ITEM NO.39 COURT NO.11 SECTION XIV

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

PETITION(S) FOR SPECIAL LEAVE TO APPEAL (C) NO(S). 18178/2025

[Arising out of impugned final judgment and order dated 09-05-2025 in WP(C) No. 5737/2025 passed by the High Court of Delhi at New Delhi]

MUKESH KUMAR GARG PETITIONER(S)

VERSUS

UNION OF INDIA & ORS. RESPONDENT(S)

(IA No. 160832/2025 - EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT IA No. 175561/2025 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES)

Date : 04-08-2025 This matter was called on for hearing today.

CORAM :
HON'BLE MR. JUSTICE PANKAJ MITHAL
HON'BLE MR. JUSTICE PRASANNA B. VARALE

For Petitioner(s) Mr. J. Sai Deepak, Sr. Adv.
Mr. Akhil Krishan Maggu, Adv.
Mr. Lav Virmani, Adv.
Mr. Vikas Sareen, Adv.
Mr. Ayush Mittal, Adv.
Mrs. Oshin Maggu, Adv.
Mr. Aryan Gangpal, Adv.
Dr. Amardeep Gaur, Adv.
M/s V. Maheshwari & Co., AOR

For Respondent(s)

UPON hearing the counsel the court made the following
O R D E R

1. Two primary contentions have been raised. First, Section 122(1) of the Central Goods and Services Tax Act, 2017 (for short 'the Act') would not be applicable

to the petitioner as he is a non-taxable person. Secondly, the provisions of Section 122 (1A) of the Act which came into force w.e.f. 01.01.2021 cannot be applied retrospectively for the Assessment Years 2017-2020.

2. Leave granted.

3. In the meanwhile, there shall be stay on the recovery of the amount directed to be deposited provided the appellant deposits 25% of the demand before the GST Department either through Electronic Ledger or through Cash Ledger.

(Nidhi Mathur)
Court Master (NSH)

(Geeta Ahuja)
Assistant Registrar-cum-PS

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

Date of decision: 09th May. 2025

\+ **W.P.(C) 5737/2025 & CM APPL.26171/2025**

MUKESH KUMAR GARG .....Petitioner
Through: Mr. Akhil K. Maggu, Mr. Ayush Mittal and Mr. Vikas, Advocates.

versus

UNION OF INDIA & ORS. .....Respondents
Through: Mr. Awadhesh Kumar Singh, Advocate.
Ms. Monica Benjamin, SSC with Ms. Nancy Jain, Advocate. for R-2 & 3. (M: 8882573792)

CORAM:
JUSTICE PRATHIBA M. SINGH
JUSTICE RAJNEESH KUMAR GUPTA

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through hybrid mode.

2. The present petition has been filed by the Petitioner- Mr. Mukesh Kumar Garg under Article 226 and 227 of the Constitution of India, *inter alia*, assailing the Order-in-Original bearing no. 220/CGST/ADC(SKJ)/2024-2025 dated 30th January, 2025 (hereinafter '*impugned order*') passed by the Respondent No. 3- Additional Commissioner-Adjudication Central Goods And Services Tax, Delhi West Commissionerate. The said impugned order arises out of Show Cause Notice (hereinafter, '*SCN*') dated 31st July, 2024, which was issued to several companies.

3. In brief, the case of the Department is that two individuals namely Mr. Anuj Garg and his father Mr. Mukesh Kumar Garg *i.e.* the Petitioner had

incorporated or established 28 firms. Thereafter, in collusion with various other traders the Petitioner had availed of fake Input Tax Credit (hereinafter, '*ITC*') without any supply of goods or services.

4. As stated in the SCN, the Department conducted a detailed investigation against the said firms and their promoters/directors. Various documents were analysed. Statements of several persons, who were associated with these two individuals, were also recorded.

5. According to the Department, the total ITC, which was availed of by the entity, which was controlled by Mr. Anuj Garg, who is the son of Mr. Mukesh Kumar Garg is to the tune of Rs.1,15,73,68,714/- (More than Rs. 115 crores). A detailed order has been passed by the Respondent No.3 after issuance of the SCN. The Petitioner had also filed a reply to the said SCN. Personal hearing was also granted to the Petitioner. In the impugned order, penalties have been imposed on the Petitioner by the Respondent No. 3.

6. The Petitioner *i.e.* Mr. Mukesh Kumar Garg, assails the impugned order on various grounds. The first ground being that under Section 74 read with Section 122(1) of the Central Goods and Service Tax Act, 2017 (*hereinafter 'CGST Act'*), the Petitioner is not a *taxable person* and hence, no penalty could have been imposed on him. Secondly, it is submitted on behalf of the Petitioner that at best under Section 122(3) of the CGST Act, the penalty which could have been imposed on the Petitioner was to the extent of Rs.25,000/-.

7. Mr. Maggu, ld. Counsel appearing for the Petitioner argues that the Petitioner was not the authorized signatory of the main firm, which had availed the ITC and the same was run by his son *i.e.* Mr. Anuj Garg. Ld. Counsel for the Petitioner submits that under such circumstances, the penalty

which has been imposed against the Petitioner deserves to be quashed.

8. On behalf of the Respondent Nos. 2 and 3, Ms. Benjamin, ld. Sr. Standing Counsel submits that all the tax returns are filed by authorized signatories, who are usually directors or promoters of the company. In the case of the Petitioner, one of the firms, which was set up to enable the fraudulent availment of ITC, was M/s Bhagwati Trading Company, which is the sole proprietary concern of the Petitioner. Insofar as the said firm was concerned, the same was coming within the jurisdiction of another Commissionerate and hence, the SCN was not issued M/s Bhagwati Trading Company. However, the facts which are set out in the impugned order clearly show the relationship between M/s Bhagwati Trading Company and two individuals, who are the master minds. It is further submitted by the ld. Sr. Standing Counsel that in addition to the two said persons *i.e.* the Petitioner and Mr. Anuj Garg, two other persons, who were their associates, were also involved in setting up the fake firms as to enable the fraudulent availment of ITC. Ld. Sr. Standing Counsel submits that the question of imposition of penalty can also be challenged in an appeal by the Petitioner under Section 107 of the CGST Act and this is not a case where the Court ought to entertain the writ petition. It also stated that all the staff of the son of the Petitioner have admitted the irregularities committed by the Petitioner and his son and, therefore, the writ petition deserves to be dismissed.

9. In rejoinder, Mr. Maggu, ld. Counsel for the Petitioner submits that under Section 75(13) of the CGST Act, once the penalty is imposed under Section 73 or 74 of the CGST Act, no penalty for the same act or omission can be imposed on the same person under any other provision of the CGST Act and, therefore, the penalty under Section 122 of the CGST Act deserves

to be rejected. Moreover, according to Mr. Maggu, ld. Counsel, if M/s Bhagwati Trading Company had availed of any tax rebate or ITC, only that amount of penalty should have been imposed on M/s Bhagwati Trading Company, which is the sole proprietary concern of the Petitioner and not the equivalent amount of penalty as is being imposed on the remaining companies, which were found to be availing of the ITC.

10. On a query from the Court, ld. Counsel for the Petitioner submits that Mr. Anuj Garg has already challenged the very same impugned order before the Appellate Authority *vide* ***Appeal No.380/GST/DtAppeal-II/2025-26*** dated 29th April, 2025.

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.

19. Ld. counsel for the Petitioner relies upon the following two decisions:

- ***Union Of India vs Hindalco Industries Limited, 2023 (153) ELT 481 SC***
- ***Paradise Foodcourt v. State of Telangana & Ors., 2018 (61) GSTL 361***

20. In the opinion of this Court, writ jurisdiction is not barred in such cases, especially if there is any arbitrary action by the Department or the order itself is without jurisdiction or there is non-compliance of principles of natural justice.

21. In the present case, none of the three grounds are made out as the SCN and the impugned order have been passed by the appropriate authority which has jurisdiction. Secondly, the Petitioner had been awarded an opportunity to file a reply and had also been afforded a hearing.

22. Some of the firms and individuals connected to the Petitioner have already availed of the appellate remedy. Thus, no ground for entertaining the present petition exists in the facts of this case.

23. Considering the fact that the Petitioner's son has already availed of the appellate remedy under Section 107 of the CGST Act in respect of the same very impugned order dated 30th January, 2025, this Court is of the opinion that the present writ petition ought not to be entertained, especially

considering the seriousness of allegations against the Petitioner.

24. It is well settled in various decisions of the Supreme Court that petitions under Article 226 of the Constitution of India would be liable to be entertained only in case of persons who come with clean hands and not in favour of the persons who present twisted facts or misrepresent the true and correct picture on record. The said decisions along with their relevant paragraphs read as under:

- ***K.D. Sharma v. SAIL, (2008) 12 SCC 481***

> *"34. The jurisdiction of the Supreme Court under Article 32 and of the High Court under Article 226 of the Constitution is extraordinary, equitable and discretionary. Prerogative writs mentioned therein are issued for doing substantial justice. It is, therefore, of utmost necessity that the petitioner approaching the writ court must come with clean hands, put forward all the facts before the court without concealing or suppressing anything and seek an appropriate relief. If there is no candid disclosure of relevant and material facts or the petitioner is guilty of misleading the court, his petition may be dismissed at the threshold without considering the merits of the claim.*
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> *XXXX*
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> *38. The above principles have been accepted in our legal system also. As per settled law, the party who invokes the extraordinary jurisdiction of this Court under Article 32 or of a High Court under Article 226 of the Constitution is supposed to be truthful, frank and open. He must disclose all material facts without any reservation even if they are against him. He cannot be allowed to play "hide and seek" or to "pick and choose" the facts he likes to*

disclose and to suppress (keep back) or not to disclose (conceal) other facts. The very basis of the writ jurisdiction rests in disclosure of true and complete (correct) facts. If material facts are suppressed or distorted, the very functioning of writ courts and exercise would become impossible. The petitioner must disclose all the facts having a bearing on the relief sought without any qualification. This is because "the court knows law but not facts"."

- ***Ramjas Foundation v. Union of India, (2010) 14 SCC 38***

"21. The principle that a person who does not come to the court with clean hands is not entitled to be heard on the merits of his grievance and, in any case, such person is not entitled to any relief is applicable not only to the petitions filed under Articles 32, 226 and 136 of the Constitution but also to the cases instituted in others courts and judicial forums. The object underlying the principle is that every court is not only entitled but is duty bound to protect itself from unscrupulous litigants who do not have any respect for truth and who try to pollute the stream of justice by resorting to falsehood or by making misstatement or by suppressing facts which have a bearing on adjudication of the issue(s) arising in the case."

- ***Prestige Lights Ltd. v. SBI, (2007) 8 SCC 449***

"33. It is thus clear that though the appellant Company had approached the High Court under Article 226 of the Constitution, it had not candidly stated all the facts to the Court. The High Court is exercising discretionary and extraordinary jurisdiction under Article 226 of the Constitution. Over and above, a court of law is also a court of

> *equity. It is, therefore, of utmost necessity that when a party approaches a High Court, he must place all the facts before the Court without any reservation. If there is suppression of material facts on the part of the applicant or twisted facts have been placed before the Court, the writ court may refuse to entertain the petition and dismiss it without entering into merits of the matter."*

25. Under these circumstances, this Court is of the view that the present writ petition is not liable to be entertained. If the Petitioner wishes to urge any other issues, the same can be considered in the appeal, if the Petitioner chooses to avail of the appellate remedy under Section 107 of the CGST Act.

26. The present petition is, accordingly, dismissed with costs of Rs.50,000/- to be deposited with the Delhi High Court Bar Association within four weeks. The pending applications, if any, are also disposed of.

PRATHIBA M. SINGH
JUDGE

RAJNEESH KUMAR GUPTA
JUDGE

MAY 9, 2025/*dk/ck*