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

Date of decision; 18th August, 2025

+ **W.P.(C) 8804/2025**

M/S SAMARTH TRADERS

.....Petitioner

Through: Mr. Sunil Dalal, Sr. Adv. with Mr. Pravesh Bhaguna, Mr. Jatin Kumar Gaur, Ms. Shipra Bali, Mr. Sarthak Malhotra, Mr. Bharat Khurana & Mr. Tarun Chawla, Advs.

versus

THE ADDITIONAL COMMISSIONER

.....Respondent

Through: Mr. R. Ramachandran, SSC with Mr. Prateek Dhir, Adv.

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 on behalf of the Petitioner- M/s Samarth Traders under Article 226 of the Constitution of India, *inter alia*, challenging the order dated 24th December, 2024 (*hereinafter, the 'impugned order'*) passed by the office of the Additional Commissioner CGST Delhi North.
3. Vide the impugned order, a demand has been raised upon the Petitioner to the tune of Rs.18,55,35,050/-. The details of the demand raised is as under:



5. Details of demand

(Amount in Rs.)										
Sr. No.	Tax rate(%)	Turnover	Place of supply	Act	Tax/Cess	Interest	Penalty	Fee	Others	Total
1.	0	0.00	Delhi	IGST	41,699,072.00	0.00	143,835,978.00	0.00	0.00	185,535,050.00

4. A brief background of the present case is that the Petitioner is a proprietorship firm involved in trading of goods and has a Goods and Services Tax ('GST') registration. During conduct of its business, the Petitioner is stated to have claimed Input Tax Credit ('ITC') on supplies received from various parties and passed on the same to the buyers. However, thereafter, the Directorate General of GST Intelligence ('DGGI'), Jaipur unit, initiated a case against one, Mr. Ashutosh Garg for creating and operating fake firms and issuance of fake invoices without supply of goods.

5. The allegation against the Petitioner is that Mr. Ashutosh Garg is operating fake firms with an intention to pass fake ITC and that the Petitioner itself is one such fake entity.

6. On 30th July, 2025 a Show Cause Notice was issued by the DGGI, Jaipur unit to the Petitioner. Thereafter, on 16th December, 2024 the Petitioner filed a reply to the said Show Cause Notice. However, on 24th December, vide the impugned order, a demand has been raised upon the Petitioner to the tune of Rs.18,55,35,050/-.

7. The case of the Petitioner is that the reply of the Petitioner has not been considered as also a personal hearing has not been granted.

8. Ld. Senior Counsel appearing on behalf of the Petitioner submits that proper consideration of the reply ought to be given by the Adjudicating Authority.

9. Mr. Ramchandran, Id. Counsel, on the other hand submits that this is a



case of fake ITC and the several hundred fake firms have been created by one M/s Ashutosh Garg, with an intention to pass on fake ITC to various parties, including the Petitioner. There were a total of 294 fake firms which were created and the total ITC which has been passed is more than a thousand crores.

10. The Court has considered the Order-in-Original, which is on record. This Court has repeatedly taken the view that, in cases of fake ITC, writ jurisdiction ought not to be ordinarily exercised, more so, when an efficacious alternate remedy is available to the Petitioner.

11. The said proposition of law has been upheld by this Court in *Standard Cartons Pvt. Ltd. v. Office of the Commissioner Central Tax Delhi West & Ors. (2025:DHC:4426-DB)*. In the said decision, the Court *inter alia* observed that in cases involving availment of fraudulent ITC, writ jurisdiction ought not to be ordinarily exercised. The Court while upholding this, considered the the burden on the exchequer as also the nature of impact on the GST regime and observed as under:

“12. In the opinion of this Court, the Petitioner has all along been aware of the proceedings before the Adjudicating Authority. The same SCN dated 2nd August, 2024 was challenged by one M/s SS Enterprises in petition being W.P.(C) 5684/2025 in which the Petitioner therein was relegated to avail of the appellate remedy in accordance with law.

13. The contentions that the Petitioner wishes to raise can always be raised in appeal, in as much as this Court has already taken a view in W.P.(C) 5737/2025 titled Mukesh Kumar Garg vs. Union of India & Ors. 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.”



14. The Petitioner has further confirmed that the RUDs have now been received on 14th May, 2025. Considering the nature of this matter which involves allegations of availment of fraudulent ITC, this Court is not inclined to entertain the writ petition. Under such circumstances. The Petitioner is free to avail of its remedies under Section 107 of the Central Goods and Service Tax Act, 2017. If the Petitioner wishes to file an appeal, it may do so by 15th July, 2025 along with the requisite pre-deposit. Upon the said appeal being filed, it shall be adjudicated on merits and shall not be dismissed as being barred by limitation.”

12. Moreover, in the present case it is noticed that the Petitioner was given adequate opportunity to file a reply and also to attend the hearing. This is also captured in paragraph 18 of the impugned order. The same reads as under:

“18. Personal Hearings in this case were fixed for 11.11.2024, 26.11.2024 and 10.12.2024 and PH letters have been sent through email as well as speed post. However, neither any of the Noticee(s) nor any of their Authorized turned up for hearing. Thereafter, an additional and last hearing was also fixed for 16.12.2024 to the Noticee No. 1 on his request dated 09.12.2024. The Noticee did not attend the hearing. however, filed his reply dated 16.12.2204 via email dated 16.12.2024.”

13. Considering the fact that the only plea of the Petitioner is that the reply has not been considered in its entirety, this plea can also be raised before the Appellate Authority.

14. In view of the above, the Petitioner is permitted to file an appeal before the Appellate Authority on or before 30th September, 2025. If the same is filed by 30th September, 2025 along with the requisite pre-deposit, it shall not be



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dismissed on the ground of limitation, but shall be adjudicated on merits.

15. The petition is disposed of in these terms. All pending application(s), if any, are also disposed of.

**PRATHIBA M. SINGH
JUDGE**

**SHAIL JAIN
JUDGE**

AUGUST 18, 2025/pd/rks