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

Date of decision: 10th July, 2025

+ **W.P.(C) 9524/2025, CM APPL. 40225/2025 & CM APPL. 40226/2025**

UTKARSH ARORA PROP OF M/S AURA INTERIOR
HARDWAREPetitioner

Through: Mr. Wahaj Ahmad Khan & Mr. Monis
Khan, Advs.

versus

ADDITIONAL COMMISSIONER CGST, DELHI NORTH WARD
20 - ZONE 2, NEW DELHI AND ANRRespondents

Through: Mr. Aakarsh Srivastava, SSC.

CORAM:

JUSTICE PRATHIBA M. SINGH

JUSTICE RAJNEESH KUMAR GUPTA

Prathiba M. Singh, J.(Oral)

1. This hearing has been done through hybrid mode.

CM APPL. 40225/2025 (for exemption)

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

W.P.(C) 9524/2025 & CM APPL. 40226/2025

3. The present writ petition has been filed by the Petitioner-Utkash Arora, proprietor of M/s Aura Interior Hardware under Article 226 of the Constitution of India, *inter alia*, assailing the Order-in-Original bearing no. 82/ADC/D.N./Shaukat Ali Nurvi/2024-25 dated 27th January, 2025 (hereinafter, '*impugned order*'). The said impugned order was dispatched to the Petitioner on 1st February, 2025. *Vide* the impugned order, a demand to



the tune of Rs. 1,14,114 has been raised against the Petitioner.

4. The case of the Central Goods and Service Tax Department (hereinafter, '*Department*') is that an investigation was initiated against three firms, namely, M/s Shreya Impex, M/s Akshita Enterprises and M/s Modern Metal Industries for availment of inadmissible Input Tax Credit (hereinafter '*ITC*') on the basis of goods-less invoices. All these firms were managed by one Sh. Vijay Prakash Sharma who was the proprietor of M/s Shreya Impex. His family members *i.e.*, his wife was the proprietor of M/s Akshita Enterprises and Sh. Vikky Gupta who was the accountant of Sh. Vijay Prakash Sharma, was the proprietor of M/s Modern Metal Industries.

5. The further allegation is that inspections were conducted and investigation was also conducted along with searches and it was noticed that there were 23 firms which had utilized and availed fake ITC of Rs. 1,22,26,83,520/- without actual receipt of goods. Insofar as the remaining entities involved in these transactions are concerned, they had enabled the availment of fraudulent ITC. The same is recorded in the impugned order as under:

"09. I have carefully gone through the show cause notice, Submissions/ Replies made by the Noticees, Records of personal hearing and documents available in the case file. I find that in the instant case, the Noticee No. 1 to 23 i.e., the Supplier firms have passed-on inadmissible ITC to the Noticee No. 24 to 291 i.e., the Recipient firms as tabulated in Table-A above.

I notice that the Supplier firms were found to be fake/non-existent at their registered business addresses and were created to issue fake invoices only. No goods were ever supplied to the Recipient firms, against the invoices issued from the Supplier firms. Invoices were issued only to pass-on the fake Input



Tax Credit without any actual supply of goods or services to avail/ utilize inadmissible ITC, without receipt of concomitant goods and without having eligible ITC available to them.

Further, I observed that in whole fake transactions, a total of 50 of the said Noticees deposited a part of their tax/interest/penalty liability. Further, some of the Noticees responded to the Summons issued to them. The details of replies and amount deposited through DRC-03 are tabulated in the Table 10 of the impugned SCN and the Table A above. However, most of the Noticees did not respond to the Summons or submitted any reply.”

6. The Petitioner herein is mentioned at serial no.174 in the impugned order as M/s Aura Interior Hardware and a demand to the tune of Rs.1,14,114/- along with penalty has been raised upon the Petitioner. The specific nature of the amount itself proves that clear documentation was available on record for the Department to allege that there was inadmissible ITC which was passed on by the Petitioner to the recipient firms.

7. Ld. Counsel for the Petitioner argues that no Show Cause Notice was issued and personal hearing also did not take place. This is completely proved to be incorrect on a perusal of paragraphs of 8.1 and 8.2 of the impugned order. The said paragraphs reads as under:

8.1 PH dated 13.12.2024, 30.12.2024 and 13.01.2025 were granted to the Noticees as mentioned in Table, above, for providing them opportunities for the personal hearing. However, some of them appeared and made their Oral as well as Written submission which have been duly considered. Further, w.r.t. to remaining Noticees, it has been observed that neither the Noticees nor their



Authorized Representatives appeared for the personal hearing on any of the dates fixed for them. Therefore, I am compelled to decide the case ex-parte, for such non-responsive Noticees, on the basis of evidence(s) already available on record.

8.2 It is evident that the conduct of the Noticees is evasive. In my opinion, no purpose will be served to keep the adjudication proceedings pending in view of the non-cooperation from the Noticees in the matter. I observe that even though the basic requirement of Principles of Natural Justice has been legally and dutifully complied with, the Noticees have failed to avail the opportunity. I accordingly proceed further to decide the case on merits.

8. Further submission on behalf of the Petitioner is that there is no Show Cause Notice for the period 2020-21 but only for 2017-18. The impugned order clearly records in detail that it relates to the period 2017 to 2023.

9. The supplier firms being fake and non-existent, they were only created to issue fake invoices. Under these circumstances, in view of the opinion of this Court in ***W.P. (C) 5737/2025*** titled ***Mukesh Kumar Garg vs. Union of India & Ors.***, the present writ petition would not be maintainable. In the said case this Court 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 ordinarily 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.”

10. The Petitioner has also approached this Court by way of a writ petition after the period for filing of the appeal has lapsed. Clearly, the conduct of the Petitioner is recalcitrant and not diligent.



11. The argument of the Petitioner that the impugned order is passed beyond the limitation period is not tenable as the same has been passed on 27th January, 2025 and dispatched on 1st February, 2025 with a proper dispatch number. The last date for passing of the order for FY 2017-18 was 5th February 2025.

12. Under these circumstances, the Court is not inclined to entertain the present writ petition as it is a case of fraudulent ITC availment.

13. At this stage, Id. Counsel for the Petitioner prays that he may be given time to file appeal against the impugned order. Under these circumstances, the Petitioner is permitted to file appeal before the Appellate Authority within a period of one month along with the requisite pre-deposit as per law.

14. If the appeal is filed within a period of one month, the same shall not be dismissed on the ground of limitation and shall be adjudicated on merits.

15. Accordingly, the petition is dismissed in these terms. All pending applications, if any, are also disposed of.

PRATHIBA M. SINGH
JUDGE

RAJNEESH KUMAR GUPTA
JUDGE

JULY 10, 2025

Rahul/ck