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

Date of decision: 11th November, 2025

\+ **W.P.(C) 17046/2025**

M/S SAMARTH TRADERS AND ANR .....Petitioners

Through: Mr. Anand Verma, Mr. Aditya Garg & Mr. Shreshth Arya, Advs.

versus

ASSISTANT COMMISSIONER OF CENTRAL TAX OLD DELHI DIVISION CGST DELHI NORTH .....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.

CM APPL. 70129/2025 (for exemption)

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

W.P.(C) 17046/2025

3. The present petition has been filed by the Petitioner under Article 226 of the Constitution of India, *inter alia*, challenging the Order-in-Original dated 21st January, 2025 (hereinafter, *'impugned order'*) passed by the Office of Assistant Commissioner of Central Tax Division - Old Delhi, Commissionerate CGST Delhi North.

4. *Vide* the impugned order, a demand has been raised against the Petitioner in the following terms:

"ORDER

(i) I hereby, confirm the demand of GST totalingRs. 1,33,94,470/ (CGST:Rs. 66,97,237/- + SGST: Rs, 66,97,237/-) (Rs. One Crore Thirty Three Lacs Ninety Four Thousand Four Hundred and Seventy only) from the noticee, under Section 74(1) of the CGST Act, 2017 read with relevant provisions of the SGST Act, 2017, on account of wrongly availed Input Tax Credit, and order to recover the same from the noticee

(ii) I hereby, confirm the demand and recovery of interest, at applicable rate, GST totalingRs, 1,33,94,470- CGST:Rs. 66,97,237/- + SGST:Rs.66,97,237/-) (Rs. One Crore Thirty Three Lacs Ninety Four Thousand Four Hundred and Seventy only) from the noticee, under Section 50 of the CGST Act, 2017 read with relevant provisions of the SGST Act, 2017:

(iii) I, hereby, order to appropriate the amount available in bank account(s) of M/s Samarth Traders which have been provisionally attached by DGGI under Section 83 of the CGST Act, 2017 against the confirmed demand GST totalingRs. 1,33,94,470/- (CGST:Rs.66,97,237/- + SGST:Rs.66,97,237/-.

(iv) I hereby, impose Penalty of Rs.1,33,94,470/- (CGST:Rs. 66 97,237/-+ SGST:Rs. 66,97,237/-) (Rs. One Crore Thirty Three Lacs Ninety Four Thousand Four Hundred and Seventy only) upon the noticee, under Section 74 of the CGST Act, 2017 Read with relevant provisions of the SGST Act, 2017 and order to recover the same from the noticee;

(v) I, refrain from imposing penalty under Section 137 of CGST Act, 2017 upon Shri Rakesh Kumar Bansal, Proprietor of M/s Samarth Traders;

(vi) I impose penalty of Re 50,000/- (CGST Rs. 25,000/- and SGST Rs. 25,000/-) (Rs. Fifty Thousand only) upon Shri Rakesh Kumar Bansal, Proprietor of M/s Samarth Traders under Section 122(3) of the

CGST Act, 2017 reed with Section 122(3) of the SGST Act, 2017."

5. A perusal of the above would show that a substantial amount of penalty has been imposed upon the Petitioner on the ground that there was wrongful availment of Input Tax Credit (hereinafter, *'ITC'*).

6. The proceedings *qua* the Petitioner arise out of an investigation conducted against M/s. Ramesh & Co. where the officials of Directorate General of Goods and Service Tax Intelligence (hereinafter, *'DGGI'*) had searched the residential premises of the proprietor of M/s Ramesh & Co. and during the course of the said investigation, it is stated to have been revealed that the said M/s Ramesh & Co. as also other entities namely, M/s Shiv Traders and M/s Laxmi Trading Co. had passed on fraudulent ITC without actual supply of goods and services. One of the parties to whom such ITC has been passed on, is the Petitioner. The relevant portion of the impugned order in this regard reads as under:

> *"26. During the inquiry, M/s Samarth Traders has been issued summons but he has wilfully chosen not to adherer to the same. The noticee has intentionally not cooperated in the investigation process and has been trying to delay the same. Noticee has neither not supplied the requisite documents which have been sought from him vide summons issued till date nor appeared to tender his/her voluntary statement. Further, as per GSTR2A of the Noticee company, the details of Input Tax Credit passed-on by M/s Ramnesh and Company, M/s Shiv Traders and M/s Laxmi Trading Co. are as under:*

S. No.	GSTIN of Supplier	Trade Name	Current Status	Taxable Value	CGST	SGST/ UGST	Total ITC passed on
1	07BVEPC1451KIZT	M/s Ramesh and Company (Prop.- Sh. Ramesh Chand)	Cancelled Suo-moto (Effective from 26.05.2018)	4,00,53,250	24,03,195	24,03,195	48,06,390
2	07CZUPP6394KIZ7	M/s Shiv Traders (Proprietor - Sh. Amod, Pandey)	Cancelled on application of taxpayer (Effective from 11.07.2020)	5,07,29, 125	30,43,747	30,43,747	60,87,495
3	07BUCPS6733HIZD	M/s Laxmi, Trading Co., (Proprietor, Sh. Rajinder, Kumar, Saini)	Suspended (Effective from 16,11.2021)	2,08,38,250	12,50,295	12,50,295	25.00,590
	Total			**11,16,20,625**	**66.97.237**	**66,97,237**	**1,33,94,475**

27. M/s Samarth Traders is found to have availed fraudulent ITC from fake/non-existent firm. The above investigation shows that M/s Samarth Traders, which was found to be holding GSTIN registration No. 07AMBPB0136DIZZ having Shri Rakesh Kumar Bansal as proprietor, had availed a total fake ITC of Rs. 1,33,94,475/- on bogus invoices issued by M/s Ramesh and Company, M/s Shiv Traders and M/s Laxmi Trading Co. which during departmental proceedings are prima-facie found to be non-existent and bogus entities engaged in passing-on fraudulent ITC without any supply of goods/services. As such, M/s Samarth Traders has availed fake ITC on paper *transactions against which no goods actually moved. By adopting such modus operandi, M/s Samarth Traders has accumulated and utilised fake ITC in the absence of which the regular GST payments relating to outward supplies would have to be discharged vide Cash Ledger. By receiving such amounts including amount representing GST, M/s Ramesh and Company, M/s Shiv Traders and M/s Laxmi Trading Co. have collected GST amounts without depositing the same with the government as their actual payment is via fake ITC*

This fake ITC enabled M/s Samarth Traders to obviate cash payment on their own outward supplies of goods.

28. From the facts and findings above, it appears that said offence committed was in the knowledge of Shri Rakesh Kumar Bansal, Proprietor of M/s Samarth Traders He seems to have knowingly engaged and associated himself in this irregular availment of ITC. Further, the director of the noticee company was very well aware of ineligible ITC but never disclosed the said fact to the department. Despite awareness of the issue and lapse of more than l.5 years Shri Rakesh Kumar Bansal has not discharged his liability. By these acts of omission and commission, said Shri Rakesh Kumar Bansal, Proprietor of M/s Samarth Traders has committed the offences, as specified Section 137 of the CGST Act, 2017 read with relevant provisions of the respective state Act, 2017 and the provisions of Section 20 of Integrated Goods & Service Tax Act, 2017"

7. After the issuance of the Show Cause Notice dated 31st July, 2023, it is stated in the impugned order that the Petitioner did not co-operate in the investigation. Moreover, personal hearing notices were also issued to the Petitioner but the Petitioner did not appear before the Adjudicating Authority. Paragraph 33 of the impugned order reads as under:

> *"33. To follow the principal of Natural Justice, the opportunities of Personal hearings, in the impugned matter, were given/provided to the noticee vide this office letter(s) dated 11.06.2024, to attend the personal hearing on 14.03.2022. The taxpayer's representative Shri Sanjeev Kumar Aggarwal appeared to attend the personal hearing on 14.03.2022 with the authority letter and submitted a written submission. He further added on the hearing that he has nothing more to add apart from their written submission. The then adjudicating authority has been changed so the matter was to decide by the present adjudication authority therefore, the Personal hearings, in the impugned matter, was provided again to the Noticee on 02.12.2024, 16.12.2024 and 30.12.2024. However, neither the noticee nor his representative was come to attend the personal hearing on the given dates. Therefore, the matter shall be decided on the basis of merit and the records and personal hearings submitted by the noticee earlier."*

8. A perusal of the record would show that the Petitioner has filed a reply to the Show Cause Notice on 23rd November, 2023. But the question is whether the personal hearing was granted or not to the Petitioner. The stand of the Department was that the same has been granted but the stand of the Petitioner is that the same has not been granted.

9. Be that as it may, considering that the substantial amount of penalty has been imposed upon the Petitioner, let the Petitioner avail of its appellate remedy under Section 107 of the Central Goods and Service Tax Act, 2017 by 15th December along with the requisite pre-deposit.

10. If the same is filed by 15th December, 2025, the same shall not be dismissed on the ground of limitation and shall be adjudicated on merits.

11. The present petition is disposed of in the above terms. Pending applications, if any, are also disposed of.

PRATHIBA M. SINGH, J.

SHAIL JAIN, J.

NOVEMBER 11, 2025/*pd/ck*