

Reserved

Chief Justice's Court

Case :- WRIT TAX No. - 1177 of 2025

Petitioner :- M/s Reliable Trading Company

Respondent :- Joint Director Directorate General of Goods and Services Tax Intelligence (DGGI) Zonal Unit, Meerut and 2 others

Counsel for Petitioner :- Utkarsh Malviya, Abhinav Mehrotra

Counsel for Respondent :- Parv Agarwal

Hon'ble Arun Bhansali, Chief Justice

Hon'ble Kshitij Shailendra, J.

(Per : Arun Bhansali, CJ)

1. This petition is directed against show cause notice dated 29.07.2024 issued by respondent no. 1, Joint Director (DGGI), Zonal Unit, Meerut and order-in-original dated 22.01.2025 passed by respondent no. 3, Additional Commissioner, Central Goods & Service Tax, Meerut. Further, a prayer has been made that mandatory deposit of 10% under Section 107(6)(b) of the Central Goods and Service Tax Act, 2017 (for short 'the Act') be ordered to be waived off at the time of filing the appeal due to petitioner's hardship.

2. Petitioner is a proprietorship firm engaged in retail and wholesale business dealing in trade of heavy metals and was registered under the CGST/SGST Act. The registration stands cancelled w.e.f. 08.02.2021 on an application made by the petitioner. A show cause notice was issued to the petitioner under Section 74 of the Act with the allegations that information was obtained that proprietor of the petitioner was engaged in creation of fake firms, which was used for availment and passing of fraudulent input tax credit (ITC) to various end users without any supply of goods or services. The allegations pertained to eight firms from which the petitioner had made purchases, which was claimed that the transactions were through banking channels, proper invoices, transportation through e-way bills and bilties qua which it was alleged

that the petitioner was engaged in circular trading and wrongful availment of ITC without actual supply of goods. It was indicated that on physical inspection of the place of business of the eight firms, the same were not found. The money, which was sent by the petitioner through banking channels, was withdrawn and transferred to another entity and two major transporters, were not traceable whilst the others have given statement against the petitioner. The petitioner filed response denying the allegations and asked Revenue to permit cross-examination.

3. By the order impugned, the pleas raised by the petitioner were not accepted and finding was recorded regarding fraudulent availment of ITC issued by firms which were never in existence and consequently, the demand was raised.

4. Counsel for the petitioner made submissions that the respondents were not justified in invoking provisions of Section 74 of the Act, as the entire evidence was already available with them. Further attempt was made to establish that the findings recorded were erroneous and, therefore, the same require interference by this Court.

5. Counsel for the respondent-Department raised preliminary objection about maintainability of the petition without availing the alternative remedy of appeal. Further submissions were made that the Authority, while passing the order, has clearly indicated that those persons whose cross-examination was sought by the noticee, was not relied on by the Department and by seeking cross-examination, the petitioner was acting mischievously and was applying dilatory tactics. Various factual pleas raised by the petitioner have all been appropriately dealt with by the adjudicating authority and no case for interference under Article 226 of the Constitution of India is made out.

6. Reliance was placed on **State of Karnataka vs. Ecom Gill Coffee Trading Pvt. Ltd. : (2023) 4 Centax 223 (S.C.)** and **Shiv Trading vs. State of U.P. : (2023) 12 Centax 344 (All.)**.

7. We have considered the submissions made by counsel for the parties and have perused the material available on record.

8. In a case of present nature wherein the allegations pertain to fraudulent availment of ITC i.e. based on supply from non-existent firms and without receiving any actual supply, the plea would always fall within the parameters of Section 74 of the Act, as the same would be 'input tax credit wrongly availed or utilised by reason of fraud or any wilful misstatement or suppression of facts'. The very fact that the input tax credit was availed based on fake supplies, to claim that the said fake supplies were disclosed and, therefore, Section 74 of the Act would not apply, is totally baseless. All the pleas raised and reply to the show cause notice having been dealt with by the adjudicating authority and the challenge laid to the said finding is only factual and does not fall in any of the parameters laid down by the Hon'ble Supreme Court wherein petitions under Article 226 of the Constitution of India can be entertained. Reference can be made to **Jaipur Vidyut Vitran Nigam Limited and others vs. MB Power (Madhya Pradesh) Limited and others : (2024) 8 SCC 513** (paras 128 to 134).

9. In the case of **Ecom Gill Coffee Trading (supra)**, it has, *inter alia*, been laid down by Hon'ble Supreme Court that ITC would be available to any dealer only after he discharges burden to establish actual receipt of goods. Mere production of invoices and payment to selling dealer by account payee cheque is not sufficient. Similar is the view expressed by a Single Judge of this Court in the case of **Shiv Trading (supra)**.

10. In view of the above fact situation, we do not find any reason to entertain the present writ petition bypassing the availability of alternative remedy. The alternative prayer made for exempting the mandatory deposit, cannot be countenanced, which prayer is contrary to the statute.

11. Consequently, the petition filed by the petitioner is dismissed, leaving it open for the petitioner to avail remedy in accordance with law.

Order Date :- 08.05.25

SL

(Kshitij Shailendra, J) (Arun Bhansali, CJ)

