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\* IN THE HIGH COURT OF DELHIAT NEW DELHI

Date of Decision: 01<sup>st</sup> December, 2025Uploaded on: 2<sup>nd</sup> December, 2025

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W.P.(C) 18230/2025

M/S A V METALS MARKETING PVT LTD .....Petitioner  
Through: Mr. S. B. Sharma, Mr. Yashwant  
Gehlot, Advs.  
versus

PRINCIPAL COMMISSIONER .....Respondents  
CGST AND ANR  
Through: Mr. Shashank Sharma, SSC, Ms.  
Malika Kumari, Adv. for R-1.

**JUSTICE PRATHIBA M. SINGH**  
**JUSTICE RENU BHATNAGAR**

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

1. This hearing has been done through hybrid mode.

**CM APPL. 75339/2025**

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

**W.P.(C) 18230/2025, & CM APPL. 75340/2025**

3. The present petition has been filed by the Petitioner under Article 226 of the Constitution of India, *inter alia*, challenging the Order-in-Original dated 21st January, 2025 (hereinafter, '*impugned order*') passed by the Office of the Additional Commissioner of Central GST, Delhi North. *Vide* the impugned order, the following demand has been raised against the Petitioner:



## 5. Details of demand

(Amount in Rs.)

Sr. No.	Tax rate(%)	Turnover	Place of supply	Act	Tax/Cess	Interest	Penalty	Fee	Others	Total
1.	0	0.00	Delhi	CGST	1,160,08 5.50	0.00	1,160,08 5.50	0.00	0.00	2,320,17 1.00
2.	0	0.00	Delhi	SGST	1,160,08 5.50	0.00	1,160,08 5.50	0.00	0.00	2,320,17 1.00

4. In a challenge to the same impugned order dated 21st January, 2025, this Court has already relegated a similarly placed notice to avail of the appellate remedy in '**W.P.(C) 16455/2025 Toshniwal Electricals Pvt Ltd vs The Principal Commissioner of Central Tax Delhi North & Ors.**' vide order dated 30<sup>th</sup> October, 2025, where the Court has held as under:

*"13. Under these circumstances, the Court is not inclined to entertain the present writ petition. The Petitioner was well aware of several notices, which were issued and the reply was duly filed by the Petitioner. Even in reply, the only ground taken is that the RUDs have not been supplied and there is no stand taken by the Petitioner on merits.*

*14. Accordingly, the Court is inclined to relegate the Petitioner to avail of appellate remedy under Section 107 of the Central Goods and Service Tax Act, 2017. The appeal may be filed by the Petitioner by 30<sup>th</sup> November, 2025 along with the requisite pre-deposit. If the same is filed by the said date, the appeal shall be entertained on merits and shall not be dismissed being barred by limitation."*

5. In the present case, the submission of Mr. S.B. Sharma, ld. Counsel for the Petitioner is that no proper hearing was afforded to the Petitioner. Hence, there is a violation of the principles of natural justice.

6. Ld. Counsel for the Petitioner also seeks to rely upon a typographical error which mentions the due date for filing reply as 28<sup>th</sup> August, 2025, which ought to have been 28<sup>th</sup> August, 2024. Clearly, the same was merely an error which cannot be taken advantage of by the ld. Counsel for the Petitioner.



Even if it is taken as 28<sup>th</sup> August, 2025, there is nothing on record to show that the 1d. Counsel for the Petitioner has ever filed any reply in the matter.

7. The matter arises out of allegations of fraudulent availment of Input Tax Credit (*hereinafter, 'ITC'*) wherein an investigation had been initiated against 16 tax payers, who have transferred substantial amounts of ITC through GSTR filing. The scrutiny revealed, as per the Department, that there was hardly any inward ITC from their declared suppliers. This led to the suspicion that 16 firms did not actually exist. The analysis of the outward supplies as reported in GSTR-1M by the previous 72 non-existent firms and another seven firms revealed that the total amount, which was transferred by these firms, was ITC of more than Rs.122 crores to 1155 taxpayers.

8. The CGST- Delhi, North Commissionerate started the investigation process by giving notices to 1155 recipients, who were associated with 79 fake entities. Some parties paid the amount of approximately Rs.5.24 crores. The Petitioner is at serial number 106 in the impugned order and the liability of the Petitioner is to the tune of Rs.23,20,171/-, as per the impugned order.

9. This Court has consistently taken the view that in cases involving fraudulent availment of ITC, ordinarily, the Court would not be inclined to exercise its writ jurisdiction. It is routinely seen in such cases that there are complex transactions involved which require factual analysis and consideration of voluminous evidence, as also the detailed orders passed after investigation by the Department. In such cases, it would be necessary to consider the burden on the exchequer as also the nature of impact on the GST regime, and balance the same against the interest of the Petitioners, which is secured by availing the right to statutory appeal.

10. It would be apposite to refer to some of the cases which have been



decided by the Supreme Court as also by this Court on these aspects. The Supreme Court in the context of Central Goods and Service Tax Act, 2017, 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***', has 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”*

11. Thereafter, this Court in **W.P.(C) 5737/2025** titled ***Mukesh Kumar Garg v. Union of India & Ors.*** dealing with a similar case involving fraudulent availment of ITC had held as under:

*“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 conoticees, 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. This position was also followed in *M/s Sheetal and Sons & Ors. v.*



**Union of India & Anr., 2025: DHC: 4057-DB.** The relevant portion of the said decision read 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....*

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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.”*

13. Recently, this Court in **W.P.(C) 5815/2025** titled **M/s MHJ Metal Techs v. Central Goods and Services Tax Delhi South** held as under:

“16. *This Court, while deciding the above stated matter, has held 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 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.”**

17. Under these circumstances, this Court is not inclined to entertain the present writ petition. However, the Petitioners are granted the liberty to file an appeal.

18. Accordingly, the Petitioners are permitted to avail of the appellate remedy under Section 107 of the CGST Act, by 15th July, 2025, along with the necessary pre-deposit mandated, in which case the appeal shall be adjudicated on merits and shall not be dismissed on the ground of limitation.

19. Needless to add, any observations made by this Court would not have any impact on the final adjudication by the appellate authority.”

14. The decision in *Metal Techs (supra)* has also been carried to the Supreme Court in *SLP(C) 27411/2025* titled *M/S Metal Techs v. Central*



**Goods and Services Tax Delhi South.** In the said SLP, the Supreme Court, vide order dated 22nd September, 2025 has merely extended the time for filing the appeal.

15. In matters of this nature, where there are a large number of notices who are connected to each other, the SCN has been properly uploaded on the portal and no satisfactory reply is filed by the Petitioner, the Court shall not interfere. Even according to Mr. S.B. Sharma, Id. Counsel, the Petitioner had written a letter to the Department seeking certain documents.

16. Under such circumstances, there is no reason as to why this Court should adopt a different approach in the present case. Accordingly, following the decision in ***Toshniwal Electricals Pvt Ltd (supra)*** the Petitioner is also relegated to avail of the appellate remedy under Section 107 of the Central Goods and Service Tax Act, 2017, in accordance with law.

17. If the Appeal is filed by 15<sup>th</sup> January, 2026 along with the requisite pre-deposit, the same shall be entertained on merits and shall not be dismissed on the ground of limitation.

18. The CGST Department is advised to exercise caution in future while mentioning financial years, due dates for replies and such material particulars in the show cause notices and orders.

19. Let a copy of this Order be communicated by the Registry, as also by Mr. Shashank Sharma, Id. Counsel for the Respondent to Mr. Manish Kumar, Chief Commissioner of Central Tax, CGST, Delhi Zone([manishkumar.69@gov.in](mailto:manishkumar.69@gov.in), [cru-cexdel@nic.in](mailto:cru-cexdel@nic.in)) for necessary information and compliance.

20. Thereafter, let a copy of this order be circulated by Mr. Manish Kumar, Chief Commissioner of Central Tax, CGST, Delhi Zone, to all



Commissionerates, highlighting that there are many errors in the orders and show cause notices, so that the same can be properly supervised and rectified.

21. The petition is disposed of in the above terms. All pending applications are also disposed of.

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**PRAATHIBA M. SINGH, J.**

**RENU BHATNAGAR, J.**

**DECEMBER 1, 2025/tg/ss**