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

% ***Judgment reserved on: 07.08.2026***

Judgment pronounced on: 18.09.2026

Judgment uploaded on: 18.09.2026

\# **CNR No. DLHC010211512025**

\+ W.P.(C) 4897/2025 and CM APPL. 22525/2025

SHRI KRISHNA INDUSTRIES THROUGH IT PROPRIETOR PROP MOHAN LAL .....Petitioner

Through: Mr. Rakesh Kumar, Adv.

versus

COMMISSIONER OF CENTRAL GOODS AND SERVICES TAX AND ORS. .....Respondents

Through: Ms. Monica Benjamin, SSC with Ms. Laiba Arif, Ms. Prerika Narang, Advs.

CORAM:
HON'BLE MR. JUSTICE ANIL KSHETARPAL
HON'BLE MS. JUSTICE SHAIL JAIN

J U D G M E N T

ANIL KSHETARPAL, J.:

1. The issue which arises for consideration in the present Petition is whether the proceedings initiated by the Central Goods and Services Tax authorities under Section 74 of the Central Goods and Services Tax Act, 2017 [“CGST Act”] are liable to be interdicted on the ground that the State Goods and Services Tax authorities had earlier initiated proceedings under Section 73 of the CGST Act in respect of the Petitioner concerning Input Tax Credit [“ITC”] allegedly availed from M.R. Enterprises.

2. By way of the present Petition, the Petitioner seeks quashing of the Show Cause Notices dated 02.08.2024 and 04.08.2024 issued under Section 74 of the CGST Act, as well as the Orders dated 31.01.2025 and 10.01.2025 passed pursuant thereto.

3. The principal grievance of the Petitioner is that the aforesaid proceedings constitute proceedings on the same subject matter which had already been dealt with by the State GST authorities and are, therefore, barred by Section 6(2)(b) of the CGST Act. The Petitioner also assails the Impugned Orders on the grounds of violation of principles of natural justice, non-consideration of its reply, non-supply of relied upon documents and alleged non-application of mind.

FACTUAL MATRIX

4. In order to appreciate the controversy involved in the present Petition, the relevant facts, in brief, are required to be noticed.

5. The Petitioner is a proprietorship concern of Mr. Mohan Lal and is stated to be engaged in the manufacture of plastic products. The Petitioner was registered under the CGST Act as well as the Delhi Goods and Services Tax Act, 2017 ["DGST Act"] with GSTIN No. 07ACLPL9679D1Z2. Its principal place of business is stated to be situated at Plot No. E-23, Pocket-E, Sector-5, DSIIDC, Bawana, North West Delhi.

6. The dispute in the present Petition relates to ITC allegedly availed by the Petitioner on the basis of invoices issued by M.R. Enterprises. According to the Central GST authorities, the

investigation conducted by the Directorate General of GST Intelligence ["DGGI"] revealed that M.R. Enterprises had passed on inadmissible ITC to various recipients without actual supply of goods. The Petitioner figures amongst the recipients against whom proceedings were consequently initiated.

7. Prior thereto, proceedings had been initiated by the State GST authorities in respect of the Petitioner for Financial Year 2017-18. The State authority issued a Show Cause Notice dated 23.09.2023 proposing, inter alia, a demand in relation to ITC claimed by the Petitioner from M.R. Enterprises. The Petitioner submitted its reply dated 10.10.2023 along with supporting documents.

8. An order dated 28.12.2023 came to be passed by the State GST authority. The Petitioner thereafter approached this Court by way of a writ petition. By order dated 05.03.2024, this Court directed the proper officer to re-adjudicate the Show Cause Notice after affording an opportunity of personal hearing and to pass a fresh speaking order in accordance with law within the period prescribed under Section 75(3) of the CGST Act.

9. Pursuant to the aforesaid order, the State GST authority passed a fresh order dated 29.07.2024. The controversy between the parties principally concerns the effect of the said order on the subsequent proceedings initiated by the Central GST authorities. According to the Petitioner, the State proceedings had already dealt with the ITC claimed from M.R. Enterprises and, consequently, the Central GST authorities could not subsequently initiate proceedings in respect

thereof. The Respondents, on the other hand, submit that the State proceedings were under Section 73 of the CGST Act and concerned a different allegation, whereas the subsequent proceedings under Section 74 were founded upon intelligence gathered during investigation regarding fraudulent availment of ITC through transactions not accompanied by actual supply of goods.

10. In the meantime, the DGGI issued a Show Cause Notice dated 02.08.2024 to the Petitioner under Section 74 of the CGST Act in respect of alleged inadmissible ITC availed from M.R. Enterprises bearing GSTIN No. 07BDIPS1163G1ZI. The notice was founded upon investigation and intelligence material gathered by the DGGI regarding availment and passing on of inadmissible ITC through invoices allegedly not accompanied by actual supply of goods.

11. A further Show Cause Notice dated 04.08.2024 was issued by Respondent No.1, CGST Delhi North, under Section 74 of the CGST Act in respect of alleged ineligible ITC availed by the Petitioner from M.R. Enterprises bearing GSTIN No. 07EJVPS7789Q1ZC. The Petitioner was included amongst the recipients against whom inadmissible ITC was proposed to be recovered.

12. The Petitioner states that it submitted a reply dated 31.08.2024 to the Show Cause Notices along with supporting documents. According to the Petitioner, the said reply specifically brought to the notice of the adjudicating authorities the earlier proceedings conducted by the State GST authority and the alleged bar contained in Section 6(2)(b) of the CGST Act. The Petitioner further asserted that

the transactions were genuine, that the goods had actually been received at its premises and that there was no fraud, wilful misstatement or suppression of facts so as to warrant invocation of Section 74 of the CGST Act.

13. The proceedings initiated pursuant to the Show Cause Notice dated 04.08.2024 culminated in the Order dated 10.01.2025. The said order records the investigation concerning M.R. Enterprises and the recipients falling within the jurisdiction of CGST Delhi North. The adjudicating authority ultimately confirmed the demand of Rs.6,12,000/- towards alleged ineligible ITC, along with applicable interest and penalty.

14. The proceedings initiated pursuant to the Show Cause Notice dated 02.08.2024 culminated in the Order dated 31.01.2025. In the said order, the adjudicating authority considered the material gathered during investigation and confirmed, inter alia, the demand of Rs.6,12,000/- against the Petitioner towards inadmissible ITC, together with applicable interest and penalty.

15. The Petitioner has, consequently, approached this Court challenging both the Show Cause Notices as well as the Orders dated 10.01.2025 and 31.01.2025.

<u>CONTENTIONS OF THE PARTIES</u>

16. <u>Contentions of the Petitioner</u>

16.1. Learned counsel for the Petitioner submitted that the proceedings initiated by the Central GST authorities are barred by

Section 6(2)(b) of the CGST Act. According to learned counsel, the State GST authority had already initiated proceedings concerning the ITC claimed by the Petitioner from M.R. Enterprises and the said proceedings had culminated in the fresh order dated 29.07.2024. Thus, according to him, the subsequent proceedings initiated by the Central authorities pertain to the same subject matter.

16.2. It was further submitted that the two Central proceedings have resulted in duplication of proceedings and overlapping demands. It was submitted that both proceedings concern the same assessee, the same Financial Year and the same alleged ITC of Rs.6,12,000/-. Mere change in the statutory provision invoked cannot enable the authorities to initiate proceedings in respect of a subject matter which had already been dealt with by the State GST authority.

16.3. Reliance was placed upon Section 6(2)(b) of the CGST Act and the judgment of the Supreme Court in ***Armour Security (India) Ltd. v. Commissioner, CGST, Delhi East Commissionerate & Anr.***[1], as well as the judgment of this Court in ***Metalax Industries v. GST Officer, Ward 66 & Ors.***, decided on 26.11.2024.

16.4. It was further submitted that the reply dated 31.08.2024 furnished by the Petitioner was not duly considered. Particular emphasis was placed upon the observation contained in the Order dated 10.01.2025 that the noticees had not submitted any reply, despite the Petitioner having submitted its reply along with supporting documents. It was submitted that such non-consideration constitutes

[1] 2025 SCC OnLine SC 1700

violation of the principles of natural justice.

16.5. It was also contended that the relied-upon investigation material was not supplied to the Petitioner and that the Impugned Orders are non-speaking orders. It was submitted that the Petitioner had specifically disputed the allegation of bogus transactions and asserted that the goods had actually been received at its premises.

16.6. It was lastly submitted that there was no fraud, wilful misstatement or suppression of facts so as to justify invocation of Section 74 of the CGST Act. The demand and penalty imposed upon the Petitioner are, therefore, stated to be unsustainable.

17. <u>Contentions of the Respondents</u>

17.1. *Per contra*, learned standing counsel for the Respondents submitted that the challenge based upon Section 6(2)(b) of the CGST Act proceeds on an erroneous understanding of the expression "same subject matter". According to learned counsel, the statutory bar is attracted only when the subsequent proceedings concern the same subject matter as the proceedings already initiated by the other tax authority.

17.2. It was submitted that the State proceedings and the subsequent Central proceedings are materially different. The State proceedings were initiated under Section 73 of the CGST Act, whereas the proceedings initiated by the Central authorities under Section 74 were founded upon intelligence and investigation which allegedly revealed fraudulent availment of ITC through transactions not accompanied by actual supply of goods.

17.3. It was further submitted that the State proceedings did not adjudicate upon the allegation that the transactions were bogus or that the invoices issued by the supplier were not accompanied by actual supply of goods. The subsequent investigation, according to the Respondents, brought to light material which formed the basis of the proceedings under Section 74.

17.4. It was next submitted that the two Central proceedings themselves concern M.R. Enterprises bearing different GSTINs and arise from separate investigative proceedings. Thus, according to the Respondents, the fact that the supplier is described by the same trade name cannot, by itself, establish identity of the supplier, transactions or subject matter.

17.5. Reliance was placed upon the judgment of the Supreme Court in ***Armour Security*** *(supra)*, particularly the conclusions recorded in paragraph 96 thereof, to submit that Section 6(2)(b) bars proceedings on the same subject matter, whereas proceedings concerning distinct infractions are not barred merely because the tax liability or obligation may be similar.

17.6. As regards the remaining objections, it was submitted that the same relate to the merits of the adjudication, including the genuineness of the transactions, receipt of goods, availability of ITC, existence of fraud or suppression and consideration of the documents furnished by the Petitioner. It was submitted that these issues can appropriately be examined by the statutory appellate authority under

Section 107 of the CGST Act.

ANALYSIS & FINDINGS

18. This Court has heard learned counsel for the parties at considerable length and carefully perused the material on record.

19. At the outset, the principal contention raised by the Petitioner is required to be examined in the context of Section 6(2)(b) of the CGST Act. The said provision seeks to prevent initiation of proceedings by one tax authority where proceedings on the same subject matter have already been initiated by the other tax authority.

20. The expression "same subject matter" is, therefore, of central significance. The Supreme Court in ***Armour Security*** *(supra)* has explained that the expression has to be understood with reference to the particular liability, deficiency or contravention which is sought to be adjudicated. Where the proceedings concern the same liability or the same contravention, the statutory bar would operate. Conversely, distinct infractions would not become the same subject matter merely because they relate to the same assessee, the same period or involve a similar tax liability.

21. The question which consequently arises is whether the proceedings initiated by the State GST authority and the subsequent proceedings initiated by the Central GST authorities concern the same liability or contravention.

22. The State proceedings in the present case were initiated under Section 73 of the CGST Act in respect of Financial Year 2017-18 and

included a demand concerning ITC claimed by the Petitioner from M.R. Enterprises. The State proceedings culminated, after the order of this Court dated 05.03.2024, in the fresh order dated 29.07.2024.

23. The subsequent proceedings initiated by the Central GST authorities, on the other hand, were under Section 74 of the CGST Act and were founded upon investigation and intelligence concerning alleged fraudulent availment of ITC through invoices which, according to the Department, were not accompanied by actual supply of goods.

24. Thus, although there is a factual nexus between the two sets of proceedings inasmuch as both relate to ITC claimed by the Petitioner and refer to M.R. Enterprises, the nature of the allegation forming the basis of the subsequent proceedings is materially different. The Central proceedings proceed on the allegation that the ITC was availed on invoices which were not accompanied by actual supply of goods and that the availment was fraudulent in nature.

25. The mere fact that the State proceedings also concerned ITC claimed from an entity described as M.R. Enterprises does not, by itself, establish that the State authority had adjudicated the very same contravention which forms the foundation of the subsequent proceedings under Section 74.

26. The distinction is further borne out from the fact that the two Central proceedings themselves refer to M.R. Enterprises bearing different GSTINs, namely GSTIN No. 07BDIPS1163G1ZI and GSTIN No. 07EJVPS7789Q1ZC. The difference in GSTINs is a

relevant circumstance while determining whether the proceedings relate to the same supplier and the same subject matter. At the same time, such difference cannot, by itself, be treated as conclusive. The nature of the liability and the contravention alleged in the respective proceedings has to be examined.

27. The Petitioner has placed considerable emphasis on the fact that the proceedings relate to the same Financial Year and involve ITC of Rs.6,12,000/-. These circumstances, however, cannot by themselves establish identity of subject matter. For the statutory bar under Section 6(2)(b) to operate, it is necessary to establish identity of the liability or contravention which forms the subject matter of the two proceedings.

28. The contention that the Department cannot circumvent Section 6(2)(b) merely by changing the statutory provision invoked is undoubtedly correct as a general proposition. However, the applicability of Section 6(2)(b) cannot be determined merely by comparing the provisions under which the proceedings have been initiated. The underlying liability and contravention have to be examined.

29. In the present case, the subsequent proceedings under Section 74 are founded upon intelligence and investigation concerning alleged bogus transactions and fraudulent availment of ITC without actual supply of goods. The Petitioner has not placed sufficient material before this Court to establish that this very contravention had already been adjudicated upon by the State GST authority in the proceedings culminating in the order dated 29.07.2024.

30. The reliance placed by the Petitioner upon the judgment of this Court in ***Metalax Industries*** *(supra)* does not advance its case. The applicability of Section 6(2)(b) necessarily depends upon the identity of the subject matter of the two proceedings. The said provision cannot be invoked merely because the two proceedings have some common factual background or relate to the same assessee and period.

31. The judgment of the Supreme Court in ***Armour Security*** *(supra)* furnishes the controlling principle. The statutory bar operates where the proceedings concern the same subject matter. Where the proceedings arise out of distinct infractions or liabilities, the mere existence of some common factual or transactional background would not attract the bar.

32. This Court is, therefore, unable to accept the contention of the Petitioner that the proceedings initiated by the Central GST authorities under Section 74 are, on the material placed before this Court, *ex facie* barred by Section 6(2)(b) of the CGST Act.

33. The Petitioner has also raised objections concerning the filing and consideration of its reply dated 31.08.2024, non-supply of relied-upon documents and the alleged non-application of mind by the adjudicating authorities.

34. These objections essentially require examination of the adjudication record. The Petitioner would be entitled to place its reply dated 31.08.2024 and the supporting documents before the appellate authority and contend that the same were not considered. Likewise, the question whether the relied-upon material was duly supplied and

whether the adjudicating authorities correctly dealt with the defence raised by the Petitioner can be examined in the statutory appellate proceedings.

35. The same would apply to the Petitioner's contention that the transactions were genuine, that the goods had actually been received at its premises and that there was no fraud, wilful misstatement or suppression of facts. These are matters which go to the merits of the adjudication and require examination of the factual and documentary record.

36. It is also relevant to notice that the Impugned Orders dated 10.01.2025 and 31.01.2025 are appealable under Section 107 of the CGST Act. The existence of an efficacious statutory remedy does not render a writ petition per se non-maintainable. However, where the issues raised require examination of the adjudication record and disputed questions of fact, the High Court ordinarily does not exercise its extraordinary jurisdiction under Article 226 in substitution of the statutory appellate mechanism.

37. In the present case, the Petitioner has not established any exceptional circumstance warranting interference by this Court at this stage. The principal jurisdictional objection based upon Section 6(2)(b) is not sustainable on the material placed before this Court. The remaining objections essentially concern the correctness of the adjudication and are capable of being examined by the appellate authority.

38. The contention of the Petitioner regarding the alleged

duplication between the two Central proceedings also cannot, in the present proceedings, furnish a basis for interference with the impugned orders. The two proceedings refer to M.R. Enterprises bearing different GSTINs and the Respondents assert that they arise from separate investigative material. Whether any liability has, in fact, been duplicated or whether the two proceedings concern identical transactions is a matter which would require examination of the respective Show Cause Notices and adjudication records.

39. The Petitioner is, therefore, not precluded from raising the aforesaid contention before the appellate authority. The statutory appellate authority, while examining the appeals, would be competent to consider the complete record and determine whether there is any duplication or overlapping liability in accordance with law.

40. This Court has also considered the Petitioner's submission that Section 74 could not have been invoked in the absence of material establishing fraud, wilful misstatement or suppression of facts. Such a contention directly concerns the basis and sustainability of the adjudication under Section 74. The same can appropriately be urged before the appellate authority, which is competent to examine the material relied upon by the Department as well as the defence raised by the Petitioner.

41. The extraordinary jurisdiction under Article 226 is discretionary. The availability of a statutory appeal is a material consideration where the challenge involves examination of factual material and the correctness of findings recorded by the adjudicating

authority. In the facts of the present case, the Petitioner has not made out a case warranting interference with the impugned orders in exercise of such jurisdiction.

42. It is, therefore, held that the Petitioner has failed to establish that the proceedings initiated by the Central GST authorities are proceedings on the "same subject matter" as the earlier proceedings initiated by the State GST authority so as to attract the bar contained in Section 6(2)(b) of the CGST Act.

43. Before concluding, it is clarified that the observations made herein are confined to the question whether interference is warranted in exercise of the extraordinary writ jurisdiction of this Court. This Court has not expressed any final opinion on the merits of the demand, the genuineness of the transactions, actual receipt of goods, applicability of Section 16 of the CGST Act, existence of fraud, wilful misstatement or suppression, the consideration of the reply dated 31.08.2024, supply of relied-upon documents, or the correctness of the quantum of tax, interest or penalty.

CONCLUSION

44. In view of the aforesaid discussion, the present Writ Petition is devoid of merit and is, accordingly, dismissed.

45. The Petitioner shall, however, be at liberty to avail the statutory remedy of appeal under Section 107 of the CGST Act against the Orders dated 10.01.2025 and 31.01.2025, in accordance with law.

46. Needless to state, in the event the Petitioner avails the statutory

remedy, all contentions available to it in law shall remain open, including the contentions relating to Section 6(2)(b) of the CGST Act, the alleged overlapping proceedings, the filing and consideration of the reply dated 31.08.2024, non-supply of relied-upon documents, invocation of Section 74 and the merits of the demand, interest and penalty.

47. The appellate authority shall consider the aforesaid contentions independently and in accordance with law, without being influenced by any observation contained in the present judgment except to the extent expressly decided herein.

48. The present Petition, along with the pending application, stands disposed of in the aforesaid terms.

ANIL KSHETARPAL, J.

SHAIL JAIN, J.

SEPTEMBER 18, 2026
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