



2025:DHC:4057-DB



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

Date of Decision: 15th May, 2025

+ **W.P.(C) 6441/2025, CM APPLs. 29361/2025 & 29362/2025**

M/S SHEETAL AND SONS

.....Petitioner

Through: Mr. Bimal Jain and Mr. Keshav
Jatwani, Advocates.

versus

UNION OF INDIA & ANR.

.....Respondents

Through: Mr. Chetanya Puri, SPC with Ms.
Nisha Puri, Advocate for UOI.
Ms. Anushree Narain SSC with Mr.
Ankit Kumar, Advocate for R-2.

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W.P.(C) 6443/2025 & CM APPL. 29364/2025

SUNNY JAGGA

.....Petitioner

Through: Mr. Bimal Jain and Mr. Keshav
Jatwani, Advocates.

versus

UNION OF INDIA & ANR.

.....Respondents

Through: Mr. Soumava Karmakar, SPC with
Ms. Jyoti Bajaj, Advocate for UOI.
Ms. Anushree Narain SSC with Mr.
Ankit Kumar, Advocate for R-2.

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W.P.(C) 6447/2025, CM APPLs. 29368/2025 & 29369/2025

SUNNY JAGGA

.....Petitioner

Through: Mr. Bimal Jain and Mr. Keshav
Jatwani, Advocates.



2025:DHC:4057-DB



versus

UNION OF INDIA & ANR.

.....Respondents

Through:

Mr. Chetanya Puri, SPC with Ms. Nisha Puri and Ms. S. Jiwani, Advocates for UOI.

Ms. Anushree Narain SSC with Mr. Ankit Kumar, Advocate for R-2.

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W.P.(C) 6449/2025, CM APPLs. 29371/2025 & 29372/2025

M/S VIKAS TRADERS

.....Petitioner

Through:

Mr. Bimal Jain and Mr. Keshav Jatwani, Advocates.

versus

UNION OF INDIA & ANR.

.....Respondents

Through:

Mr. Soumava Karmakar, SPC with Ms. Jyoti Bajaj, Advocate for UOI.

Ms. Anushree Narain SSC with Mr. Ankit Kumar, Advocate for R-2.

CORAM:

JUSTICE PRATHIBA M. SINGH

JUSTICE RAJNEESH KUMAR GUPTA

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through hybrid mode.
2. These are four writ petitions challenging the dated Order-in-Original bearing no. 203/ADC/D.N./Bhavan Meena/2024-25 04th February, 2025 (hereinafter, '*impugned order*'), which has been passed pursuant to a Show Cause Notice dated 24th May 2022 under Section 74 and 122 of the Central Goods and Service Tax Act, 2017 (hereinafter, '*CGST Act*').

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DHYANI
Signing Date: 21.05.2025
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W.P.(C) 6441/2025 & connected matters

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3. The Show Cause Notice was issued on the basis that Input Tax Credit (hereinafter, 'ITC') had been fraudulently availed of by several traders by generating fake invoices without supply of goods. The said five firms against whom the Directorate General of GST Intelligence (hereinafter, 'DGGI') started an investigation are as under:

- M/s S R Impex;
- M/s S R International;
- M/s R K Enterprises;
- M/s Vikas Impacts;
- M/s SK Traders.

4. The allegation against the said firms was to the effect that a substantial amount of ITC was availed of by these firms without supply of any goods or services. The amount of ITC availed of is set out below:

- M/s S R Impex-47.49 Crores
- M/s S R International-50.66 Crores
- M/s R K Enterprises-11.39 Crores
- M/s Vikas Impacts- 10.45 Crores
- M/s SK Traders-2.82 Crores

5. In so far as the Petitioners are concerned, there are two firms viz., M/s.Sheetal and Sons as also M/s.Vikas Traders run by one Mr. Sunny Jagga who is also the Petitioner in two of the writ petitions. One firm was in the name of the mother of Mr. Sunny Jagga and the second is run by him. As part of the investigation, statement of Mr. Sunny Jagga was recorded. Thereafter the Show Cause Notice and all the Relied Upon Documents (hereinafter, 'RUDs') were also served upon to Mr. Sunny Jagga. In the statement, the said Petitioner *i.e.* Mr. Sunny Jagga states as under:



“On being asked, I state that my firm M/s Sheetal & Sons was incorporated in 2008. I further state that in M/s Vikas Traders my mother Smt. Sheetal Jagga is the proprietor. I further state that I am responsible for all day to day business related activities of both the firms. M/s Sheetal & Sons is registered under GST with GSTIN 07AEHPJ8758DIZA and M/s Vikas Traders is registered with the GST via registration no. 07AAPPJ0956P121. On being asked I state that both the firms are engaged in the business of trading of dry fruits after importation of the same. On being asked, I state that before GST period we were registered with the sales tax department being a trader. I further state that the turn-over of M/s Sheetal & Sons for FY 2017-18 was Rs. 42.90 Crore approx, for FY 2018-19 was Rs, 55.88 Crore approx and for FY 2019-20 till date was Rs. 46.34 Crore (Without GST) and the turn-over of M/s Vikas Traders for FY 2017-18 (July onward) was Rs. 65.85 Crore approx, for FY 2018-19 was Rs. 104.91 Crore approx and for FY 2019-20 till date was Rs. 82.21 Crore (With GST). On being asked, I state that we purchase dry fruit mainly badam, walnuts, almond inshell, walnuts inshell and cloves etc. through import and after import we supply the same in domestic market. Our main registered buyers (wholesalers) of dry-fruits are M/s Starrh Almond King Pvt. Ltd., A.P, M/s Bhagirath Mutha & Co., Delhi, M/s Divnuitty Product Pvt. Ltd., Delhi, M/s Om Traders, Delhi and M/s A.S. Traders, Delhi, M/s A.R. Traders, Delhi etc.

On being asked, I state that we had issued invoices to M/s Om Traders, Delhi GSTIN No 07AQQPJ1446B2Z0 and M/s A.R. Traders, Delhi GSTIN No.07KWAPS8688JIZF and M/s A.S. Traders, Delhi, GSTIN No 07HXMPS9461K3ZB for dry-fruits as per directions of Sh. Gopal Sharma the owner of M/s G.S. Nuts in the same market. We had also sold the goods to M/s G.S. Nuts and have business relation with him for the last four years. On being asked I state that we have



issued invoices to M/s Om Traders, Delhi, M/s A.R. Traders, Delhi and M/s A.S. Traders, Delhi, as per instruction of Shri Gopal Sharma and have delivered the goods at different place as per his instructions. I do not remember the location of the premises where the goods was delivered. On being asked I state that I or any of my employees do not know any person or employee of M/s Om Traders, Delhi, M/s A.R. Traders, Delhi and M/s A.S. Traders, Delhi. I further state that I or any of my employees never visited the premises of these three entities. Today the officers informed me that M/s Om Traders, Delhi, M/s A.R. Traders, Delhi and M/s A.S. Traders, Delhi, are fake/non-existent firm and did not had any genuine business transaction, in this regard, I state that I had issued invoices on the direction of Sh. Gopal Sharma to these firm and delivered the goods at the premises as directed by him. I further state that I was not aware that these firms are fake and non-existent and I trusted Sh. Gopal Sharma and now I think that Sh. Gopal Sharma had cheated me and had got issued invoice by me to the fake/non-existent. I further state that I do not know Mr. Ritesh Aggarwal. I further submit that all the payments from these firms were received through RTGS only. I will get the details of accounts from my bank from which these RTGS were received in my bank account, and will inform you the details accordingly.”

6. On the basis of the above statement, demands have been raised and penalties have been imposed on the Petitioner in the impugned order.

7. The allegation of the Petitioner is that no personal hearing was granted to the Petitioners in this case. A perusal of the impugned order would show that the contrary is recorded in Paragraph Nos. 8.1 and 8.2, of the impugned order which are extracted below:

“8.1 **PH** dated 14.01.2025; 15.01.2025; 17.01.2025; 20.01.2025 & 21.01.2025 were granted to



the Noticees as mentioned in Table, above, for providing them opportunities for the personal hearing. However, some of them appeared and made their Oral as well as Written submission which have been duly considered. Further, w.r.t. to remaining Noticees, it has been observed that neither the Noticees nor their Authorized Representatives appeared for the personal hearing on any of the dates fixed for them. Therefore, I am compelled to decide the case ex-parte, for such non-responsive Noticees, on the basis of evidence(s) already available on record.

8.2 It is evident that the conduct of the Noticees is evasive. In my opinion, no purpose will be served to keep the adjudication proceedings pending in view of the non-cooperation from the Notices in the matter. I observe that even though the basic requirement of Principles of Natural Justice has been legally and dutifully complied with, the Noticees have failed to avail the opportunity. I accordingly proceed further to decide the case on merits.”

8. Ms. Anushree Narain, Id. Senior Standing Counsel for the Respondent submits that the Show Cause Notice and the RUDs have been issued to the Petitioner. The impugned order also records that the personal hearing notices have also been issued. In the opinion of this Court, there is no reason to disbelieve the same. However, Id. Counsel for the Petitioner disputes the fact that the personal hearing notices were issued.

9. On a query from the Court as to what is the e-mail address of the Petitioner, it is confirmed that the e-mail address of the Petitioner is sunny.dryfruits@gmail.com.

10. A perusal of the Show Cause Notice would show that the Show Cause Notice was issued at the said e-mail address along with all the RUDs running



into more than 189 pages.

11. At this stage, considering the nature of the transactions and the statement made by the Petitioner before the Department, this Court is of the opinion that exercising writ jurisdiction in this case is completely unwarranted. The network of firms which were being operated, the question whether any actual supplies were made or not and whether ITC was fraudulently availed would be factual issues that require deeper examination of evidence and documents. There is no reason to disbelieve the Department that the personal hearing notice was issued when admittedly the Show Cause Notice and the RUDs have also been issued. Moreover, Paragraph No. 8.1 of the impugned order records that the personal hearing notices have been issued. The Petitioners have been all along aware of the proceedings in the SCN.

12. The Petitioners after having received the Show Cause Notice and the RUDs even failed to file a reply to show that genuine supplies were made.

13. The allegation is also raised that the date of uploading on the portal of the Order-in-Original is wrong. This issue may be raised in the appeal by the Petitioner.

14. Under such circumstances, considering the allegation of fraudulent availment of the ITC and the fact that the Petitioner in his statement states that he does not know as to where the goods were delivered and the same were given to one Mr. Gopal Sharma, it is clear that there are factual issues that are required to be looked into. There is no argument of lack of jurisdiction or arbitrary exercise of power.

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 Article



226. 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. The relevant portion of the said decision reads 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.”*

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.

17. The Petitioner shall approach the Appellate Authority under Section 107 of the CGST Act along with the requisite pre-deposit by 15th July, 2025.

18. The Appellate Authority shall adjudicate the appeal on merits and not dismiss the same on the ground of limitation.

19. The petition is disposed of in above terms. Pending applications, if any, are also disposed of. Contentions of all parties are left open.

PRATHIBA M. SINGH
JUDGE

RAJNEESH KUMAR GUPTA
JUDGE

MAY 15, 2025/MR/ck