Mukesh Kumar Garg vs. Union of India & Others

Whether a writ petition is maintainable against a penalty order under Section 74 read with Section 122(1) of the CGST Act, when the petitioner — alleged mastermind of a fake ITC network of 28 firms — claims he is not a taxable person and that penalty,

Date of Order: May 9, 2025
Case Law No: GIB-DHC-2025-52
Source: GST INDIA Biz (www.gstindia.biz)

CASE DESCRIPTION / SUMMARY

BACKGROUND

The Department conducted a detailed investigation and found that the petitioner and his son had incorporated or established 28 firms which, in collusion with various other traders, facilitated fraudulent availment of Input Tax Credit without any actual supply of goods or services. One of the firms — a sole proprietary concern of the petitioner — was identified as part of this network. The total fake ITC availed by entities controlled by the petitioner's son was alleged to be more than Rs.115 crores. After investigation, analysis of documents, and recording of statements of associated persons, a Show Cause Notice dated 31.07.2024 was issued to several companies and individuals including the petitioner. A detailed Order-in-Original was passed on 30.01.2025 confirming demands and imposing penalties on the petitioner and multiple connected firms and individuals. Personal hearing was granted and the petitioner filed a reply. Aggrieved, the petitioner filed a writ petition before the Delhi High Court. Notably, the petitioner's son had already filed an appeal before the Appellate Authority against the very same impugned order.

CRUCIAL FACTS

The petitioner challenged the impugned order on the ground that he was not a taxable person under Section 74 read with Section 122(1) of the CGST Act, being neither the authorized signatory nor the operator of the main firm which availed the ITC — that firm being run by his son. He further argued that at best, under Section 122(3), the maximum penalty imposable on him was Rs.25,000/-. He also argued that under Section 75(13) of the CGST Act, once penalty is imposed under Section 73 or 74, no further penalty for the same act can be imposed under any other provision of the CGST Act. The Revenue contended that the petitioner's own sole proprietary concern was part of the fake firm

network, and that staff of the son had admitted to irregularities committed by both father and son. The Revenue also urged that the impugned order being an appealable order under Section 107, the writ petition was not maintainable — particularly given that one co-noticee (the son) had already availed of the appellate remedy against the same order.

COURT OBSERVATIONS (Verbatim — Crucial)

On misuse of ITC and the GST regime:

"*It is observed by this Court in a large number of writ petitions that this facility under Section 16 of the CGST Act has been misused by various individuals, firms, entities and companies to avail of ITC even when the output tax is not deposited or when the entities or individuals who had to deposit the output tax are themselves found to be not existent. Such misuse, if permitted to continue, would create an enormous dent in the GST regime itself.*"

On seriousness of allegations:

"*The allegations against the Petitioner in the impugned order are extremely serious in nature. They reveal the complex maze of transactions, which are alleged to have been carried out between various non-existent firms for the sake of enabling fraudulent availment of the ITC.*"

On writ jurisdiction and factual disputes:

"*The Court, in exercise of its writ jurisdiction, cannot adjudicate upon or ascertain the factual aspects pertaining to what was the role played by the Petitioner, whether the penalty imposed is justified or not, whether the same requires to be reduced proportionately in terms of the invoices raised by the Petitioner under his firm or whether penalty is liable to be imposed under Section 122(1) and Section 122(3) of the CGST Act.*"

On multiplicity of proceedings:

"*The persons, who are involved in such transactions, cannot be allowed to try different remedies before different forums, inasmuch as the same would also result in multiplicity of litigation and could also lead to contradictory findings of different Forums, Tribunals and Courts.*"

On when writ jurisdiction is available:

"*Writ jurisdiction is not barred in such cases, especially if there is any arbitrary action by the Department or the order itself is without jurisdiction or there is non-compliance of principles of natural justice. In the present case, none of the three grounds are made out as the SCN and the impugned order have been passed by the appropriate authority which has jurisdiction. Secondly, the*

Petitioner had been awarded an opportunity to file a reply and had also been afforded a hearing."

On clean hands doctrine:

"*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.*"

FINAL VERDICT

The writ petition is dismissed with costs of Rs.50,000/- to be deposited with the Delhi High Court Bar Association within four weeks. The petitioner is at liberty to urge all issues in an appeal under Section 107 of the CGST Act.

 THUMBS DOWN *(Against Assessee — Dismissed with costs)*

ADDITIONAL FOOTNOTES

CASES REFERRED BY COURT

S.No.	Case Name	Citation
1.	K.D. Sharma vs. SAIL *(SC — Clean hands doctrine; suppression of material facts in writ jurisdiction)*	(2008) 12 SCC 481
2.	Ramjas Foundation vs. Union of India *(SC — Person not coming with clean hands not entitled to relief in writ jurisdiction)*	(2010) 14 SCC 38
3.	Prestige Lights Ltd. vs. SBI *(SC — Suppression of material facts; writ court may dismiss petition without going into merits)*	(2007) 8 SCC 449
4.	Union of India vs. Hindalco Industries Limited *(SC — Relied upon by Petitioner's counsel)*	2023 (153) ELT 481 SC
5.	Paradise Foodcourt vs. State of Telangana *(Relied upon by Petitioner's counsel)*	2018 (61) GSTL

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