2025

6. This order arises from Show Cause Notice bearing reference no 325/2024-25 which was issued specifically against the Petitioner's firm for availing fraudulent ITC from two fake/non-existent firms namely; M/s Nivaran Enterprises and M/s Radhey Enterprises. *Vide* the said order dated 10th January, 2025 demand to the tune of;

- (i) Rs.55,15,011/- *qua* ITC availed from M/s Nivaran Enterprises and;
 - (ii) Rs. 1412730/- *qua* ITC availed from M/s Radhey Enterprises
- was confirmed against the Petitioner's firm.

7. The case of the Petitioner in this writ petition is that the sum of Rs.55,15,012/- has been duplicated in both the orders dated 21st January, 2025



and 10th January, 2025, though with a difference of Re.1/-. It is his submission that the same is a clear error by the Department, therefore, the demands are liable to be set aside.

8. This Court is of the opinion that both these orders are appealable orders before the concerned Appellate Authority under Section 107 of the Central Goods and Services Tax Act, 2017. The question of duplication, if any, shall be examined and adjudicated by the Appellate Authority. However, on a *prima facie* perusal, it appears that the amount pertaining to M/s Nivaran Enterprises has been reflected in both orders, indicating a possible instance of duplication.

9. In view thereof, the Petitioner is permitted to avail of its Appellate remedies in respect of both orders.

10. However, considering the possibility of duplication, insofar as the second order is concerned *i.e.*, 10th January, 2025, the pre-deposit shall only be in respect of the amount pertaining to M/s Radhey Enterprises *i.e.*, Rs.14,12,730/- at the initial stage. The Appellate Authority may examine the matter and pass directions in accordance with law.

11. Let the appeal be filed by the Petitioner before the Appellate authority within a period of 30 days. The appeal shall be adjudicated on merits. Needless to add, this Court has not examined the merits of either orders, except the issue of duplication – only for the purposes of directing the pre-deposit.



2025:DHC:2652-DB



12. The petition is disposed of in the above terms. Pending applications, if any, is also disposed of.

PRATHIBA M. SINGH
JUDGE

RAJNEESH KUMAR GUPTA
JUDGE

APRIL 16, 2025/dk/Ar.