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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of decision: 30th May, 2025

+ **W.P.(C) 8032/2025 & CM APPL. 35235/2025**
M/S JASMEET TRADING COMPANYPetitioner
Through: Mr. Pranay Jain, Adv.

versus

ADDITIONAL COMMISSIONER, CGST, DELHI NORTH
.....Respondent
Through: Ms. Anushree Narain, SSC with Mr.
Ankit Kumar, Adv. (9910014337)

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. 35234/2025

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

W.P.(C) 8032/2025 & CM APPL. 35235/2025

3. The present petition has been filed by the Petitioner- M/s Jasmeet Trading Company under Article 226 of the Constitution of India, *inter alia*, challenging the Order-in-Original bearing no. 98/ADC/D.N./Shaukat Ali Nurvi/2024-25 dated 01st February, 2025 (*hereinafter, 'the impugned order'*). *Vide* the impugned order, demands and penalties have been raised against the Petitioner. The impugned order arises out of Show Cause Notice dated 11th June, 2024 (*hereinafter, 'the SCN'*).

4. The allegations raised by the Department against the Petitioner entity



in the said SCN is that the Petitioner entity fraudulently availed Input Tax Credit (*hereinafter, 'ITC'*). The ITC which was availed by the Petitioner entity was to the tune of Rs. 6,12,530/- and it is this amount which was set out in the SCN as the undue benefit which was reaped by the Petitioner.

5. Ld. Counsel for the Petitioner, has raised broadly two issues to challenge the impugned order:

- i. Firstly, it is the case of the Petitioner that in the present case, the SCN and impugned order have been passed by different authorities;
- ii. Second, that a consolidated SCN has been issued for multiple financial years and the consequent impugned order has been passed. The said issue is already under consideration by this Court in *W.P.(C) 4392/2025* titled *Quest Infotech Pvt. Ltd. & Anr. v. Union of India*.

6. The Court has considered the matter. As held by the Supreme Court in *Civil Appeal No. 5121/2021* titled *Assistant Commissioner of State Tax and Ors. v. M/s Commercial Steel Limited*, a writ petition can be entertained under exceptional circumstances only which are set out in the said judgment 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.

7. The above legal position has also been reiterated 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.

8. The nature of the allegations against the Petitioner in the present case, as is clear from the SCN as also the impugned order is that the Petitioner, in collusion with other entities has taken substantial benefit of ITC without sale of any goods or services. This strikes at the root of the Input Tax Credit facility which is recognised in the GST regime.



9. An appeal before the appellate authority is a full-fledged remedy provided under Section 107 of the Central Goods and Service Tax Act, 2017.

10. The contentions that the Petitioner wishes to raise can always be raised in appeal, in as much as this Court has already taken a view in *W.P.(C) 5737/2025* titled *Mukesh Kumar Garg vs. Union of India & Ors.* In the said case, the Court, has already taken a view in this regard 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 usually 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.”

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

12. In so far as the issue pertaining to the issuance of consolidated SCN and impugned order for multiple financial years is concerned, the decision in *W.P. (C) 4392/2025* titled *Quest Infotech Pvt. Ltd. & Anr. v. Union of India* which may be passed by this Court shall bind the future proceedings as well, if the Petitioner chooses to go in appeal against the impugned order.

13. Needless to add, any observations made by this Court in this order, would not have any impact on the final adjudication by the appellate authority, if the Petitioner wishes to file the same.

14. The petition is disposed of in said terms. Pending application(s), if any, also stand disposed of.

**PRATHIBA M. SINGH
JUDGE**

**RAJNEESH KUMAR GUPTA
JUDGE**

MAY 30, 2025

kk/ck