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ORISSA HIGH COURT : CUTTACK

W.P.(C) No.13821 of 2025

In the matter of an Application under Articles 226 & 227 of
the Constitution of India, 1950

* * *

M/s. TRANSTECH SOLUTION
Represented through its partner
Tathagat Sahoo
Aged about 40 years
Son of Akshaya Kumar Sahoo
Occupation: Business
Residing At: Plot No.606/755
Lakheswar, Baliana
Phulnakhara, Bhubaneswar – 754 001
District: Khordha, Odisha ... Petitioner

-VERSUS-

- 1.** The Commissioner CT & GST
Odisha, Baniyakar Bhawan
Buxibazar, Cuttack-753001
- 2.** The Joint Commissioner of State Tax
Bhubaneswar-I Circle
Bhubaneswar. ... Opposite Parties

Counsel appeared for the parties:

For the Petitioner : Smt. Kananbala Roy Choudhury,
Sri Gourav Kumar Roy Choudhury,
Advocates



For the Opposite Parties : Sri Sunil Mishra,
Standing Counsel,
CT & GST Department

P R E S E N T:

**HONOURABLE CHIEF JUSTICE
MR. HARISH TANDON**

AND

**HONOURABLE JUSTICE
MR. MURAHARI SRI RAMAN**

Date of Hearing : 10.07.2025 :: Date of Judgment : 24.07.2025

JUDGMENT

MURAHARI SRI RAMAN, J.—

Alleging illegal, arbitrary and capricious exercise of power in blocking the input tax credit under Rule 86A of the Central Goods and Services Tax Rules, 2017 / the Odisha Goods and Services Tax Rules, 2017 by the Tax Officer *vide* communication *via* e-mail dated 28.04.2025, the petitioner has come up before this Court by way of filing this writ petition under Articles 226 and 227 of the Constitution of India, craving for grant of following relief(s):

“In the facts and under the circumstances stated above, the Hon’ble Court would graciously be pleased to admit this writ application call for record and issue;



- a) *Rule NISI calling upon the opp. Parties to show cause as to why the unilateral action of the O.P. as intimated vide ANNEXURE-1 shall not be set aside / quashed and declared as unwarranted and illegal; And if the O.P. fail to show cause or show insufficient cause make the said Rule absolute;*
- b) *Issue a writ in the nature of Mandamus directing the Opposite Parties to withdraw the action of blocking ITC from petitioner's ECL (w.r.t Annexure-1) as prayed in the petition under ANNEXURE-4 within a stipulated period by taking into account the evidences under Annexure-2,3&5 enabling the petitioner to discharge its statutory liabilities without any extra charges.*
- c) *Issue any appropriate writ(s)/direction(s)/order(s) deemed fit in the fact and circumstances of the case.*

And for which act of your kindness, the petitioner shall remain ever pray as in duty bound."

Factual matrix:

2. The petitioner, registered taxable person under the Central Goods and Services Tax Act, 2017 and the Odisha Goods and Services Tax Act, 2017 (collectively be called "GST Act") engaged in works contract business, received e-mail on 28.04.2025, whereby it is intimated that the Input Tax Credit amounting to Rs.1,88,120/- has been blocked against the Electronic Credit Ledger available on GST portal with respect to GSTIN 21AANFT4251D1ZH. Since the action of the Department



was unilateral without compliance of principles of natural justice, on enquiry, it has come to fore that the Supplier-M/s. Metro International assigned with GSTIN 19ABWFM6003E1Z2 being non-existent, the goods supplied by it would not entitle the petitioner to avail the benefit of Input Tax Credit to the extent of Rs.1,88,120.00.

- 2.1. On visiting the portal, the petitioner stated to have downloaded documents which demonstrate that said supplier-M/s. Metro International has reflected all the transactions effected with the petitioner and discharged its liability fully for the period in question. It is also revealed that M/s. Metro International, the alleged supplier is not a non-existent person; nonetheless, the documents available in the web-portal of the Department concerned indicate factum of furnishing returns by discharge of full liability with respect to transactions effected during the period 2024-25.
- 2.2. A representation / reply filed before the Joint Commissioner of State Tax, Bhubaneswar-I Circle, Bhubaneswar on 03.05.2025 has not been attended to.
- 2.3. As Input Tax Credit has been blocked since 28.04.2025, despite representation or reply submitted with material particulars is kept pending for the reason best known to the Authority concerned, the petitioner feeling



constrained approached this Court beseeching extraordinary jurisdiction by invoking provisions of Articles 226 and 227 of the Constitution of India.

Hearing:

3. On the concession of counsel for the both sides, this matter is taken up for final hearing at the stage of admission. Accordingly, heard Smt. Kananbala Roy Choudhury, learned Advocate for the petitioner and Sri Sunil Mishra, learned Standing Counsel for the CT&GST Organisation. On conclusion of hearing, the matter is kept reserved for preparation and pronouncement of judgment/order.

Rival contentions and submissions:

4. Smt. Kananbala Roy Choudhury, learned counsel appearing for the petitioner drawing attention of this Court to the documents downloaded from the web-portal *vide* Annexure-2, submitted that the alleged supplier-M/s. Metro International assigned with GSTIN 19ABWFM6003E1Z2 confirms that during the financial year 2024-25, the status of the said entity stands as follows:

<i>Filing details for GSTR3B</i>				<i>Filing details for GSTR-1/IFF</i>			
<i>Financial Year</i>	<i>Tax Period</i>	<i>Date of filing</i>	<i>Status</i>	<i>Financial Year</i>	<i>Tax Period</i>	<i>Date of filing</i>	<i>Status</i>
2024-2025	November	11/12/2024	Filed	2024-2025	November	11/12/2024	Filed
2024-2025	October	07/11/2024	Filed	2024-2025	October	07/11/2024	Filed
2024-2025	September	17/10/2024	Filed	2024-2025	September	10/10/2024	Filed



2024-2025	August	20/09/2024	Filed	2024-2025	August	09/09/2024	Filed
2024-2025	July	05/08/2024	Filed	2024-2025	July	05/08/2024	Filed
2024-2025	June	14/07/2024	Filed	2024-2025	June	11/07/2024	Filed
2024-2025	May	15/06/2024	Filed	2024-2025	May	11/06/2024	Filed
2024-2025	April	13/05/2024	Filed	2024-2025	April	11/05/2024	Filed

4.1. Details of statutory compliance with respect to said taxable person depicts as follows:

Financial Year	Tax Period	% of Liability paid	Financial Year	Tax Period	% of Liability Paid
2025-26	Total		2024-25	November	100%
			2024-25	October	100%
			2024-25	September	100%
			2024-25	August	100%
			2024-25	July	100%
			2024-25	June	100%
			2024-25	May	100%
			2024-25	April	100%
			2024-25	Total	100%

Note: Liability percentage is displayed for the periods only after GSTR-1 & GSTR-3B are filed and GSTR-2B is generated.”

4.2. It is vehemently contended by Smt. Kananbala Roy Choudhury, learned counsel for the petitioner referring to the details of invoices which are issued by the aforesaid M/s. Metro International *vide* Annexure-5 series that there was no impediment for the authority concerned to unblock the Input Tax Credit as available in the Electronic Credit Ledger of the petitioner.

4.3. Sri Sunil Mishra, learned Standing Counsel representing the Authorities under the Odisha GST statute refuting such plea of the learned counsel for the petitioner, commenced his argument by making statement that material contained in letter from the Special



Commissioner of CT & GST (Enforcement), Commissionerate of CT & GST, Odisha under Finance Department specifying certain dealers including the present petitioner having had transactions with non-existing tax payers of the State GST of West Bengal triggered action of blocking Input Tax Credit to the extent the petitioner effected such transactions with named suppliers. Therefore, he vehemently contested by furnishing confidential letter dated 08.04.2025 issued from Commissionerate of CT & GST, Odisha, that it would be premature for this Court to intervene with the factual adjudication required to be taken recourse of by the Department. Sri Mishra, learned Standing Counsel taken this Court to the document wherein the following is reflected:

“Blocked Credit ledger

GSTIN-21AANFT4251D1ZH

Legal Name-TRANSTECH SOLUTION

Period: From-01-04-2025 To -05-05-2025

Date	Reference No.	Block/ Unblock	Amount of blocked/unblocked credit				Blocked/ unblocked by	Reason
			Integrated Tax(₹)	Central Tax (₹)	State/ UT Tax(₹)	CESS(₹)		
28-04-2025	BL2104250000115	Blocked	1,88,120.00	0.00	0.00	0.00	Shri/Mr/MsRAJASHREE SAHA, Joint Commissioner of State Tax, OD007, Admn. State	Supplier found non-functioning

4.4. On 01.07.2025 when the matter was taken up, Sri Sunil Mishra, learned Standing Counsel submitted that as against the transactions effected by the petitioner, in addition to M/s. Metro International, the allegation in



the confidential report contained dealing with another taxable person, namely, M/s. Cerebral Trade Exim bearing GSTIN-19AATFC4263E2Z6, which is also found non-existent.

4.5. In response to such submission, Smt. Kananbala Roy Choudhury, learned Advocate sought for an accommodation to obtain instruction with regard to M/s. Cerebral Trade Exim as the petitioner was unaware about such allegations with respect to such supplier. Accordingly, the matter stood adjourned to 10.07.2025.

4.6. On 10.07.2025, Smt. Kananbala Roy Choudhury, learned counsel for the petitioner has furnished a memo enclosed therewith copies of the downloaded material showing transactions with said M/s. Cerebral Trade Exim and status of statutory compliance during the period 2024-25. It is seriously contended by the learned counsel for the petitioner that the allegation made by the CT & GST Organization is *de hors* the material available in the portal and record. She submitted that when both the suppliers, namely, M/s. Metro International and M/s. Cerebral Trade Exim were not non-existent, but the material furnished by her indicates that these suppliers have been complying with the statutory requirement as projected in the web-portal during the period 2024-25, there was no legally tenable ground available with the State Tax Officer to block the Input Tax Credit available



in the Electronic Credit Ledger. Therefore, she prayed for intervention in this regard by directing the Authority concerned to unblock and facilitate the petitioner to avail the benefit of Input Tax Credit.

4.7. Relying on the judgment of this Court in W.P.(C) No.22157 of 2024 (*M/s. Atulya Minerals, Jurudi, Jajang, Keonjhar Vrs. Commissioner of State Tax, Commissionerate of CT & GST*), decided on 10.09.2024, and decision in the case of *K-9-Enterprises Vrs. State of Karnataka, Writ Appeal Nos.100425 to 100430 of 2023 (T-RES)*, decided on 02.04.2024 by the High Court of Karnataka at Bengaluru (Dharwad Bench), she submitted that the Department has proceeded with misconception and this case demonstrates highhanded exercise of power against the petitioner which warrants interference.

4.8. Sri Sunil Mishra, learned Standing Counsel opposing vehemently, contended that the statutory authority has invoked powers under Rule 86A of the OGST Rules, 2017 and having found *prima facie* material from the material available on record received by way of confidential report, submitted that the suppliers, namely, M/s. Metro International and M/s. Cerebral Trade Exim had been issuing invoices notwithstanding the fact that their registration certificates are shown to have been cancelled since 20.01.2024 and 18.01.2024



respectively. In such view of the matter, the Authority concerned is required to consider the reply as stated to have been submitted by the petitioner on 03.05.2025 *vide* Annexure-4 and proceed with further enquiry, if necessary and take up the issue with the outside the State Department. He, therefore, submitted that allowing the prayer of the petitioner at this stage would seriously affect the Revenue. He, on written instruction received from the Joint Commissioner of CT & GST Circle-I, Bhubaneswar, also submitted that the proper officer has exercised power under Section 73 of the GST Act read with Rule 142 of the Rules framed thereunder for recovery of Input Tax Credit as availed by the petitioner in terms of Section 16(2) and, accordingly, notice has been issued inviting reply. It is submitted that till date the petitioner has not submitted any reply. Hence, he submitted that the entire allegations *vis-à-vis* entitlement of Input Tax Credit is required to be adjudicated upon by the proper officer. This Court may not show any inclination to entertain this writ petition and fervently prayed for dismissal of the same.

Analysis and discussions:

5. Perused the materials available on record. Considered the plea, arguments and submissions of counsel for respective parties.



6. On a careful perusal of documents forming part of the writ petition and exchanged between the parties and those furnished before the Court during the course of hearing, it is found that whereas the petitioner has placed material showing the alleged non-existent suppliers having discharged their respective liability with respect to transactions effected during the financial year 2024-25, such documents also show cancellation of registration of such alleged non-existent dealers. The document enclosed to the confidential report as submitted by the learned Standing Counsel reveals that the blocked credit ledger of the petitioner related to the period from 01.04.2025 to 05.05.2025. It is also discernible from the Form GST DRC-01A, *i.e.*, intimation of tax ascertained as being payable under Section 73(5)/74(5) dated 17.06.2025, that the petitioner was assessed to tax to the tune of Rs.1,88,120/- besides levy of interest and imposition of penalty under the Inter-State Goods and Services Tax Act, 2017 for the period from April, 2021 to March, 2022. From the documents so enclosed and relied upon by the learned counsel for the respective parties, it is seemly that there arises factual incongruity, which can be dealt with by the statutory authorities empowered under the GST Act. As is transpiring from the material on the record that against the intimation *via* e-mail in respect to blocking of Input Tax Credit amounting to Rs.1,88,120/- on



Electronic Credit Ledger available in the GST portal, the explanation submitted by the petitioner before the authority concerned has not yet been considered.

6.1. Minute study of documents placed by both the sides indicates that in order to verify correctness of the claim of input tax credit against receipt of goods/services from M/s. Cerebral Trade Exim and M/s. Metro International (suppliers) on account of inter-State transactions, the Department on the basis of inputs from Enforcement Agency, enquiry appears to be in progress and therefore, the reply of the petitioner as at Annexure-4 stated to have been submitted has been kept pending. The record reveals identical figure of tax has been depicted in the intimation of tax ascertained as being payable with respect to IGST under Section 73 of the GST Act read with Rule 142 of the GST Rules *vide* DRC-01A, copy of which is supplied by the learned Standing Counsel for perusal and consideration of this Court during the course of hearing of present matter. This Court appreciates the arguments advanced by Sri Sunil Mishra, learned Standing Counsel that in order to justify availing input tax credit it is necessary that the fact-finding statutory authority is required to examine whether by dint of transactions as effected between the alleged suppliers and the petitioner the goods have actually moved from the other State and received at



proper destination inside the State of Odisha. Support can be had from *The State of Karnataka Vrs. Ecom Gill Coffee Trading Private Limited*, (2023) 2 SCR 647, wherein pertinent observation runs as follows:

“The burden of proof as per Section 70 of the KVAT Act, 2003 was not an issue before the Delhi High Court. How and when the burden of proof can be said to have been discharged to prove the genuineness of the transactions was not the issue before the Delhi High Court. As observed hereinabove, while claiming ITC as per Section 70 of the KVAT Act, 2003, the purchasing dealer has to prove the genuineness of the transaction and as per Section 70 of the KVAT Act, 2003, the burden is upon the purchasing dealer to prove the same while claiming ITC.”

6.2. Therefore, it is unequivocal that the factual details are required to be “apprised by the petitioner” and “appraised by the authority concerned” to come to conclusion on appreciating material collected (with confrontation, of course) and those brought on record by the recipient-petitioner in rebuttal thereof, if any. This is more so in the presence of provisions of Section 16(2) of the CGST Act, *inter alia* contemplating as follows:

*“(2) Notwithstanding anything contained in this section, no registered person shall be **entitled to** the credit of any input tax in respect of any supply of goods or services or both to him unless, –*

(a) he is in possession of a tax invoice or debit note issued by a supplier registered under this Act, or



such other tax paying documents as may be prescribed;

- (aa) the details of the invoice or debit note referred to in clause (a) has been furnished by the supplier in the statement of outward supplies and such details have been communicated to the recipient of such invoice or debit note in the manner specified under Section 37;*
- (b) he has received the goods or services or both.*

Explanation.—

For the purposes of this clause, it shall be deemed that the registered person has received the goods or, as the case may be, services—

- (i) where the goods are delivered by the supplier to a recipient or any other person on the direction of such registered person, whether acting as an agent or otherwise, before or during movement of goods, either by way of transfer of documents of title to goods or otherwise;*
- (ii) where the services are provided by the supplier to any person on the direction of and on account of such registered person.*
- (ba) the details of input tax credit in respect of the said supply communicated to such registered person under Section 38 has not been restricted;*
- (c) subject to the provisions of Section 41 the tax charged in respect of such supply has been actually paid to the Government, either in cash or through*



utilisation of input tax credit admissible in respect of the said supply; and

(d) he has furnished the return under Section 39:

Provided that where the goods against an invoice are received in lots or installments, the registered person shall be entitled to take credit upon receipt of the last lot or installment:

Provided further that where a recipient fails to pay to the supplier of goods or services or both, other than the supplies on which tax is payable on reverse charge basis, the amount towards the value of supply along with tax payable thereon within a period of one hundred and eighty days from the date of issue of invoice by the supplier, an amount equal to the input tax credit availed by the recipient shall be paid by him along with interest payable under Section 50 in such manner as may be prescribed:

*Provided also that the recipient shall be **entitled to avail** of the credit of input tax on payment made by him to the supplier of the amount towards the value of supply of goods or services or both along with tax payable thereon.”*

6.3. Rule 36 of the CGST Rules, 2017, makes it abundantly clear with respect to documentation. Said rule is extracted hereunder:

“36. Documentary requirements and conditions for claiming input tax credit.—

(1) The input tax credit shall be availed by a registered person, including the Input Service Distributor, on



the basis of any of the following documents, namely,—

- (a) an invoice issued by the supplier of goods or services or both in accordance with the provisions of Section 31;*
 - (b) an invoice issued in accordance with the provisions of clause (f) of sub-section (3) of Section 31, subject to the payment of tax;*
 - (c) a debit note issued by a supplier in accordance with the provisions of Section 34;*
 - (d) a bill of entry or any similar document prescribed under the Customs Act, 1962 or rules made thereunder for the assessment of integrated tax on imports;*
 - (e) an Input Service Distributor invoice or Input Service Distributor credit note or any document issued by an Input Service Distributor in accordance with the provisions of sub-rule (1) of Rule 54.*
- (2) Input tax credit shall be availed by a registered person only if all the applicable particulars as specified in the provisions of Chapter VI are contained in the said document:*

Provided that if the said document does not contain all the specified particulars but contains the details of the amount of tax charged, description of goods or services, total value of supply of goods or services or both, GSTIN of the supplier and recipient and place of supply in case of inter-State supply, input tax credit may be availed by such registered person.



- (3) *No input tax credit shall be availed by a registered person in respect of any tax that has been paid in pursuance of any order where any demand has been confirmed on account of any fraud, willful misstatement or suppression of facts under Section 74.*
- (4) *No input tax credit shall be availed by a registered person in respect of invoices or debit notes the details of which are required to be furnished under sub-section (1) of Section 37 unless,—*
- (a) *the details of such invoices or debit notes have been furnished by the supplier in the statement of outward supplies in Form GSTR-1 as amended in Form GSTR-1A if any, or using the invoice furnishing facility; and*
 - (b) *the details of input tax credit in respect of] such invoices or debit notes have been communicated to the registered person in Form GSTR-2B under sub-rule (7) of Rule 60.”*

6.4. There is marked distinction between the expressions, “entitlement to” claim input tax credit and “entitled to avail” input tax credit. The Hon’ble Supreme Court of India in the case of *Chief Commissioner of Central Goods and Services Tax Vrs. Safari Retreats Private Ltd., (2024) 10 SCR 793* observed that,

“27. *** From sub-section (1) of Section 16, it is apparent that only a registered person, as defined by Section 2(94) of the CGST Act, can avail of ITC. A person who is registered under Section 25 of the CGST Act becomes a registered person. The availability of ITC



is subject to such conditions and restrictions as may be prescribed. The word “prescribed” is defined to mean prescribed by the rules made under the CGST Act. Therefore, the entitlement to ITC is subject to conditions and restrictions as may be provided in the Rules framed under the CGST Act. ITC has to be availed in the manner laid down by Section 49. Sub-section (2) of Section 49 and other sub-sections deal with how ITC can be availed. Under sub-section (1) of Section 16, a registered person is entitled to take credit of the input tax charged on any supply of goods or services or both to him, which are used or intended to be used in the course of or in furtherance of his business. Input tax is defined by Section 2(62). In relation to a registered person, it means Central, State, Integrated or Union Territory tax charged on the supply of goods or services or both made to him. It includes the tax payable by him on a reverse charge basis under sub-sections (3) and (4) of Section 9. Further conditions for the use of ITC are prescribed by sub-section (2) of Section 16.

30. **** Section 17(5) begins with a non-obstante clause. A non-obstante clause is a device used by the legislature that is usually employed to give an overriding effect to certain provisions over some contrary provisions that may be found in the same or some other enactments. Such a clause is used to indicate that the said provision should prevail despite anything to the contrary in the provisions mentioned in the non-obstante clause. It is pertinent to note that in view of the non obstante clause used at the beginning of sub-section (5), it seeks to*



override both sub-section (1) of Section 16 and sub-section (1) of Section 18. As noted earlier, sub-section (1) of Section 16 lays down the eligibility and conditions for taking ITC. Sub-section (1) of Section 18 deals with the availability of ITC in special circumstances. Therefore, in the cases covered by sub-section (5), ITC is not available. In a sense, sub-section (5) of Section 17 carves out an exception to the provisions of sub-section (1) of Sections 16 and 18, which confer the benefit of ITC.”

- 6.5. Except for statement showing details of invoices and bank statement no invoice is placed on record to ascertain the veracity. However, even if they are made part of the writ petition, this Court is afraid to examine the same with the books of accounts *vis-à-vis* returns. Rule 36 of the CGST Rules warrants documentary proof for claiming input tax credit which are necessarily for the fact-finding adjudicating authority to verify and assess its sanctity on production of such documents for examination. Therefore, for the paucity of material on the record relating to writ petition to consider the genuineness of the invoices and waybills, correctness of entries in the books of account along with other relevant and related evidences, this Court desists from adjudicating the issue raised on factual merit by the petitioner, which is strongly opposed by the learned Standing Counsel.



6.6. This Court finds the following observation made in *Jayam & Co Vrs. Assistant Commissioner*, (2016) 6 SCR 787:

“12. It is trite law that whenever concession is given by statute or notification etc. the conditions thereof are to be strictly complied with in order to avail such concession. Thus, it is not the right of the ‘dealers’ to get the benefit of ITC but it is a concession granted by virtue of Section 19. As a fortiori, conditions specified in Section 10 must be fulfilled. In that hue, we find that Section 10 makes original tax invoice relevant for the purpose of claiming tax. Therefore, under the scheme of the VAT Act, it is not permissible for the dealers to argue that the price as indicated in the tax invoice should not have been taken into consideration but the net purchase price after discount is to be the basis.”

6.7. The pivotal point around which the present matter revolves is exercise of power under Rule 86A of the CGST Rules, which reads as follows:

“86A. Conditions of use of amount available in electronic credit ledger.—

(1) The Commissioner or an officer authorised by him in this behalf, not below the rank of an Assistant Commissioner, having reasons to believe that credit of input tax available in the electronic credit ledger has been fraudently availed or is ineligible in as much as—



- (a) *the credit of input tax has been availed on the strength of tax invoices or debit notes or any other document prescribed under Rule 36—*
 - (i) *issued by a registered person who has been found non-existent or not to be conducting any business from any place for which registration has been obtained; or*
 - (ii) *without receipt of goods or services or both; or*
- (b) *the credit of input tax has been availed on the strength of tax invoices or debit notes or any other document prescribed under rule 36 in respect of any supply, the tax charged in respect of which has not been paid to the Government; or*
- (c) *the registered person availing the credit of input tax has been found non-existent or not to be conducting any business from any place for which registration has been obtained; or*
- (d) *the registered person availing any credit of input tax is not in possession of a tax invoice or debit note or any other document prescribed under Rule 36,*

may, for reasons to be recorded in writing, not allow debit of an amount equivalent to such credit in electronic credit ledger for discharge of any liability under Section 49 or for claim of any refund of any unutilised amount.



- (2) *The Commissioner, or the officer authorised by him under sub-rule (1) may, upon being satisfied that conditions for disallowing debit of electronic credit ledger as above, no longer exists, allow such debit.*
- (3) *Such restriction shall cease to have effect after the expiry of a period of one year from the date of imposing such restrictions.”*

6.8. Rule 86A mandates that the Commissioner, or an officer authorised by him, not below the rank of Assistant Commissioner, must have ‘reasons to believe’¹ that credit of input tax available in the electronic credit ledger is either ineligible or has been fraudulently availed by the registered person, before disallowing the debit of amount from electronic credit ledger of the said registered person under Rule 86A. The reasons for such belief must be based only on one or more of the following grounds:

- (a) The credit is availed by the registered person on the invoices or debit notes issued by a supplier, who is found to be non-existent or is found not to be conducting any business from the place declared in registration.

¹ For elaborate illuminating discussion about the expression “reason to believe” reference can be had to *State of U.P. Vrs. Aryaverth Chawal Udyog*, (2015) 17 SCC 324 = (2016) 91 VST 1 (SC).



- (b) The credit is availed by the registered person on invoices or debit notes, without actually receiving any goods or services or both.
- (c) The credit is availed by the registered person on invoices or debit notes, the tax in respect of which has not been paid to the government.
- d) The registered person claiming the credit is found to be non-existent or is found not to be conducting any business from the place declared in registration.
- e) The credit is availed by the registered person without having any invoice or debit note or any other valid document for it.

6.9. The Commissioner or an officer authorised by him, not below the rank of Assistant commissioner, must form an opinion for disallowing debit of an amount from electronic credit ledger in respect of a registered person only after proper application of mind considering all the facts of the case, including the nature of *prima facie* fraudulently availed or ineligible input tax credit and whether the same is covered under the grounds mentioned in sub-rule (1) of Rule 86A; the amount of input tax credit involved; and whether disallowing such debit of electronic credit ledger of a person is necessary for restricting him from utilizing/passing on fraudulently



availed or ineligible input tax credit to protect the interests of revenue. It is reiterated that the power of disallowing debit of amount from electronic credit ledger must not be exercised in a mechanical manner and careful examination of all the facts of the case is important to determine case(s) fit for exercising power under Rule 86A. The remedy of disallowing debit of amount from electronic credit ledger being, by its very nature extraordinary has to be resorted to with utmost circumspection and with maximum care and caution. It contemplates an objective determination based on intelligent care and evaluation as distinguished from a purely subjective consideration of suspicion. The reasons are to be on the basis of material evidence available or gathered in relation to fraudulent availment of input tax credit or ineligible input tax credit availed as per the conditions/grounds under sub-rule (1) of Rule 86A.

6.10. Rendering a holistic approach, it would emanate that Rule 86A of the GST Rules, 2017 lends no manner of misdirection that the petitioner should first approach the authority concerned raising objections against the blocking of the input tax credit and the said authority would be under an obligation to decide the objection within a time bound period. To come to such conclusion, this Court is persuaded by the following observations



contained in *S.S. Industries Vrs. Union of India*, (2021) 87 GSTR 71 (Guj) after discussing gamut of Rule 86A of the GST Rules read with Section 16 of the GST Act:

“In the overall view of the matter, we are convinced that we should not interfere at this stage, more particularly, when the investigation is in progress. The respondents have made themselves clear in the reply affidavit filed in both the matters that at the end of the investigation if they decide to issue a show-cause notice under Section 74 of the Act, then all the material relied upon by the Department shall be disclosed to the writ applicants. It would be too much for this Court at this stage to stall a legitimate investigation into the allegations of fraudulent transactions and permit the writ applicants to avail the ITC of a huge amount in exercise of writ jurisdiction.”

6.11. Delving into such dispute at this stage when the reply of the petitioner is pending adjudication would be to resolving factual anomaly by the writ Court. This Court, therefore, restrains itself from doing such exercise. This Court feels it pertinent to have reference to a Judgment rendered by the Delhi High Court in *Banson Enterprises Vrs. Assistant Commissioner*, W.P.(C) No.6503 of 2025, decided on 15.05.2025 [reported at 2025 SCC OnLine Del 3952] declining to entertain writ petition challenging Show Cause Notice, which also has application to the challenging any order or decision which is available for challenge before the appellate authority under the



statutory framework. The observation of said Court runs as follows:

“10. The Court has considered the matter. As held in Assistant Commissioner of State Tax Vrs. Commercial Steel Limited (2021) 7 SCR 660, 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.'*
11. *The above legal position has also been reiterated in Elesh Aggarwal Vrs. Union of India, (Neutral Citation: 2023:AHC:121765-DB) wherein the Allahabad High Court has held that no ground is made for interference on merits in exercise of extraordinary jurisdiction.*
12. *The nature of the allegation 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.*



13. *The statement of Petitioner No. 2-Mr. Bansal, itself having been recorded by the Respondent-Department and the principles of natural justice having been fully complied with during the adjudication proceedings, this Court does not find any infirmity in the impugned order so as to exercise its extraordinary writ jurisdiction. There is no justification for not challenging the same by way of an appeal.*
14. *An appeal before the appellate authority is a full-fledged remedy provided under Section 107 of the Central Goods and Service Tax Act, 2017.*
15. *The contentions that the Petitioner wishes to raise can always be raised in appeal, inasmuch as this Court has already taken a view in W.P.(C) 5737 of 2025 titled Mukesh Kumar Garg Vrs. Union of India & Ors. [decided on 09.05.2025 reported at 2025 SCC OnLine Del 3324] 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.'

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

6.12. Finding the present case in similitude with that of the above case where decision has been rendered in the context of allegation against the availing input tax credit that fact-finding on the nature of dispute set up by the Department can be subject-matter for adjudication by the statutory authority empowered in this behalf and thereafter, if need arises the same could be tested before the other statutory authorities in the hierarchy of adjudicatory process.

Conclusion:

7. Having found that it is not a fit case for exercise of extraordinary jurisdiction under Articles 226 and 227 of the Constitution of India, this Court refrains from entertaining the writ petition. Hence, it would be mete and appropriate, if the authority in *seisin* over the matter is directed to consider reply/explanation submitted by the petitioner *vide* Annexure-4 within a period of four weeks hence by affording opportunity of hearing to the petitioner.



8. It is, however, clarified that this Court has taken the above facts for the purpose of considering the rival contentions and submissions in connection with this writ petition and any observation made hitherto touching the merit of the matter shall have no bearing on the adjudication process on facts to be taken up by the statutory authority.
9. In the result, therefore, without expressing any opinion touching the merit of the matter, this writ petition is disposed of with the aforesaid observation and direction, but in the circumstances, there shall be no order as to costs. Pending interlocutory applications, if any, are disposed of accordingly.

I agree.

(HARISH TANDON)
CHIEF JUSTICE

(MURAHARI SRI RAMAN)
JUDGE