



\$~54

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

Date of Decision: 08th July, 2025

+ **W.P.(C) 9266/2025 & CM APPL. 39260/2025**

HIGH PRECISION CORPS

.....Petitioner

Through: Mr. R. K. Bhalla, Advocate.

versus

COMMISSIONER OF STATE GOODS AND SERVICE TAX, DELHI
AND ANR

.....Respondents

Through: Mr. Sumit K. Batra, Advocate.

CORAM:

JUSTICE PRATHIBA M. SINGH

JUSTICE RAJNEESH KUMAR GUPTA

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through hybrid mode.
2. The present writ petition has been filed by the Petitioner under Article 226 of the Constitution of India, challenging the impugned order dated 28th February, 2025 by which a demand has been raised on the Petitioner to the tune of Rs. 65,21,410/-.
3. The said demand arises out of a Show Cause Notice dated 18th November, 2024 (*hereinafter, 'the SCN'*) to which the Petitioner had filed a reply dated 6th December, 2024, but the same has been considered and rejected on the ground that the GST Registration of the suppliers has been cancelled and the suppliers are non-existent. The impugned order holds that the firms are non-existent and no supply of goods and services has actually taken place.



4. The SCN was issued containing the following heads:
 - i. Under declaration of ineligible Input Tax Credit (ITC)
 - ii. ITC claimed from cancelled dealers, returned defaulters and tax non-payers.
5. In so far as the first heading i.e. Under declaration of ineligible Input Tax Credit (ITC) is concerned, the adjudicating authority agreed with the submissions made by the Petitioner on the basis of the documents produced by the Petitioner and information on the GST portal. The said demand was dropped and declared as NIL.
6. Insofar as the second head i.e., ITC claimed from cancelled dealers, returned defaulters and tax non-payers is concerned, the decision of the adjudicating authority is that there was no supply of goods and services and the firms were found to be non-existent and fraudulent, thus, the demand was raised in the impugned order.
7. Mr. R.K. Bhalla, Id. Counsel for the Petitioner has vehemently urged that the present writ petition would be maintainable in view of the fact that the amendment to Section 41 of the Central Goods and Service Tax Act, 2017 (*hereinafter*, 'CGST Act') was introduced only on 01st October, 2022 and in the impugned order, the adjudicating authority has wrongly invoked Section 16 (2)(c) read with section 41 of CGST Act, with retrospective effect.
8. The Court has heard the submissions made and has considered the matter. In *W.P.(C) 5737/2025* titled ***Mukesh Kumar Garg vs. Union of India & Ors.***, this 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, though not barred, ought to be exercised sparingly and in



exceptional 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.”



9. In such circumstances, this Court is of the opinion that the Petitioner ought to avail of its remedy in accordance with law by filing an appeal against the impugned order under Section 107 of the Central Goods and Service Tax Act, 2017. All grounds raised in this petition may be raised in the Appeal.

10. Though the limitation period for filing such appeal has already lapsed in terms of Section 107 of the CGST Act, which provides for a period of three months plus one month only for filing of the appeal, however, this Court has, in several matters, extended the period of limitation after examining the merits of the case.

11. Thus, in the facts of this case, the Petitioner is given one month time to file the appeal along with the requisite pre-deposit. If the same is filed within a period of one month, it shall not be dismissed on the ground of limitation but shall be considered on merits.

12. No observations made by this Court shall have any bearing on the final adjudication of the appeal.

13. Accordingly, the present writ petition is disposed of in above terms. All the pending applications, if any, are also disposed of.

PRATHIBA M. SINGH
JUDGE

RAJNEESH KUMAR GUPTA
JUDGE

JULY 8, 2025/MR/ss