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

Date of decision: 31st July, 2025

+ **W.P.(C) 10518/2025 & CM APPL. 43634/2025**

SARDAR AUTO TRADERS

.....Petitioner

Through: Mr. Wahaj Ahmad Khan, Adv.
(M:9818503940)

versus

**ADDITIONAL COMMISSIONER CGST WARD 32,
ZONE 1 AND ANR**

.....Respondents

Through: Mr Aakarsh Srivastava, Senior
Standing Counsel with Mr. Anand
Pandey, Adv. (M: 9871094948)

CORAM:

JUSTICE PRATHIBA M. SINGH

JUSTICE SHAIL JAIN

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through hybrid mode.
2. The present petition has been filed challenging the impugned order dated 4th February, 2025 in Form GST DRC-07 for the assessment year 2017-18 passed by the Respondent under the Central Goods and Services Act, 2017.
3. The brief facts of the case are that the investigation in the present case was initiated on the basis of a reference received from the Jaipur Zonal Unit of Directorate General of GST Intelligence. During the course of the investigation it was found that certain individuals are involved in creation of non-operational or non-existent firms for fraudulent availment of Input Tax Credit (hereinafter “ITC”). The Department had also investigated four entities namely M/s Sahni Traders, M/s M.R. Enterprises, M/s S K Traders and M/s Mahaveer Impex who were alleged to have passed on ITC to 76 recipients out of which the Petitioner - M/s. Sardar Auto Traders was also found to be one



of them. The total ITC in respect of the Central GST and State GST availed by the Petitioner is stated to the tune of Rs.1,48,333/- (Rs.74,166/- + Rs.74,166/-).

4. A Show Cause Notice was issued to the Petitioner on 3rd August, 2024. On 4th August, 2024, the Petitioner is stated to have filed a reply to the same. Finally, the Order-in-Original dated 31st January, 2025 has been passed. In terms of the said order, the total tax and demand raised against the Petitioner is in the following effect:

“ORDER”

xxx

xxx

xxx

G) The firms/company mentioned at serial no. 1 to 76 (recipients of the four firms M/s Sahni Traders, M/s M.R. Enterprises, M/s S K Traders and M/s Mahaveer Impex)

(i) I confirm the demand of ITC amounts, availed fraudulently by the company firms mentioned/listed in following Table-Y, against their respective names, without actual receipt of any supplies under section 74(9) of the CGST Act, 2017 read with correspondence provision of SGST Act, 2017 and IGST Act, 2017:-

S.No.	GSTIN /UIN of Recipient	Trade Name	IGST	CGST	SGST	G. Total ITC
xxx	xxx	xxx	xxx	xxx	xxx	xxx
47	07AA CFS23 77L1Z V	SARD AR AUTO TRAD	0	74166	74166	14833 3



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5. The said imposition of penalty is under challenge in this petition.
6. Submission of the Id. Counsel for the Petitioner is that for the same assessment year, the Delhi GST Department has also issued the notice and the said notice has concluded in a final order. Hence, there cannot be duplication of notice by the Central GST Department for the same period.
7. Heard Id. Counsel for the parties and considered the documents placed on record. The present is a case of notice being issued for fraudulent availment of ITC by four suppliers and the Petitioner is one of the recipients of the said suppliers. In the case of fraudulent availment of ITC, this Court has already taken a view in ***W.P.(C) 5737/2025*** titled ***Mukesh Kumar Garg vs. Union of India & Ors.*** that ordinarily, the writ petition would not be maintainable. The said observations are set out below:

“11. 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 ought to 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. In view of the above, this Court is not inclined to entertain the present writ petition. In the opinion of the Court, since the present matter relates to fraudulent avilment of ITC and the impugned order is an appealable order,



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the Petitioner firm ought to avail of its appellate remedy. Further, the grounds raised by the Petitioner can clearly be agitated before the Appellate Authority.

9. All the pleas and objections of the Petitioner are left open. In the appeal the Petitioner may raise the ground relating to overlapping demands, if any. However, considering the fact that the limitation for challenge may have expired, the time till 31st August, 2025 is granted to the Petitioner to file the appeal before the Appellate Tribunal along with pre-deposit. If the appeal is filed by 31st August, 2025, the same shall not be dismissed as being barred by limitation and shall be decided on merits.

10. The petition, along with pending applications, is disposed of in the above terms.

PRATHIBA M. SINGH
JUDGE

SHAIL JAIN
JUDGE

JULY 31, 2025/dk/msh