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

Reserved on: 17th April, 2025

Date of Decision: 29th July 2025

\+ **W.P.(C) 4853/2025, CM APPL. 22194/2025 & CM APPL. 22195/2025**

AMBIKA TRADERS THROUGH PROPRIETOR GAURAV GUPTA ..... Petitioner

Through: Mr. Rajesh Jain, Mr. Rishabh Jain, Mr. Virag Tiwari, Mr. Ramashish and Ms. Tanya Saraswat, Advocates.

versus

ADDITIONAL COMMISSIONER, ADJUDICATION DGGSTI, CGST DELHI NORTH .....Respondent

Through: Mr. R. Ramachandran, Sr. Standing Counsel with Mr. Prateek Dhir, Advocate.

CORAM:
JUSTICE PRATHIBA M. SINGH
JUSTICE RAJNEESH KUMAR GUPTA

JUDGMENT

Prathiba M. Singh, J.

1. This hearing has been done through hybrid mode

2. The present petition has been filed by the Petitioner- Ambika Traders through its proprietor, Mr. Gaurav Gupta under Articles 226 and 227 of the Constitution of India, *inter alia*, assailing the Order-in-Original bearing no. 74/ADJ-DGGI/DN/2024-25 dated 23rd January, 2025 (hereinafter, '*impugned order*') passed by Respondent - Additional Commissioner, Adjudication (DGGSTI), CGST Delhi North. The present petition further

assails the form DRC-07 dated 4th February, 2025 issued along with the impugned order.

I. Facts

3. The Petitioner is stated to be a firm dealing in metal scrap. It is stated to be a sole proprietorship of Mr. Gaurav Gupta and was registered under the erstwhile VAT regime. Thereafter, it migrated to the GST regime with GST No. 07AIAPG0187ElZQ.

4. On 3rd August, 2021, a search operation was carried out at the residential premises of the proprietor of the Petitioner as also at its sales office. Various records/files were resumed by the GST Department (hereinafter, '*the Department*') from the said premises. The proprietor of the Petitioner, *i.e.* Mr. Gaurav Gupta was, thereafter, arrested on 4th August, 2021 by the Directorate General of GST Intelligence (hereinafter, '*DGGI*'), Meerut Zonal Unit. Mr. Gaurav Gupta was released on regular bail on 22nd October 2021.

5. A Show Cause Notice (hereinafter, '*SCN*') was issued to the Petitioner on 29th May, 2023 along with form DRC-01 by the DGGI, Ghaziabad Regional Unit for the financial years 2017-2018, 2018-2019, 2019-2020, 2020-2021 and 2021-2022. *Vide* the said SCN, a demand of Rs. 83,76,32,528/- was raised against the Petitioner on the ground of alleged fraudulent availment and wrongful passing on of Input Tax Credit (hereinafter, '*ITC*').

6. A detailed reply was filed by the Petitioner to the SCN on 19th December 2024. Thereafter, an additional reply to the SCN was filed by the Petitioner on 30th December 2024. The impugned order is stated to have been passed on 23rd January, 2025 along with form DRC-07 dated 4th

February 2025, whereby a demand to the tune of Rs. 83,76,32,528/- was affirmed by the Respondent, along with a penalty of an equivalent amount. Further, a penalty to the tune of Rs. 75,000/- was imposed upon the proprietor of the Petitioner *i.e.* Mr. Gaurav Gupta.

7. A corrigendum to the aforesaid impugned order was also issued on 18th March, 2025, whereby the penalty imposed upon Mr. Gaurav Gupta was rectified, as the same had been erroneously recorded as Rs. 1,00,000/- instead of the correct amount of Rs. 75,000/-. The Petitioner *vide* the present petition challenges the issuance of the SCN and passing of the impugned order.

8. The Court heard this matter on 17th April, 2025. Mr. Rajesh Jain, ld. Counsel for the Petitioner and Mr. R. Ramachandran, ld. Sr. Standing Counsel for the Respondent made their submissions at length on the said date.

II. Submissions by the Parties

9. Mr. Rajesh Jain, ld. Counsel appearing for Petitioner submits that the reply to the SCN dated 19th December, 2024 as also the additional reply dated 30th December, 2024 filed by the Petitioner have not been considered by the Adjudicating Authority. It is the submission on behalf of the Petitioner that non-consideration of the said replies by the Adjudicating Authority amounts to gross violation of principles of natural justice.

10. Mr. Jain further submits that non-consideration of the reply is violative of the mandatory obligation upon the Adjudicating Authority in terms of Section 74(9) of the Central Goods and Service Tax Act, 2017 (hereinafter, '*CGST Act*'). The relevant provision reads as under:

"74. Determination of tax not paid or short paid

> ***or erroneously refunded or input tax credit wrongly availed or utilised by reason of fraud or any wilful-misstatement or suppression of facts.—***
>
> *XXXX*
>
> *(9) The proper officer shall, after considering the representation, if any, made by the person chargeable with tax, determine the amount of tax, interest and penalty due from such person and issue an order."*

11. Ld. Counsel for the Petitioner has placed reliance upon a Circular bearing no. ***171/03/2022-GST*** dated 6th July, 2022 issued by the Central Board of Indirect Taxes and Customs, to show that if no goods were procured or supplied by any entity, such an entity would not be liable to pay any tax in terms of Sections 73 or 74 of the CGST Act. It is further submitted by the ld. Counsel that, in such circumstances, only imposition of penalty under Sections 122(1)(i), 122(1)(ii), and 122(1)(vii) of the CGST Act could have been invoked, which has admittedly not been done in the present case. It is also the case of the Petitioner that the said circular shall have a binding effect on the Adjudicating Authority in terms of Section 168(1) of the CGST Act.

12. Further, it is submitted by the ld. Counsel for the Petitioner that the grounds which can be taken in the impugned order raising demands of tax or penalty would have to be only those grounds which were mentioned in the SCN in terms of Section 75(7) of the CGST Act. The relevant provision reads as under:

> *"**75. General provisions relating to determination of tax.-***
>
> *XXXX*
>
> *(7) The amount of tax, interest and penalty*

> *demanded in the order shall not be in excess of the amount specified in the notice and no demand shall be confirmed on the grounds other than the grounds specified in the notice."*

13. Ld. Counsel for the Petitioner also draws the attention of the Court to the fact that the SCN issued to the Petitioner pertains to multiple financial years, *i.e.*, from 2017–18 to 2021–22, which is impermissible under the scheme and framework of Section 74 of the CGST Act.

14. Moreover, *vide* application dated 5th December 2024, the Petitioner had sought cross examination of the witnesses, officers, etc. on behalf of Mr. Gaurav Gupta. However, the same was rejected *vide* letter dated 13th December, 2024 issued by the Adjudicating Authority. The relevant portion of the said letter dated 13th December, 2024 reads as under:

> *"2. In this regard, as per your* ***Letter dated 05.12.2024 and e-mail dated 12.12.2024****, it is observed that you have submitted a list of the Witnesses/Panchas/Officers and requested for their Cross-Examination before adjudication of the subject SCN. In view of the facts of the case and proceedings held in the matter, till date, I deny the request for Cross-Examination, on the grounds mentioned below:*
>
> > *"(i) Mr. Gaurav Gupta Proprietor of Ms Ambika Traders vide his Statement dated 03.08.2021 submitted that he used to make payments in Bank Accounts, as directed by Mr. Rohit Rustogi and the latter after deducting the commission at the rate of 10 paisa per Kg, returned back the rest of the amount to him. The Supplier firms of M/s Ambika Traders did not exist, the money was getting laundered/routed through facade of issuance of invoices and banking channels without actual transportation/movement of the goods. Only money was being routes, documents*

> *were forged and no actual business activity/supply took place as there was no supply of goods.*
> *(ii)* ***Para 14.1*** *of the impugned SCN specifically directed to submit the reply within 30 days of receipt of this notice, but you failed to submit any detailed reply to the SCN, till date despite the fact that you admittedly in receipt of subject in the month of September, 2023 and Vakalatnama was signed by you on 07.11.2024. Further, regarding your submission dated 12.11.2024, it appears that you did not collect the non-RUDs from SCN issuing authority within 30 of receipt of the SCN (Para 14.5 of SCN refers).*
> *(iii) You did not appear on any of PH scheduled for 12.11.2024, 28.11.2024 and 12.12.2024, thus failed to submit even any Oral submission before the undersigned."*

15. It is the submission of the ld. Counsel for the Petitioner that no prejudice would have been caused to the Respondent, if the opportunity of cross examination would have been provided to the Petitioner. The Petitioner relies upon the decisions of ***HIM Logistics Pvt. Ltd. v. The Principal Commissioner of Customs, 2016 SCC OnLine Del 1236*** and ***Flevel International v. Central Excise, 2015 SCC OnLine Del 12173*** to contend that the denial of the opportunity for cross-examination is violative of the settled legal position and is, therefore, unsustainable in law. The relevant extracts of the said decisions, relied upon by the Petitioner, reads as under:

- ***HIM Logistics Pvt. Ltd. v. The Principal Commissioner of Customs, 2016 SCC OnLine Del 1236***

"16. In the present case, it is an admitted fact that the Respondent Department is placing considerable reliance on the statements of Mr. Shyam Lal and Ms. Preeti, the partners of the importer, in support of the case made out in the SCN. The impugned order of the AA does not indicate that any prejudice would be caused to the Department by providing the Petitioner the right of cross-examination. On the other hand the denial of such right would prejudice the Petitioner since the said statements are adverse to the Petitioner. In the circumstances, the denial of the Petitioner's right of cross-examination is held contrary to the law explained in Basudev Garg (supra)."

- ***Flevel International v. Central Excise, 2015 SCC OnLine Del 12173***

"42. It is settled law that the denial of an opportunity of cross-examination of a witness whose statements have been relied upon in the adjudication order would vitiate the order of adjudication. In Basudev Garg v. Commissioner of Customs 2013 (294) E.L.T. 353 (Del), this Court referred to Section 9D of the CE Act and noted that even while upholding its constitutional validity in J & K Cigarettes Ltd. v. Collector of Central Excise (2011) 22 S.T.R. 225 (Del), a Division Bench of this Court had observed that the circumstances tax officers sought for vide the written request dated 05.12.2024. Request for cross examination of witnesses and central tax officers on the basis of whose statements/reports the case was booked against the petitioner was required to be acceded to. Basic requirement of the rule of law is that

> *before condemning a person that too on the basis of a statement of third party, the party against whom such statements have been relied upon is to be granted an opportunity to cross examine the person who gave that statement. This requirement flows from the opportunity of hearing required to be given as per section 75(4) of the CGST Act. Applying the statements unilaterally that too behind the back of the petitioner cannot under any circumstances be justified, even if the proceedings are quasi-judicial in nature. The respondent was therefore not at all justified in denying the fundamental right of cross examination to the petitioner. Even no prejudice would have been caused to the respondent had the cross examination of witnesses/officers been provided to the petitioner."*

16. Furthermore, ld. Counsel for the Petitioner submits that a unique situation has arisen in the present case in as much as without alleging the outward supply of the goods being sourced from a third party, ITC on supplies received from the suppliers has been denied by the Respondent. According to the Petitioner, if the suppliers were found to be non-existent by the Respondent, then as per paragraph 3 of the Circular bearing no. ***171/03/2022-GST*** dated 6th July, 2022, neither the Petitioner could avail or utilise the ITC nor any demand of tax on outward supplies could be fastened on the Petitioner whether under Section 73 or 74 of the CGST Act.

17. Ld. Counsel for the Petitioner has also pointed out that no purpose would be served to the Petitioner in availing the appellate remedy under Section 107 of the CGST Act as the Appellate Authority cannot perform functions of Adjudicating Authority. Moreover, it is submitted on behalf of

the Petitioner that under Section 107 (11) of the CGST Act, the Appellate Authority cannot remand back the matter to Adjudicating Authority, hence, this Court shall be the appropriate forum to remand back the matter to the Adjudicating Authority for proper adjudication. Section 107(11) of the CGST Act reads as under:

> *"(11) The Appellate Authority shall, after making such further inquiry as may be necessary, pass such order, as it thinks just and proper, confirming, modifying or annulling the decision or order appealed against but* ***shall not refer the case back to the adjudicating authority that passed the said decision or order****:*
> *Provided that an order enhancing any fee or penalty or fine in lieu of confiscation or confiscating goods of greater value or reducing the amount of refund or input tax credit shall not be passed unless the appellant has been given a reasonable opportunity of showing cause against the proposed order:*
>
> *Provided further that where the Appellate Authority is of the opinion that any tax has not been paid or short-paid or erroneously refunded, or where input tax credit has been wrongly availed or utilised, no order requiring the appellant to pay such tax or input tax credit shall be passed unless the appellant is given notice to show cause against the proposed order and the order is passed within the time limit specified under section 73 or section 74."*

18. Mr. Ramachandra, ld. Sr. Standing Counsel for the Respondent on the other hand submits that the impugned order is very detailed and there is a clear appellate remedy available under Section 107 of the CGST Act. It is submitted by the ld. Sr. Standing Counsel that considering the complex factual nature of the matter, the Petitioner should be relegated to the

appellate remedy.

III. Analysis and Findings

19. Before going into the submissions raised on behalf of both the parties, in order to have the perspective of the matter, a background of the same would be necessary.

a) Background of the SCN

20. The DGGI, Meerut Zonal Unit is stated to have received certain intelligence that the Petitioner is involved in availment and further passing on of fraudulent ITC. Such ITC is based on invoices issued from non-existent or fake firms. The allegation in the SCN is that the following five suppliers had raised invoices in favour of the Petitioner, on the strength of which the Petitioner availed ITC to the extent of:

Sl No.	***Name of Supplier Firms***	***ITC Availed by M/ s No. Ambika Trader (in Rs)***
1	*M/s Metals Scrap & Alloys (07EGFPK5023J1ZE)*	*8,24,47,685/-*
2	*M/s Prime Impex (07BCWPK1493A1ZH)*	*7,38,32,822/-*
3	*M/s A. K. Impex (07BBKPJ6013N1ZF)*	*3,87,12,240/-*
4	*M/s Vinesh Traders (07AKYPC1581A1ZA)*	*2,11,18,625/-*
5	*M/ s Deepak Trading Co (07GALPS9710J lZ0)*	*87,96,669/-*
Total		***22,49,08,041/-***

21. All the above five firms were investigated by the DGGI and were found to be non-traceable. Since the registration under the GST regime, no business activity had been conducted at the registered addresses of these firms.

22. Mr. Gaurav Gupta was summoned and his statements were recorded on 3rd August 2021 and 4th August 2021 respectively, in the office of DGGI.

23. Thus, from the initial investigation, it was observed that a substantial amount of ITC to the tune of over Rs.22.49 Crores were availed from the abovementioned five firms. In addition, from the statements of Mr. Gaurav Gupta it was also revealed that there were other firms from whom ITC was availed by the Petitioner.

24. Upon summons being issued to the abovementioned five firms, except one person *i.e.* Mr. Anuj Kumar, proprietor of M/s Metals Scrap & Alloys, none appeared before the Department. Further, there were 20 firms from whom ITC was availed by the Petitioner, however, upon investigation it was revealed that most of these firms never existed or their registered addresses were either vague or incomplete. During the investigation it was also noticed that the GST registrations of few of the suppliers of the Petitioner were cancelled.

25. Several transporters of the Petitioner were also investigated by the DGGI and were found to be non-existent. The investigation further revealed that Mr. Gaurav Gupta was involved with one Mr. Rohit Rostagi *i.e.* Proprietor of M/s Pooja Impex and M/s Pooja Enterprises, to whom he would pay all the fraudulently availed ITC after deducting a commission @ 10 paise per kg of the metal scrap.

26. As per the investigation carried out by the DGGI, there was no

purchase of metal scrap by the Petitioner. The bank accounts of the Petitioner and its suppliers were also analysed during the investigation. There was a network of enterprises and firms who had availed of ITC amounting to several crores by merely raising invoices to each other. The total ITC availed of by the Petitioner for the financial years 2017-18, 2018-19, 2019-20 and 2020-2021 is to the tune of Rs. 83,76,32,528/-. Paragraph 11 of the SCN is relevant in this regard and is set out below:

> *"**11. Gist of Investigation***
> ***From the above investigation, it was found that M/ s Ambika Traders had availed fraudulent Input Tax Credit on the strength of fake GST invoices amounting to the tune of Rs. 83,76,32,528/- (**Eighty Three Crores Seventy Six Lakhs Thirty Two Thousand Five Hundred and Twenty Eight only) issued by 20 (Twenty) non-existent/fake supplier firms/companies i.e. Pooja Impex (GSTIN : 07AIGPR1260D2ZI) , M/s Pooja Enterprises(GSTIN: 07 AATFP8454E1ZQ), M/s Metals Scrap & Alloys(GSTIN: 07EGFPK5023J1ZE), M/s Prime Impex(GSTIN: 07BCWPK1493A1ZH), M/s Pooja Udyog(GSTIN: 07ADUPR9585N1Z3), M/s A.K.Impex(GSTIN: 07BBKPJ6013N1ZF), M/s Anupma & Sons (GSTIN: 07KYYPS6808C1ZK), M/s Vinesh Traders(GSTIN: 07AKYPC1581A1ZA), M/s S.P Traders(GSTIN:07BNDPP3613D1ZC), M/s Rudra Enterprises (GSTIN: 07CBMPB4975N1Zl), M/s Vik International (GSTIN: 07CMWPS0210A1ZA), M/s Alpha traders (GSTIN: 07APHPK6884L1Z6), M/s Rahul Trading Company (GSTIN: 07BJMPR7820K1ZL), M/s S.G. Traders (GSTIN: 07UOPH5322E1ZS), M/s Sparsh Impex (GSTIN: 07AJVPC4600L2Z1), M/s Deepak Trading Co. (GSTIN: 07GALPS9710J1Z0), M/s Soni Steel (GSTIN: 07APNPG4569A2ZW), M/s Radhey Enterprises (GSTIN: 07AYMPC1386K3Z4), M/s Shri Shyam Metal (GSTIN: 07AHFPG7305L1ZB) & M/s Shiv Trading Co*

(GSTIN: 07CQZPP4731L1ZX).
From the statement of the transporters, who deposed during the course of investigation, it may be inferred that M/s Ambika Traders never received any supplies (goods or services or both) from these twenty non-existent/fake suppliers and they fraudulently got possession of the transport documents and forged them. *Many-a-inward supplies, as claimed by M/s Ambika Traders, turned out to be the outward supplies; this is duly collaborated by the depositions of the transporters. Bereft of supplies, M/s Ambika Traders availed and utilized ITC fraudulently."*

27. The SCN further notes the provisions of the CGST Act which are alleged to have been contravened by the Petitioner. The relevant portion of the SCN reads as under:

"9. ***Statutory Provisions:***
9.1 In view of the foregoing, M/s Ambika Traders and its aforesaid non-operational/ fake twenty supplier firms have contravened the following provisions of the CGST Act, 2017 and the Rules made thereunder:-
i. Section 16, of the CGST Act, 2017, in as much as, they failed to fulfill the following conditions of Section 16(2),

(a) failed to receive underlying goods shown in the invoices,
(b) the tax charged in respect of supply has not been actually paid by the supplier;
(c) the supplier failed to furnish a valid return;
Further, they failed to pay to the supplier of goods, the amount towards the value of supply along with tax payable thereon within a period of 180 days from the date of issue of invoice by the supplier.

ii. Section 31 of the CGST Act, 2017, in as much as they issued invoices without the supply of underlying

goods;

iii. Section 35 of the CGST Act, 2017, in as much as they failed to maintain a true and correct account of - (a) production or manufacture of goods; (b) inward and outward supply of goods; (c) stock of goods;

iv. Section 39, and Section 49 of the CGST Act, 2017, in as much as they failed to declare a true and correct value of Inward Supplies and Input Tax Credit, and they have availed fraudulent ITC based on the invoices issued by the bogus supplier, and utilized the said fake ITC to discharge outward GST liability in their monthly GSTR-3B returns;

v. Section 41 of the CGST Act, 2017, in as much as M/s Ambika Traders availed fraudulent ITC based on bogus invoices;

vi. Section 44 of the CGST Act, 2017, in as much as M/s Ambika Traders neither report nor reversed the ITC availed based on bogus invoices in the annual return.

vii. Section 74 of the CGST Act, 2017, in as much as they have not paid or short paid GST or wrongly availed or utilised input tax credit by reason of fraud or any wilful-misstatement or suppression of facts and therefore, they are liable to tax and penalty alongwith interest payable thereon under section 50 of the CGST Act, 2017.

viii. Section 122 of the CGST Act, 2017,

(1) Where a taxable person who –

(i) supplies any goods or services or both without issue of any invoice or issues an incorrect or false invoice with regard to any such supply;

(ii) issues any invoice or bill without supply of goods or services or both in violation of the provisions of this Act or the rules made thereunder;

(iii) collects any amount as tax but fails to pay the same to the Government beyond a period of three months from the date on which such payment becomes due;

(iv) collects any tax in contravention of the provisions of this Act but fails to pay the same to the Government beyond a period of three months from the date on which such payment becomes due;

(v) fails to deduct the tax in accordance with the provisions of sub-section (1) of section 51, or deducts an amount which is less than the amount required to be deducted under the said sub-section, or where he fails to pay to the Government under sub-section (2) thereof, the amount deducted as tax;

(vi) fails to collect tax in accordance with the provisions of sub-section (1) of section 52, or collects an amount which is less than the amount required to be collected under the said sub-section or where he fails to pay to the Government the amount collected as tax under sub-section (3) of section 52;

(vii) takes or utilises input tax credit without actual receipt of goods or services or both either fully or partially, in contravention of the provisions of this Act or the rules made thereunder;

(viii) fraudulently obtains refund of tax under this Act;

(ix) takes or distributes input tax credit in contravention of section 20, or the rules made thereunder:

(x) falsifies or substitutes financial records or produces fake accounts or documents or furnishes any false information or return with an intention to evade payment of tax due under this Act;

(xi) is liable to be registered under this Act but fails to obtain registration;

(xii) furnishes any false information with regard to registration particulars, either at the time of applying for registration, or subsequently;

(xiii) obstructs or prevents any officer in discharge of his duties under this Act;

(xiv) transports any taxable goods without the cover of documents as may be specified in this behalf;

(xv) suppresses his turnover leading to evasion of tax

under this Act;
(xvi) fails to keep, maintain or retain books of account and other documents in accordance with the provisions of this Act or the rules made thereunder;
(xvii) fails to furnish information or documents called for by an officer in accordance with the provisions of this Act or the rules made thereunder or furnishes false information or documents during any proceedings under this Act;
(xviii) supplies, transports or stores any goods which he has reasons to believe are liable to confiscation under this Act;
(xix) issues any invoice or document by using the registration number of another registered person;
(xx) tampers with, or destroys any material evidence or document;
(xxi) disposes off or tampers with any goods that have been detained, seized, or attached under this Act,
he shall be liable to pay a penalty of ten thousand rupees or an amount equivalent to the tax evaded or the tax not deducted under section 51 or short deducted or deducted but not paid to the Government or tax not collected under section 52 or short collected or collected but not paid to the Government or input tax credit availed of or passed on or distributed irregularly, or the refund claimed fraudulently, whichever is higher.
(2) Any registered person who supplies any goods or services or both on which any tax has not been paid or short-paid or erroneously refunded, or where the input tax credit has been wrongly availed or utilised,—
(a) for any reason, other than the reason of fraud or any wilful misstatement or suppression of facts to evade tax, shall be liable to a penalty of ten thousand rupees or ten per cent of the tax due from such person, whichever is higher;
(b) for reason of fraud or any wilful misstatement or suppression of facts to evade tax, shall be liable to a

penalty equal to ten thousand rupees or the tax due from such person, whichever is higher.
(3) Any person who –
(a) aids or abets any of the offences specified in clauses (i) to (xxi) of sub-section (1);
(b) acquires possession of, or in any way concerns himself in transporting, removing, depositing, keeping, concealing, supplying, or purchasing or in any other manner deals with any goods which he knows or has reasons to believe are liable to confiscation under this Act or the rules made thereunder;
(c) receives or is in any way concerned with the supply of, or in any other manner deals with any supply of services which he knows or has reasons to believe are in contravention of any provisions of this Act or the rules made thereunder;
(d) fails to appear before the officer of central tax, when issued with a summon for appearance to give evidence or produce a document in an inquiry;
(e) fails to issue invoice in accordance with the provisions of this Act or the rules made thereunder or fails to account for an invoice in his books of account, shall be liable to a penalty which may extend to twenty-five thousand rupees
ix. Section 137 of the CGST Act, 2017:- Offences by companies.—

(1) Where an offence committed by a person under this Act Act is a company, every person who, at the time the offence was committed was in charge of, and was responsible to, the company for the conduct of business of the company, as well as the company, shall be deemed guilty of the offence and shall be liable to be proceeded against and punished accordingly.
(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or

connivance of, or is attributable to any negligence on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

(3) Where an offence under this Act has been committed by a taxable person being a partnership firm or a Limited Liability Partnership or a Hindu Undivided Family or a trust, the partner or karta or managing trustee shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly and the provisions of sub-section (2) shall, mutatis mutandis, apply to such persons.

(4) Nothing contained in this section shall render any such person liable to any punishment provided in this Act, if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

x. Section 155 of the CGST Act, 2017:- Burden of proof.— Where any person claims that he is eligible for input tax credit under this Act, the burden of proving such claim shall lie on such person.

xi. Further, for the contravention, of the above provisions of the CGST Act, 2017 read with the Delhi GST Act, 2017 read with the IGST Act, 2017, the offences were committed by M/s Ambika Traders and its aforesaid supplier firms and hence liable for penalty under Section 122 of the CGST Act, 2017 read with the Delhi GST Act, 2017 read with the IGST Act, 2017.-*"*

28. The SCN clearly is issued both in respect of fraudulent availment ITC and penalty for the same under Section 122(1) of the CGST Act. The demands proposed to be raised against the Petitioner in terms of the SCN are as under:

i. Fraudulently availed ITC in contravention of Section 16 of CGST Act amounting to Rs.83,76,32,528/-.

ii. Demand of fraudulently utilized ITC of Rs.83,76,32,528/- under Section 74 of the CGST Act/Delhi Goods and Service Tax Act, 2017 (hereinafter, '*DGST Act*') read with Section 20 of the Integrated Goods and Services Tax Act, 2017 (hereinafter, '*IGST Act*').

iii. Interest under Section 50 of the CGST Act/ DGST Act read with Section 20 of the IGST Act.

iv. Penalty under Section 74 of the CGST Act/ DGST Act read with Section 20 of the IGST Act.

v. Penalty Section 122(1)(x)(xvi)(xvii) of the CGST Act/DGST Act.

vi. Penalty under Section 122(3) of the CGST Act/DGST Act read with Section 20 of the IGST Act.

vii. Penalty under Section 122(3)(a)(d)(e) and Section 137 of the CGST Act read with provisions of DGST and IGST against Mr. Gaurav Gupta.

29. Notices were issued to all the 20 alleged fake non-existent firms.

30. The Petitioner submitted a detailed reply to the SCN on 19th December, 2024, wherein responses to various factual assertions were provided and certain objections were raised. Subsequently, an additional reply was filed on 30th December, 2024, setting forth further factual submissions and additional objections.

b) Background of the Impugned Order

31. The impugned order under challenge in the present petition was passed by the Adjudicating Authority upon affording the Petitioner four

opportunities of personal hearing. As recorded in the impugned order, the proprietor of the Petitioner, Mr. Gaurav Gupta, had personally appeared on one such occasion and the Petitioner was duly represented through ld. Counsel during the course of the proceedings. The relevant portion of the impugned order reads as under:

> *"16. Personal Hearings in this case were fixed for 12.11.24, 28.11.24, 12.12:24 and addition PH 20.12. 2024..* ***Advocate Rishabh Jain along with the proprietor of M/s AMBIKA TRADERS Shri Gaurav Gupta appeared on 20.12.2024 and submitted detailed reply of SCN****."*

32. The objections raised by the Petitioner before the Adjudicating Authority are as under:

i. A consolidated demand cannot be raised for multiple financial years.

ii. All Relied Upon Documents (hereinafter, '*RUDs*') were not supplied to the Petitioner.

iii. Certain objections were raised as to the manner in which the *panchnama* was prepared by the DGGI.

33. After considering all the submissions, the Adjudicating Authority comes to the conclusion that the behaviour of the noticee *i.e.*, the Petitioner has been evasive. There was no attempt on behalf of the Petitioner to explain and justify the availment of ITC. The Adjudicating Authority holds that there was no receipt of any goods nor supply of any goods. The finding of the Adjudicating Authority is relevant and is set out below:

> *" In view of above, I find that the* ***Supplier*** *firms were* ***non-existent/fake*** *firms and created only on paper for* ***passing-on*** *of fake ITC with intent to defraud the*

*government exchequer. Therefore, in view of the facts of the case and observations as above, I find no reason to deny the allegations raised in the impugned Show Cause Notice that **fake/ non-existent Supplier** firms have been engaged in supplying of fake invoices to **Noticee No. 1** without any actual supply of goods and or services.*

*Therefore, in view of the above, I hold unambiguously, from the facts and discussions above, that the Noticee's behavior has been evasive to the communications and opportunities provided to them against the allegations leveled on them vide the said communications and they are escaping the department from appearing before the same, furnishing any defense in their support and deposit any liability due to them. Had there been any genuineness in their act of **availment** of the impugned ITC amount, they would have at least once tried to provide explanation of their dubious act as informed to them vide the above said communications. Hence, I hold that it has been proved beyond the doubt they were involved in the conspiracy to defraud the Government exchequer and hence, they have wrongly **availed** the ITC in contravention to the provisions of the CGST/ DGST Act, and thus the same is ineligible to them and therefore the same is recoverable from them along with the applicable interest and penalty.*

*In this regard, I find that it has been established that **Supplier** firms were **non-existent/fake** firms and they have neither received any goods physically nor supplied any goods physically. The firms were not engaged in any actual business activity and have been created only for the purpose of issuance of fake invoices without actual supply of goods."*

34. The Adjudicating Authority also notes that in the era of self-assessment there is an additional responsibility on the assessee. The relevant

extract of the impugned order reads as under:

> *"Moreover, under the era of self-assessment in tax matters, the assessee has a greater responsibility towards assessment and payment of taxes due to the Govt. properly in time. The burden of proving the rightful claim of Input Tax Credit (ITC) lies on the assessee. The department comes to know about the details of taxes payable and Input Tax Credit (ITC) available to the Noticees, only from the statutory returns filed by them at certain intervals of time. Thus, the Noticees were statutorily bound and capable to have taken reasonable steps to ensure genuineness & eligibility of Input Tax Credit (ITC) before taking it into their account which in turn affects the discharge of their outward tax liability."*

35. The conclusion of the Adjudicating Authority, thereafter, is as under:

> *"In view of the above, I find that impugned Input Tax Credit (ITC) have been* ***availed*** *and* ***utilized*** *fraudulently in contraventions, as discussed hereinabove, with intent to take undue credit, to make payment of taxes out of such undue Input Tax Credit (ITC) and take undue benefit of Input Tax Credit (ITC) through refund route by reason of fraud and suppression of facts which caused loss to the Govt. exchequer. There is wilful suppression of the material facts from the department with such intent. The department on its own efforts detected the case and raised the demand otherwise it would have been gone unnoticed. Hence, invocation of extended period of limitation, under Section 74(1) of the CGST, 2017 read with DGST Act, 2017 and IGST Act, 2017 in the instant case is warranted and justified. Thus,* ***Noticee No. 1*** *is liable to pay the amount of wrongly* ***availed/utilized*** *ITC under the provisions of* ***Section 74(1) of the Act, ibid."***

36. In view of the above findings, the Adjudicating Authority had raised

demands and imposed penalties on the Petitioner as also its proprietor, Mr. Gaurav Gupta. The demand *qua* the Petitioner and Mr. Gaurav Gupta are as under:

(i) Disallowance of ITC to the tune of Rs.83,76,32,528/- availed by the Petitioner during the period, July, 2017 to August 2021;

(ii) The demand of fraudulently utilized ITC to the same amount *i.e.* Rs.83,76,32,528/-;

(iii) Interest under Section 50 of the CGST Act/DGST Act read with Section 20 of the IGST Act;

(iv) Penalty to the tune of Rs.83,76,32,528/- under Section 74 of the CGST Act/DGST Act read with Section 20 of the IGST Act;

(v) Penalty imposed on Mr. Gaurav Gupta to the tune of Rs.25,000/- for violation of each of the clauses under Section 122 (3)(a)(d)(e) of the CGST Act.

Thus, a total sum of Rs.1,67,52,65,056/- *i.e.,* the demand of tax and penalty has been raised against the Petitioner.

37. Insofar as the twenty fictitious and non-existent firms are concerned, the penalty imposed upon them corresponds to the actual amount of ITC allegedly availed or utilized by them.

c) Proceedings before this Court

38. The broad contentions raised for the Petitioner before this Court are as under:

(a) That the two replies dated 19th December 2024 and 30th December 2024 filed by the Petitioner to the SCN have not been properly considered by the Adjudicating Authority.

(b) That the impugned order passed by the Adjudicating Authority proceeds beyond the SCN.

(c) That consolidated SCN for multiple financial years has been issued under Section 74 of CGST Act, which is impermissible.

39. Each of the submissions made by the ld. Counsel for the Petitioner are considered below:

Consideration of the reply

40. A perusal of the impugned order shows that it is a detailed order setting out various facts, the investigation which took place, hearings which were afforded and an analysis of the reply. After perusing the impugned order which runs into almost 100 pages, it cannot be said that the replies filed by the Petitioner have not been considered by the Adjudicating Authority. The Adjudicating Authority has obviously not agreed with the Petitioner's stand in the replies filed to the SCN. In fact, some of the conclusions arrived at by the Adjudicating Authority as extracted above would show that the replies have been duly considered.

41. Moreover, a perusal of the reply dated 19th December, 2024 and the additional reply dated 30th December, 2024 show that most of the contents of these replies raised technical objections and there is no substantive reply that actual business was conducted. Deficiencies are being pointed out in the investigation process, supply of RUDs, recording of statements, etc.

42. The reply does not *prima facie* contest the investigation and the facts revealed therein. In a case of fraudulent availment of ITC or utilization of ITC, the best evidence for a person who is genuinely conducing a business would be to state the exact nature of the goods sold, the quantities purchased/sold, etc. There is, *prima facie,* no averment in the reply or the

additional reply giving such details. Thus, the conclusion of the Adjudicating Authority cannot be held to be arbitrary or perverse.

Consolidated SCN for Multiple Financial Years

43. Insofar as the issue of consolidated notice for various financial years is concerned, a perusal of Section 74 of the CGST Act would itself show that at least insofar as fraudulently availed or utilized ITC is concerned, the language used in Section 74(3) of the CGST Act and Section 74(4) of the CGST Act is *"for any period"* and *"for such periods"* respectively. This contemplates that a notice can be issued for a period which could be more than one financial year. Similar is the language even in Section 73 of the CGST Act. The relevant provisions read as under:

> *"**73. Determination of tax [, pertaining to the period up to Financial Year 2023-24,] not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for any reason other than fraud or any wilful-misstatement or suppression of facts.—***
>
> *XXXX*
>
> *(3) Where a notice has been issued **for any period** under sub-section (1), the proper officer may serve a statement, containing the details of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised **for such periods** other than those covered under sub-section (1), on the person chargeable with tax.*
>
> *(4) The service of such statement shall be deemed to be service of notice on such person under sub-section (1), subject to the condition that the grounds relied upon for such tax periods other than those covered under sub-section (1) are the same as are mentioned in the earlier notice.*
>
> *XXXX*
>
> ***74. Determination of tax [, pertaining to the period up to Financial Year 2023-24,] not paid or short paid or***

> ***erroneously refunded or input tax credit wrongly availed or utilised by reason of fraud or any wilful-misstatement or suppression of facts.***—
>
> *XXXX*
>
> *(3) Where a notice has been issued* ***for any period*** *under sub-section (1), the proper officer may serve a statement, containing the details of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised* ***for such periods*** *other than those covered under sub-section (1), on the person chargeable with tax.*
>
> *(4) The service of statement under sub-section (3) shall be deemed to be service of notice under sub-section (1) of section 73, subject to the condition that the grounds relied upon in the said statement, except the ground of fraud, or any wilful-misstatement or suppression of facts to evade tax, for periods other than those covered under sub-section (1) are the same as are mentioned in the earlier notice."*

44. Some of the other provisions of the CGST Act, which are relevant, include Section 2(106) of the CGST Act, which defines *"tax period"* as under:

> *"2.[...] (106) "tax period" means the period for which the return is required to be furnished"*

45. Thus, Sections 74(3), 74(4), 73(3) and 73(4) of the CGST Act use the term *"for any period"* and *"for such periods"*. This would be in contrast with the language used in Sections 73(10) and 74(10) of the CGST Act where the term *"financial year"* is used. The said provisions read as under:

> *"73.[...] (10) The proper officer shall issue the order under sub-section (9) within three years from the due date for furnishing of annual return for the* ***financial year*** *to which the tax not paid or short paid or input*

tax credit wrongly availed or utilised relates to or within three years from the date of erroneous refund"

"74.[...] 10) The proper officer shall issue the order under sub-section (9) within a period of five years from the due date for furnishing of annual return for the ***financial year*** *to which the tax not paid or short paid or input tax credit wrongly availed or utilised relates to or within five years from the date of erroneous refund."*

The Legislature is thus, conscious of the fact that insofar as wrongfully availed ITC is concerned, the notice can relate to a period and need not to be for a specific financial year.

46. The nature of ITC is such that fraudulent utilization and availment of the same cannot be established on most occasions without connecting transactions over different financial years. The purchase could be shown in one financial year and the supply may be shown in the next financial year. It is only when either are found to be fabricated or the firms are found to be fake that the maze of transactions can be analysed and established as being fraudulent or bogus.

47. A solitary availment or utilization of ITC in one financial year may actually not be capable of by itself establishing the pattern of fraudulent availment or utilization. It is only when the series of transactions are analysed, investigated, and enquired into, and a consistent pattern is established, that the fraudulent availment and utilization of ITC may be revealed. The language in the abovementioned provisions i.e., the word *`period' or `periods'* as against *`financial year' or `assessment year'* are therefore, significant.

48. The ITC mechanism is one of the salient features of the GST regime which was introduced to encourage genuine businesses. In the words of Shri Pranab Mukherjee, the then Hon'ble President of India, who addressed the Nation at the launch of the GST on 1st July, 2017, ITC was highlighted as one of the core features integral to the framework of the GST regime. The relevant extract of the said speech of the Hon'ble President is set out below:

> *"I am told that a key feature of the system is that buyers will get credit for tax paid on inputs only when the seller has actually paid taxes to the government. This creates a strong incentive for buyers* ***to deal with honest and compliant sellers who pay their dues promptly****."*

49. It is seen that the said feature of ITC has been misused by large number of unscrupulous dealers, businesses who have in fact utilized or availed of ITC through non-existent supplies/purchases, fake firms and non-existent entities. The ultimate beneficiary of the ITC in the most cases may not even be the persons in whose name the GST registration is obtained. Businesses, individuals, and entities have charged commissions for passing on ITC. In several cases, it has also been noticed that the persons in whose name the GST registration stands are in fact domestic helps, drivers, employees, etc., of businessmen who are engaged on salary and who may not even be aware that their identities are being misused.

50. In fact, Parliamentary questions have been raised on such fraudulent availment of ITC. In one such Parliamentary question, it was revealed as under:

> *"The press release issued by Ministry of Finance on 07.01.2024 (Annexure 1) brought out that 29,273*

> *bogus firms involved in suspected Input Tax Credit (ITC) evasion of Rs 44,015 crore were detected in a sustained drive against non-existent tax payers by GST formations across the country since May 2023. An amount of Rs. 44,015 Crore (Rs.15240 Crore (State) + Rs. 28775 Crore (Centre)) of fake ITC has been detected."*[1]

51. On 7th January 2024, *vide* a press release issued by the Press Information Bureau, New Delhi, the Ministry of Finance brought to light the said large-scale involvement of fictitious entities in the alleged evasion of ITC. As per the contents of the said press release, a total of 29,273 non-genuine firms have purportedly been found to be involved in the evasion of ITC amounting to approximately Rs. 44,015 Crores, as unearthed during a sustained enforcement drive undertaken by the GST authorities across the country since May 2023 against non-existent taxpayers. The relevant portion of the said release reads as under:

> *"To curb frauds in Goods and Services Tax (GST) and increase compliance, the GST formations, under the Central Board of Indirect Taxes and Customs (CBIC) and the State/UT Governments, across the country are carrying out a focused drive on the issue of non-existent / bogus registrations and issuance of fake invoices without any underlying supply of goods and services.*
> ***Since the initiation of the special drive against fake registrations in mid-May 2023, a total of 29,273 bogus firms involved in suspected Input Tax Credit (ITC) evasion of Rs. 44,015 crore have been detected. This has saved Rs. 4,646 crore of which Rs. 3,802 crore is by blocking of ITC and Rs. 844 crore is by***

[1] Answer by the Minister of State in Ministry of Finance, Mr. Pankaj Chaudhary to a question raised on Monday, 05th February, 2024 in Lok Sabha being unstarred Question No. 435 titled as *'Unearthing of Fake Input Tax Credit'*

way of recovery. So far, 121 arrests have been made in the cases.

In the quarter ending December, 2023, 4,153 bogus firms that involved suspected ITC evasion of around Rs.12,036 crore were detected. 2,358 of these bogus firms were detected by the Central GST Authorities. This has protected revenue of Rs. 1,317 crore of which Rs. 319 crore has been realised and Rs 997 crore has been protected by blocking ITC. 41 persons were arrested in these cases. 31 of these arrests were by Central GST Authorities. State wise details are annexed."

52. Moreover, a Co-ordinate Bench of this Court *vide* order dated 3rd October, 2024 in ***W.P.(C) 13855/2024*** titled '***M/s Vallabh Textile Through Its Authorized Representative v. Additional/Joint Commissioner, CGST Delhi East Commiserate & Ors.',*** has held as under:

"1. The instant writ petition seeks to assail the validity of a Show Cause Notice ["SCN"] dated 29 May 2024 and which raises issues pertaining to Financial Years ["FYs"] 2017-18 to 2021-22.

2. The principal ground of challenge which was addressed before us was with respect to the action of the respondents who have proceeded to issue a consolidated notice for the aforesaid period.

3. On an ex-facie perusal of Section 74 of the Central Goods & Services Tax Act, 2017 ["CGST"]/Delhi Goods & Services Tax Act, 2017 ["DGST"], we find ourselves unable to sustain that challenge in the absence of any prohibition that may have been statutorily engrafted in this respect. That in any case would not constitute a jurisdictional challenge warranting the writ petition being entertained against a SCN.

4. Insofar as FY 2017-18 is concerned, it was the submission of learned counsel for the writ petitioner

that the same would not sustain bearing in mind the provisions contained in Section 74(10) of the CGST Act, 2017/DGST Act, 2017. Insofar as that question is concerned, we leave it open to the writ petitioner to initiate appropriate proceedings independently.

5. Bearing in mind the well settled principles which govern situations and contingencies in which a SCN challenge may be entertained by a Court under Article 226 of the Constitution, we find no ground to entertain the instant writ petition.

6. It shall, subject to the aforesaid observation, stand dismissed."

53. *Vide* the said decision, the Coordinate Bench of this Court has clarified the position in law that a consolidated SCN for multiple years is permissible under the purview of Section 74 of the CGST Act, and hence, the said argument cannot be a ground for entertaining a writ petition.

54. The present case appears to be one such case where a substantial amount of ITC is alleged to have been availed/utilized running into more than Rs.83 Crores. The Petitioner is alleged to be one of the main entities/persons involved in the said activity. The transactions are between the years 2017 to 2021. A consolidated notice is, therefore, not merely permissible but, in fact, required in such cases in order to establish the illegal modality adopted by such businesses and entities. The language of the provision itself does not prevent issuance of SCN or order for multiple years in a consolidated manner.

55. Even in the order which has been impugned before this Court, the details of the amounts for each year are set out clearly in the content of the order itself and is, therefore, clearly decipherable. Thus, it cannot be held that the issuance of consolidated notice or order violates the language of the

provisions. Especially, in the case of fraudulent availment of ITC or utilization of ITC such consolidated notice and order would not just be permissible but may, in fact, be required to show the wilful misstatement or suppression or the fraudulent availment/utilization.

56. Insofar as the statement that the impugned order travels beyond SCN is concerned, the same is a completely untenable argument as the SCN contemplates demands of tax, interest, and penalty for wrongful availment or utilization of ITC under Section 122 of the CGST Act. The impugned order does not travel beyond SCN in any manner.

57. Further, the impugned order is an appealable order under Section 107 of the CGST Act and there is a substantive appellate remedy available to the Petitioner. The allegation that an opportunity of cross-examination was not afforded to the Petitioner is completely misplaced inasmuch as such proceedings of SCN cannot be converted into mini-trials. The statements which are recorded are of the Petitioner's proprietor or its suppliers/ purchasers, some of whom appeared before the Department. Moreover, the right of cross-examination is not an unfettered right as held by this Court in the decision of '***M/s Vallabh Textiles v. Additional Commissioner Central Tax GST, Delhi East & Ors.', (2025: DHC: 2559-DB)*** wherein the Court observed as under:

> *"15.* ***While cross-examination can be granted in certain proceedings, if it is deemed appropriate, the right to cross-examine cannot be an unfettered right.*** *This has been so held recently by this Court in Sushil Aggarwal v. Principal Commissioner Of Customs (2025:DHC:698-DB). The relevant portion of the decision reads as under:*
>
> *"15. Accordingly, this Court is of the opinion that in*

order to ensure that there is compliance of Section 138(B) of the Act, ***though the same cannot be claimed as an unfettered right in all cases, in the facts of the present*** *case, both Mr. Sushil Aggarwal and Mr. Aidasani are afforded an opportunity to cross examine Mr. Bhalla."*

16. The rationale behind setting aside an order/judgment on the grounds of non-provision of the right to cross-examine is to safeguard the affected party from being prejudiced due to non-providing of cross examination. Therefore, such reasoning presumes/implies the existence of prejudice. In other words, if the alleging party fails to prove any substantial prejudice caused to it due to such non-provision, it shall not have the inherent right to set aside such an order/judgment. This view has been upheld by the Supreme Court in various judgments including ***M/s. Telestar Travels Pvt. Ltd. v Special Director Of Enforcement 2013(9) SCC 549.*** *The relevant portion of the said judgment reads as under:*

"23. That brings us to the third limb of the attack mounted by the appellants against the impugned orders. It was argued by Mr Divan that while holding that Bountiful Ltd. was a paper company and was being controlled and operated from India by the appellants through Shri Sirish Shah, the adjudicating authority had relied upon the statements of Miss Anita Chotrani and Mr Deepak Raut, and a communication received from the Indian High Commission in London. These statements and the report were, according to Mr Divan, inadmissible in evidence as the appellant's request for an opportunity to cross-examine these witnesses had been unfairly declined, thereby violating the principles of natural justice that must be complied with no matter the strict rules of the Evidence Act had been excluded from its application. ...

24. Mr Malhotra, on the other hand, argued that the

right of cross-examination was available to a party under the Evidence Act which had no application to the adjudication proceedings under FERA. ... ...He also placed reliance upon a decision of this Court in Surjeet Singh Chhabra v. Union of India(1997(1) SCC 508 1997 SCC (Cri) 272) to argue that cross-examination was unnecessary in certain circumstances such as the one at hand where all material facts were admitted by the appellants in their statements before the authority concerned.

25. There is, in our opinion, no merit even in that submission of the learned counsel. It is evident from Rule 3 of the Adjudication Rules framed under Section 79 of FERA that the rules of procedure do not apply to adjudication proceedings. That does not, however, mean that in a given situation, cross-examination may not be permitted to test the veracity of a deposition sought to be issued against a party against whom action is proposed to be taken. It is only when a deposition goes through the fire of cross-examination that a court or statutory authority may be able to determine and assess its probative value. Using a deposition that is not so tested, may therefore amount to using evidence, which the party concerned has had no opportunity to question. Such refusal may in turn amount to violation of the rule of a fair hearing and opportunity implicit in any adjudicatory process, affecting the right of the citizen. ***The question, however, is whether failure to permit the party to cross-examine has resulted in any prejudice so as to call for reversal of the orders and a de novo enquiry into the matter. The answer to that question would depend upon the facts and circumstances of each case."***

XXXX

18. A perusal of the above decisions reveals that while cross-examination would be required in certain cases,

> ***it need not be given as a matter of right in all cases. The provision of the opportunity to cross-examine depends on the facts and circumstances of each case and is warranted only when the party seeking such an opportunity is able to demonstrate that prejudice would be caused in the absence thereof.***
>
> *19. The Court is of the considered view that parties cannot, by praying for cross-examination, cannot convert Show-cause Notice proceedings into mini-trials. Persons seeking cross-examination ought to give specific reasons why cross-examination is needed in a particular situation and that too of specific witnesses.* ***A blanket request to cross-examine all persons whose statements have been recorded by the Department, many of whom are typically employees, sellers, purchasers, or other persons connected to the entity under investigation, cannot be sustained.*** *If a prayer for cross-examination is made, the Authority has to consider the same fairly and if the need is so felt in respect of a particular person, the same ought to be permitted. If not, the Authority can record the reasons and proceed in the case. Moreover, cross examination need not also be of all persons whose statements are recorded. It could be permitted by the Authority in case of some persons and not all.*
>
> ***20. In the present case, the mere rejection of the Petitioner's request for cross-examination cannot, in and of itself, be treated as a sufficient ground to bypass the statutorily prescribed appellate remedy and invoke the writ jurisdiction of this Court."***

58. In the facts of this case, no prejudice is caused to the Petitioner if cross-examination is not afforded as all the documents relied upon by the Adjudicating Authority are those which have been recovered from the Petitioner's premises itself and the Petitioner is well in the knowledge of the actual status of the purchasers and the suppliers.

59. This Court has already taken a view that interference in such cases in writ jurisdiction is limited. The Court cannot go into analysis of facts in writ jurisdiction. It is well-settled in law that the High Court, despite being vested with wide and extensive powers under Articles 226 and 227 of the Constitution of India, must exercise such powers within the bounds of judicial discipline and established legal principles. The jurisdiction of the High Court does not extend to reappreciation of evidence or interference with factual findings recorded by the competent authorities. The High Court cannot assume the role of an Appellate Authority for adjudication of disputed questions of fact. This position has been affirmed by the Supreme Court in the decision of ***Shamshad Ahmad v. Tilak Raj Bajaj, (2008) 9 SCC 1***. The relevant portion of the said decision reads as under:

> *"38.* ***Though powers of a High Court under Articles 226 and 227 are very wide and extensive over all courts and tribunals throughout the territories in relation to which it exercises jurisdiction, such powers must be exercised within the limits of law. The power is supervisory in nature. The High Court does not act as a court of appeal or a court of error. It can neither review nor reappreciate, nor reweigh the evidence upon which determination of a subordinate court or inferior tribunal purports to be based or to correct errors of fact or even of law and to substitute its own decision for that of the inferior court or tribunal. The powers are required to be exercised most sparingly and only in appropriate cases in order to keep the subordinate courts and inferior tribunals within the limits of law***
> *39. In Chandavarkar Sita Ratna Rao v. Ashalata S. Guram [(1986) 4 SCC 447] this Court stated : (SCC p. 458, para 16)*

> *"16. ... unless there was any grave miscarriage of justice or flagrant violation of law calling for intervention it was not for the High Court under Articles 226 and 227 of the Constitution to interfere. If there is evidence on record on which a finding can be arrived at and if the court has not misdirected itself either on law or on fact, then in exercise of the power under Article 226 or Article 227 of the Constitution, the High Court should refrain from interfering with such findings made by the appropriate authorities."*

60. Moreover, the scope of writ jurisdiction is quite limited when an efficacious and adequate alternative remedy is available to the litigant. Where a statutory remedy exists that is both efficacious and adequate, the invocation of the writ jurisdiction of the High Court under Article 226 is generally not warranted. While the existence of such alternative remedy does not divest the High Court of its jurisdiction to issue writs, it remains a material consideration in the exercise of its discretionary jurisdiction. Where such alternate remedy exists, it would be a sound exercise of judicial discretion to decline interference under Article 226, unless compelling circumstances and grounds are demonstrated to justify such invocation. This legal position stands affirmed by the Supreme Court way back in the case of ***Union of India v. T.R. Varma, 1957 SCC OnLine SC 30.*** The relevant portion of the said decision reads as under:

> *"6. At the very outset, we have to observe that a writ petition under Article 226 is not the appropriate proceeding for adjudication of disputes like the present. Under the law, a person whose services have been wrongfully terminated, is entitled to institute an action to vindicate his rights, and in such an action, the Court will be competent*

to award all the reliefs to which he may be entitled, including some which would not be admissible in a writ petition. ***It is well-settled that when an alternative and equally efficacious remedy is open to a litigant, he should be required to pursue that remedy and not invoke the special jurisdiction of the High Court to issue a prerogative writ. It is true that the existence of another remedy does not affect the jurisdiction of the Court to issue a writ; but, as observed by this Court in Rashid Ahmed v. Municipal Board, Kairana [(1950) SCR 566] "the existence of an adequate legal remedy is a thing to be taken into consideration in the matter of granting writs". Vide also K.S. Rashid and Son v. Income Tax Investigation Commission [(1954) SCR 738, 747] . And where such remedy exists, it will be a sound exercise of discretion to refuse to interfere in a petition under Article 226, unless there are good grounds therefor****. None such appears in the present case. On the other hand, the point for determination in this petition whether the respondent was denied a reasonable opportunity to present his case, turns mainly on the question whether he was prevented from cross-examining the witnesses, who gave evidence in support of the charge. That is a question on which there is a serious dispute, which cannot be satisfactorily decided without taking evidence. It is not the practice of courts to decide questions of that character in a writ petition, and it would have been a proper exercise of discretion in the present case if the learned Judges had referred the respondent to a suit. In this appeal, we should have ourselves adopted that course, and passed the order which the learned Judges should have passed. But we feel pressed by the fact that the order dismissing the respondent having been made on September 16, 1954, an action to set it aside*

would now be time-barred. As the High Court has gone into the matter on the merits, we propose to dispose of this appeal on a consideration of the merits."

61. The said legal position has been reaffirmed by the Supreme Court in the decisions of ***Titaghur Paper Mills Co. Ltd. v. State of Orissa, (1983) 2 SCC 433*** and ***Radha Krishan Industries v. State of H.P., (2021) 6 SCC 771.*** The relevant portion of the said decisions read as under:

Titaghur Paper Mills Co. Ltd. v. State of Orissa, (1983) 2 SCC 433

"11. Under the scheme of the Act, there is a hierarchy of authorities before which the petitioners can get adequate redress against the wrongful acts complained of. The petitioners have the right to prefer an appeal before the Prescribed Authority under sub-section (1) of Section 23 of the Act. If the petitioners are dissatisfied with the decision in the appeal, they can prefer a further appeal to the Tribunal under sub-section (3) of Section 23 of the Act, and then ask for a case to be stated upon a question of law for the opinion of the High Court under Section 24 of the Act. ***The Act provides for a complete machinery to challenge an order of assessment, and the impugned orders of assessment can only be challenged by the mode prescribed by the Act and not by a petition under Article 226 of the Constitution. It is now well recognised that where a right or liability is created by a statute which gives a special remedy for enforcing it, the remedy provided by that statute only must be availed of.*** *This rule was stated with great clarity by Willes, J. in Wolverhampton New Waterworks Co. v. Hawkesford [(1859) 6 CBNS 336, 356 : 28 LJCP 242 : 141 ER 486 : 7 WR 464] in the following passage:*

"There are three classes of cases in which a liability may be established founded upon statute. . . . But

there is a third class, viz. where a liability not existing at common law is created by a statute which at the same time gives a special and particular remedy for enforcing it. . .the remedy provided by the statute must be followed, and it is not competent to the party to pursue the course applicable to cases of the second class. The form given by the statute must be adopted and adhered to."

The rule laid down in this passage was approved by the House of Lords in Neville v. London Express Newspapers Ltd. [1919 AC 368 : 1919 All ER Rep 61 : 88 LJKB 282 : 120 LT 299] and has been reaffirmed by the Privy Council in Attorney-General of Trinidad and Tobago v. Gordon Grant & Co. Ltd. [1935 AC 532 : 104 LJ PC 82 : 153 LT 441 (PC)] and Secretary of State v. Mask & Co. [AIR 1940 PC 105 : 67 IA 222 : 188 IC 231] It has also been held to be equally applicable to enforcement of rights, and has been followed by this Court throughout. The High Court was therefore justified in dismissing the writ petitions in limine."

Radha Krishan Industries v. State of H.P., (2021) 6 SCC 771.

*"**C.1. Maintainability of the writ petition before the High Court***

24. The High Court has dealt with the maintainability of the petition under Article 226 of the Constitution. Relying on the decision of this Court in CCT v. Glaxo Smith Kline Consumer Health Care Ltd. [CCT v. Glaxo Smith Kline Consumer Health Care Ltd., (2020) 19 SCC 681 : 2020 SCC OnLine SC 440] , the High Court noted that although it can entertain a petition under Article 226 of the Constitution, it must not do so when the aggrieved person has an effective alternate remedy available in law. However, certain exceptions to this "rule of alternate remedy" include where, the statutory authority has not acted in accordance with the

provisions of the law or acted in defiance of the fundamental principles of judicial procedure; or has resorted to invoke provisions, which are repealed; or where an order has been passed in violation of the principles of natural justice. Applying this formulation, the High Court noted that the appellant has an alternate remedy available under the GST Act and thus, the petition was not maintainable.

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27. The principles of law which emerge are that:

27.1. The power under Article 226 of the Constitution to issue writs can be exercised not only for the enforcement of fundamental rights, but for any other purpose as well.

27.2. The High Court has the discretion not to entertain a writ petition. One of the restrictions placed on the power of the High Court is where an effective alternate remedy is available to the aggrieved person.

27.3. Exceptions to the rule of alternate remedy arise where : (a) the writ petition has been filed for the enforcement of a fundamental right protected by Part III of the Constitution; (b) there has been a violation of the principles of natural justice; (c) the order or proceedings are wholly without jurisdiction; or (d) the vires of a legislation is challenged.

27.4. An alternate remedy by itself does not divest the High Court of its powers under Article 226 of the Constitution in an appropriate case though ordinarily, a writ petition should not be entertained when an efficacious alternate remedy is provided by law.

27.5. When a right is created by a statute, which itself prescribes the remedy or procedure for enforcing the right or liability, resort must be had to that particular statutory remedy before invoking the discretionary remedy under Article 226 of the Constitution. This rule of exhaustion of statutory remedies is a rule of

policy, convenience and discretion.
27.6. In cases where there are disputed questions of fact, the High Court may decide to decline jurisdiction in a writ petition. However, if the High Court is objectively of the view that the nature of the controversy requires the exercise of its writ jurisdiction, such a view would not readily be interfered with.
28. These principles have been consistently upheld by this Court in Chand Ratan v. Durga Prasad [Chand Ratan v. Durga Prasad, (2003) 5 SCC 399] , Babubhai Muljibhai Patel v. Nandlal Khodidas Barot [Babubhai Muljibhai Patel v. Nandlal Khodidas Barot, (1974) 2 SCC 706] and Rajasthan SEB v. Union of India [Rajasthan SEB v. Union of India, (2008) 5 SCC 632] among other decisions."

62. Furthermore, recently the Supreme Court in the context of CGST Act, has in ***Civil Appeal No. 5121/2021*** dated 3rd September, 2021 titled ***'The Assistant Commissioner of State Tax & Ors. v. M/s Commercial Steel Limited',*** held as under:

"11. The respondent had a statutory remedy under section 107. Instead of availing of the remedy, the respondent instituted a petition under Article 226. The existence of an alternate remedy is not an absolute bar to the maintainability of a writ petition under Article 226 of the Constitution. ***But a writ petition can be entertained in exceptional circumstances where there is:***
(i) a breach of fundamental rights;
(ii) a violation of the principles of natural justice;
(iii) an excess of jurisdiction; or
(iv) a challenge to the vires of the statute or delegated legislation.

12 In the present case, none of the above exceptions

was established. There was, in fact, no violation of the principles of natural justice since a notice was served on the person in charge of the conveyance. In this backdrop, it was not appropriate for the High Court to entertain a writ petition. The assessment of facts would have to be carried out by the appellate authority. As a matter of fact, the High Court has while doing this exercise proceeded on the basis of surmises. However, since we are inclined to relegate the respondent to the pursuit of the alternate statutory remedy under Section 107, this Court makes no observation on the merits of the case of the respondent.

13. For the above reasons, we allow the appeal and set aside the impugned order of the High Court. The writ petition filed by the respondent shall stand dismissed. However, this shall not preclude the respondent from taking recourse to appropriate remedies which are available in terms of Section 107 of the CGST Act to pursue the grievance in regard to the action which has been adopted by the state in the present case"

63. The said legal position has also been reiterated by this Court in ***M/s Sheetal and Sons & Ors. v. Union of India & Anr., (2025: DHC: 4057-DB)*** and by the Allahabad High Court in ***Writ Tax No. 753 of 2023*** titled '***Elesh Aggarwal* v. *Union of India'*** wherein the Allahabad High Court has held that no ground is made for interference on merits in exercise of extra ordinary jurisdiction. The relevant portion of the decision in ***M/s Sheetal and Sons & Ors. (Supra)*** reads as under:

"15. The Supreme Court in the decision in Civil Appeal No 5121 of 2021 titled 'The Assistant Commissioner of State Tax & Ors. v. M/s Commercial Steel Limited' discussed the maintainability of a writ petition under Article226. ***In the said decision, the Supreme Court reiterated the position that existence of an alternative remedy is not absolute bar to the***

maintainability of a writ petition, however, a writ petition under Article 226 can only be filed under exceptional circumstances*....*

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16. In view of the fact that the impugned order is an appealable order and the principles laid down in the abovementioned decision i.e. ***The Assistant Commissioner of State Tax & Ors. (Supra)****, the Petitioners are relegated to avail of the appellate remedy."*

64. Recently, this Court in the case of ***'Mukesh Kumar Garg v. Union of India & Ors.'*** **(*2025: DHC: 3532-DB*),** while adjudicating upon a matter concerning fraudulent availment of ITC, observed as under:

"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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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 todisclose 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."*

65. In the light of the above facts and the settled position in law, the present writ petition is not liable to be entertained especially since the Petitioner has an alternative, effective and efficacious remedy available.

66. All the contentions raised before this Court can always be raised before the Appellate Authority.

67. The limitation for availing of the appellate remedy, however, has expired in terms of Section 107 of the CGST Act. Since the petition has remained pending before this Court since April 2025, the Petitioner is given time till 31st August, 2025 to file an appeal challenging the impugned order dated 23rd January 2025 along with the requisite pre-deposit. If the same is filed within the stipulated time, the appeal shall not be dismissed on the ground of being barred by limitation and shall be adjudicated on merits.

68. Needless to add, nothing said in this judgement shall affect the final adjudication by the Appellate Authority.

69. The writ petition is disposed of with costs of Rs.25,000/- to the Delhi High Court Bar Association. The said costs shall be deposited within two

weeks. The bank details of the Delhi High Court Bar Association are as under:

- ***Name: Delhi High Court Bar Association***
- ***Account No.: 15530100000478***
- ***IFSC Code: UCBA0001553***
- ***Bank & Branch: UCO Bank, Delhi High Court***

70. Pending applications, if any, are also disposed of.

PRATHIBA M. SINGH
JUDGE

RAJNEESH KUMAR GUPTA
JUDGE

JULY, 29 2025
dj/ck.