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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 10555/2025, CM APPL. 43737/2025 & CM APPL. 43738/2025**

MALIK TRADERS THROUGH ITS PROPRIETOR, NAFIS MALIK

.....Petitioner

Through: Mr. M.A. Ansari, Ms. Tabbassum Firdause, Mr. Sameed Salim, Mr. Imran Aamad, Advs. (M:9718503000)

versus

THE PRINCIPAL COMMISISONER OF CENTRAL TAX & ORS.

.....Respondents

Through: Ms. Monica Benjamin, Adv.

CORAM:

JUSTICE PRATHIBA M. SINGH

JUSTICE RAJNEESH KUMAR GUPTA

ORDER

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23.07.2025

1. This hearing has been done through hybrid mode.
2. The present petition has been filed *inter alia* challenging the impugned order in original dated 28th January, 2025 in respect of Financial Year 2017-18 to 2021-22 (hereinafter "*impugned order*") and impugned Show Cause Notice dated 24th July, 2024 in respect of Financial Year 2018-19 and 2019-20 (hereinafter "*impugned SCN*").
3. This is a case of fraudulent availment of Input Tax Credit. The Department after conducting investigation in respect of 108 firms has issued the impugned order and impugned SCN raising certain demands against the Petitioner Firm.



4. It is submitted by the Id. Counsel for the Petitioner Firm that there are overlapping proceedings which have been opened for the same Financial Years by the State and Central GST Departments.
5. Ms. Monica Benjamin, Id. SSC submits that there is no overlapping of proceedings - as long as the proceedings are in respect of different transactions even though within the same Financial Year. It is further submitted that the Petitioner Firm did not raise any of the grounds mentioned in the Petition before the Adjudicatory Authority.
6. After some hearing, Id. Counsel for the Petitioner Firm submits that the Petitioner Firm is willing to go in appeal against the impugned order dated 28th January, 2025.
7. The Court has heard the parties and perused the documents placed on record. In the opinion of the Court, since the present matter relates to fraudulent availment of ITC and the impugned order is an appealable order, the Petitioner Firm should avail of its appellate remedy. Further, the grounds raised by the Petitioner can clearly be agitated before the Appellate Authority. This view is also supported by the decision of this Court in ***W.P.(C) 5737/2025*** titled ***Mukesh Kumar Garg vs. Union of India & Ors.***, wherein it is clearly held that in case of fraudulent availment of ITC through bogus invoicing, writ petitions ordinarily are not to be entertained. The relevant findings 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.”

8. Accordingly, the Petitioner Firm is granted an opportunity to file an appeal under Section 107 of the Central Goods and Services Tax Act, 2017 before the Appellate Authority along with the requisite pre-deposit.

9. Let the appeal be filed by 31st August, 2025 with the pre-deposit. If it is filed by then, it shall not be dismissed on the ground of limitation and shall be adjudicated on merits.



10. The petition is disposed of in these terms. Pending applications, if any, are also disposed of.

PRATHIBA M. SINGH, J.

RAJNEESH KUMAR GUPTA, J.

JULY 23, 2025

dj/msh