$~93

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

***Date of decision: 07th July, 2025***

\+ **W.P.(C) 9141/2025 & CM APPL. 38815/2025**

BHUPENDER KUMAR .....Petitioner

Through: Mr. Abhishek Garg and Mr. Ranesh Singh Mankotia, Advocates.

versus

ADDITIONAL COMMISSIONER ADJUDICATION CGST DELHI NORTH & ORS. .....Respondents

Through: Ms. Monica Benjamin SSC and Ms. Nancy Jain Advocates.

**CORAM:**
**JUSTICE PRATHIBA M. SINGH**
**JUSTICE RAJNEESH KUMAR GUPTA**

**Prathiba M. Singh, J. (Oral)**

1. This hearing has been done through hybrid mode.

**CM APPL. 38816/2025 (for exemption)**

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

**W.P.(C) 9141/2025 & CM APPL. 38815/2025**

3. The present petition challenges the impugned order dated 1st February, 2025 passed by the Central GST, Delhi North, raising a demand of a sum of approximately Rs. 285 crores against the Petitioner– Mr. Bhupender Kumar. The operative portion of the impugned order reads as under:

> *iv. I impose a penalty upon Shri Bhupinder Kumar,*

*equivalent to the ITC availed, collectively amounting to Rs.2,85,66,26,459/- under* ***Section 122(1A)*** *of the CGST Act, 2017 read with concurrent provisions of SGST Act, 2017 and further read with Section 20 of the IGST Act, 2017 and Order to recover the same from him;*

*v. I also impose a penalty of Rs.75000/- upon Shri Bhupinder Kumar, under* ***Section 122(3) (a), (d) & (e)*** *of the CGST Act, 2017 read with concurrent provisions of SGST Act, 2017 and further read with Section 20 of the IGST Act, 2017 and, Order to recover the same from him;*

*vi. I also impose a penalty of Rs.75000/- upon Shri Bhupinder Kumar, under* ***Section 125*** *of the CGST Act, 2017 read with concurrent provisions of SGST Act, 2017 and further read with Section 20 of the IGST Act, 2017 and, Order to recover the same from him;*

4. The brief background of the case is that the Petitioner is a GST consultant against whom a show cause notice was issued on 8th March, 2024 (hereinafter, *'the SCN')* by the Directorate General of Goods and Service Tax Intelligence, Ghaziabad Regional Unit *(hereinafter, 'DGGI')* along with three other individuals namely Sh. Naveen Monga, Sh. Anoop Kumar and Sh. Sanjay Sehgal.

5. The allegations in the SCN were that 44 fake firms were created and operated by Sh. Sanjay Sehgal and his associates. The Petitioner was one of the consultants engaged by Sh. Sanjay Sehgal who enabled the creation of the said firms. Initially the investigation was started on the ground that there were 44 fake firms but thereafter, when investigation was conducted, it was realized that there were 63 fake firms, out of which 54 firms were used for fraudulent availment and passing on of input tax credit *(hereinafter, 'ITC').*

6. The searches were conducted at four premises, including the office of Sh. Naveen Monga, residential address of the Petitioner, godown of the

Petitioner and the residential address of the Sh. Anoop Kumar. Statements were also recorded of all these persons and on the basis of the documents, etc. which were collected by the DGGI, the SCN was issued.

7. The submission on behalf of the Petitioner is that in so far as the Petitioner is concerned, the only notice to show cause was issued under Section 122(3)(a), (d) & (e) of the Central Goods and Service Tax Act, 2017 *(hereinafter, 'CGST Act').* The Petitioner's statement was also recorded prior to the issuance of the SCN. It is not in dispute that the Petitioner did not reply to the said SCN.

8. Ld. counsel for the Petitioner raises the following two grounds in the present petition:

i. That no notice was issued under Section 122(1A) of the CGST Act and hence, no penalty could have been imposed under said provision till the twin conditions under Section 122(1A) of the CGST Act are not satisfied.

ii. That the Petitioner was merely a consultant and the mastermind of the alleged transactions was admittedly Sh. Sanjay Sehgal even as per the DGGI. Sh. Sanjay Sehgal has also admitted to this position in his statement.

9. Ld. Counsel also relies upon the decision of the Allahabad High Court in ***WRIT TAX NO. 777 of 2022*** titled ***M/s Samsung India Electronics Private Limited v. State of U.P. & Ors.*** to argue that if the show cause notice does not contain a specific allegation, the final order cannot be passed on a ground not contained in the show cause notice. Reliance is also placed upon Section 75(7) of the CGST Act to reaffirm the said submission.

10. Mr. Garg submits that the impugned order also does not, anywhere,

come to the conclusion that the transactions were carried out at the Petitioner's behest or that he has retained the benefit of any alleged transactions. Ld. counsel for the Petitioner further submits that Section 122(1A) of the CGST Act could not have been invoked for any transactions prior to the said provision being enacted i.e. it cannot be made retrospectively applicable.

11. On the other hand, Ms. Monica Benjamin, ld. counsel for the Department submits that the SCN clearly supports the final findings in as much as in para 19.4.1 of the SCN, the penalty under Section 122 of the CGST Act of the CGST Act has been comtemplated and therefore, it cannot be argued that Section 122(1A) of the CGST Act has been incorrectly invoked. She further submits that the Petitioner, having chosen not to file any reply to controvert the position that he had attained any benefit from the alleged transactions, cannot now argue, after having stayed quiet, that the said findings have been arrived at by the Department in an incorrect manner. She further relies upon the decision of Allahabad High Court in ***WRIT TAX No. 1453 of 2025*** titled ***M/s Shashi Contractors v. State of U.P. & Anr.***

12. Heard. A perusal of the SCN reveals the malaise of availment of fraudulent ITC from and passing on of the same to non-existent firms and entities. A perusal of the SCN clearly contains all the allegations against the four individuals, including the Petitioner. The statement of the Petitioner was also recorded and the gist of the said statement is also set out in the said SCN.

13. When it comes to the action to be taken against the Petitioner, the show cause notice is clear to the following effect:

> ***19.2.3.1 The ITC of GST availed and passed (amounts mentioned in Table-A above) should not be denied as the same appears to be availed and passed on without any***

***concomitant supply of goods and services.***

*xxxxxxx*

***19.4.1 And Whereas, Sh. Naveen Monga, Sh. Bhupender Kumar, and Sh. Anoop Kumar aided and abetted Shri Sanjay Sehgal and they have jointly and severally contravened the provisions of Section 7, 16, 31, 37, 39 of the CGST Act, 2017, read with similar provisions of Delhi GST Act, 2017, read with similar provisions of UP GST Act, 2017 read with similar provisions of read with Section 20 of IGST Act, 2017. The aforesaid acts of commission and omission by Sh. Naveen Monga, Sh. Bhupender Kumar, and Sh.Anoop Kumar, jointly and severally, read with Sections 155 of the CGST Act, 2017 are liable to penalty under Sections 122 and 137 of the CGST Act, 2017 read with similar provisions of Delhi GST Act, 2017, read with similar provisions of UP GST Act, 201 7 read with similar provisions of read with Section 20 of IGST Act, 2017.***

***19.4.2 And therefore, Shri Sanjay Sehgal, being the mastermind and overall controller and operator of racket of fake firms is hereby required to show cause within 30 days of the receipt of this notice to the Additional/ Joint Commissioner (Adjudication-DGGI cases), Central GST Commissionerate Delhi North, Office of the Commissioner, CR Building, IP Estate, New Delhi-110002 as to why Penalty should not be imposed upon them in terms of Section 122(1) (A) of CGST Act, 2017, read with Delhi GST Act, 2017 read with UP GST Act, 2017 read with Bihar GST Act, 2017 read with Section 20 of the IGST Act, 2017, for furnishing false returns with intent to avail/pass ineligible ITC of GST; for false information with regard to registration particulars, either at the time of applying for registration, or subsequently; for issuing invoices and documents by using the registration number of another registered person; for aiding and abetting for offences. mentioned in Section 122(1) of CGST Act read with the SGST Act, 2017, and or***

***under Section 20 of the IGST Act, 2017; for failure to appear before the proper officer of central tax, to give evidences or produce documents in inquiry; for failure 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 in violation of the provisions of these Acts or the rules made thereunder.***

*19.4.3 And, Sh. Naveen Monga, Sh. Bhupender Kumar, and Sh. Anoop Kumar, jointly and severally, are hereby required to show cause within 30 days of the receipt of this notice to the Additional/Joint Commissioner (Adjudication-DGGI cases), Central GST Commissionerate Delhi North, Office of the Commissioner, CR Building, IP Estate, New Delhi-110002 as to why:-*

*19.4.3.1 Penalty should not be imposed upon them in terms of* ***Section 122(3)(a), 122(3)(d) & 122(3)(e)*** *of CGST Act, 2017, read with Delhi GST Act, 2017 read with UP GST Act, 2017 read with Bihar GST Act, 2017 read with Section 20 of the IGST Act, 2017, for furnishing false returns with intent to avail/ pass ineligible ITC of GST; for false information with regard to registration particulars, either at the time of applying for registration, or subsequently; for issuing invoices and documents by using the registration number of another registered person; for aiding and abetting for offences mentioned in Section 122(1) of CGST Act read with the SGST Act, 2017, and or under Section 20 of the IGST Act, 2017; for failure to appear before the proper officer of central tax, to give evidences or produce documents in inquiry; for failure 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 in violation of the provisions of these Acts or the rules made thereunder.*

***20.*** *The Noticee and Co-noticees are further required to produce all the evidence(s) upon which they intend to rely in support of their defence at the time of showing cause. They are further required to mention in their reply whether they wish to*

*be heard in person before the case is adjudicated. If no cause is shown within 30 days of receipt of this notice or if they do not appear before the adjudicating authority when the case is posted for hearing, the same will be decided ex-parte based on the evidence available on record.*

***21. This show cause notice is being issued based on records/information available -without any prejudice to any other action that is being taken or may be taken against the Noticees under the provisions of CGST Act 2017, SGST Act 2017, and/ or IGST Act, 20 I 7 and the rules made thereunder, or any other law for the time being in force in India."***

14. Along with the SCN, all the RUDs, the articles, documents etc. were attached and the same were served upon the Petitioner. The Petitioner's statements were also recorded by the Department during the course of the investigation and Sh. Sanjay Sehgal was also arrested on 12th February, 2022 and currently is out on bail.

15. The statements of Sh. Sanjay Sehgal and the Petitioner, as recorded, are set out below:

***3. Statements of accused persons recorded post searches dated 28.01.2022***

***3.1*** *During investigation, summonses were issued to Sh. Bhupender Kumar, Sh. Naveen Monga and Sh. Anoop Kumar for recording of statements and submission of documents in response to which they appeared in the office of DGGI, Ghaziabad Regional Office and their statements were recorded under Section 70 of CGST Act, 2017. Gist of these statements is as under:-*

*a)* ***Statement of Sh. Bhupender Kumar (ANNEXURE A6)****:- Statements of Sh. Bhupender Kumar were recorded on 28.01.2022, 29.01.2022 & 09.02.2022 wherein he inter-alia accepted that:-*

*• That his name is Bhupender and his residential address is H No.- 357, Near Old Shiv Mandir, Ghevra, Delhi-110081. His contact details are 9310115560/8377897450.*

*• That he has done M.B.A from MDU Rohtak in 2008. After that he started a private job as a data entry operator in Delhi VAT Department, Delhi. Later on, during GST regime in 2018, He met with Shri Sanjay Sehgal in VAT office and he started working for him. Sanjay Sehgal used to give him ID proofs such as PAN Card, electricity bills, mobile numbers, email IDs, rent agreements for GST registration of bogus firms and they used to give him Rs 5000/- per GST registration. The bogus firms registered by him were used for fake billings.*

*• That the residential address of Shri Sanjay Sehgal is 73-Radha Krishna Kunj Amrit Nagar, Ghaziabad. Shri Sanjay Sehgal is also an owner of a bar namely Boot Legger, Hauz Khas Village, Delhi. Shri Sanjay Sehgal is also a director in a company namely M/s Studd Hospitality India Private Limited and the Boot legger bar is operated by this company. Mobile number of Sanjay Sehgal is 8882452753.*

*• That the work of GST returns filing of these bogus firms was done by Sanjay Sehgal and associates at their own end.*

*• That Sh. Sanjay Sehgal directed him to receive two cheque books of the firms namely M/s Neetu Solar Industries and M/s Technext Solutions.*

*• That During the search at his residence H No.-366, Near old Shiv Mandir, Ghevra, Delhi, 04 PAN cards bearing number CGZPJ7377Q, AIVPB8445K, AMIPB2502N, FWUPP0465D have been resumed, Sh. Bhupender admitted that these three PAN cards were given to him by Sh. Sanjay Sehgal for GST registration of fake firms and he did following GST registration of bogus firms by using these PANs and handed over to Sh. Sanjay Sehgal:-*

*• That During the search at his residence H No.-366, Near old Shiv Mandir, Ghevra, Delhi, 04 PAN cards bearing number CGZPJ7377Q, AIVPB8445K, AMIPB2502N, FWUPP0465D have been resumed, Sh. Bhupender admitted that these three PAN cards were given to him by Sh. Sanjay*

*Sehgal for GST registration of fake firms and he did following GST registration of bogus firms by using these PANs and handed over to Sh. Sanjay Sehgal·-*

| S. No. | GSTIN | Trade Name |
|---|---|---|
| 1 | 07CGZPJ7377Q2ZX | J D ENTERPRISES |
| 2 | 07CGZPJ7377Q1ZY | SHIV SHAKTI SOLAR CO. |
| 3 | 07AIVPB8445K2ZN | TECHNEXT SOLUTIONS |
| 4 | 07AIVPB8445K1ZO | SOLAR ENERGY INDUSTRIES |
| 5 | 07AIVPB8445K3ZM | TECHNIC SOLUTION |
| 6 | 07FWUPP0465D1Z5 | ENERGY POWER ENTERPRISES |
| 7 | 07FWUPP0465D2Z4 | SHRI GANESH SALES CORPORATION |

*• That an associate of Shri Sanjay Sehgal gave documents for the purpose of GST registration of three fake firms to him which got GST registration as M/s Mahalaxmi Enterprises (07BIEPA0176L1ZFJ, M/s Om Traders (07FCNPK2764M1ZX) and M/ s Beta Design (GSTIN-07AJUPC2985R1Z7). Further, he does not remember the contact details of said associate of Shri Sanjay Sehgal.*

*• That he gave user ID and password of these above-mentioned fake firms to Shri Sanjay Sehgal and these firms were also being operated by Sh. Sanjay Sehgal and his associates only.*

*• That, he was shown the printouts taken from the pen drive resumed from the premises of his accountant Sh. Anoop Kumar wherein a list/sheet of companies/firms along with id and password* ***(ANNEXURE: A7)*** *was found and he put his dated signature in token of having seen the same. In this regard, he stated that all these firms were created by him and his accountant on the PAN numbers which were provided by Sh.Sanjay Sehgal. After that he had provided the ID and password of these firms to Sh.Sanjay Sehgal. Sh.Sanjay Sehgal, operates the said firms for issuing invoices without supply of goods or services.*

*• That, he was shown the notebook which was resumed during searches at his residence which had details of firms, Sh. Bhupender in his statement dated 29.01.2022 admitted that he had seen the said notebook* ***(ANNEXURE: A8)*** *and put*

*his dated signature on first and last page of the said notebook. He stated that these firms were created by him and his accountant namely Sh.Anoop Kumar. After that the user-ID and password were given to Sh.Sanjay Sehgal. Shri Sanjay Sehgal and his associates had taken registration of these firms only for paper transactions. For ready reference a tabulation of the firms mentioned in the above Annexure is reproduced below·-*

| Sr.no. | GSTIN | Trade Name/Legal Name |
|---|---|---|
| 1 | 07AJUPC2985R1Z7 | Beta Design |
| 2 | 07FCNPK2764M1ZX | Om Traders |
| 3 | 07EWEPK1137A1Z2 | G K Enterprises |
| 4 | 07CGXPD9195E1ZR | Inder Enterprises |
| 5 | 07BYUPS7672B1ZR | Accurate Exims |
| 6 | 07EMAPM3065F1Z7 | Samarpita Enterprises |
| 7 | 07BSXPG2214E1ZU | Hindustani Enterprises |
| 8 | 07CGZPJ7377Q1ZY | Shiv Shakti Solar Co |
| 9 | 07AVHPN4132A2Z0 | Sai Trading |
| 10 | 07FDZPR0849P1Z8 | Sunlight Enterprises |
| 11 | 07FDZPR0849P2Z7 | Power Source Enterprises |
| 12 | 07FRLPK3059L1Z8 | Bhoraj Enterprises |
| 13 | 07ENIPK7836P1Z3 | Accurate Exims |
| 14 | 07DQUPS2635Q1ZP | Satya Trading Co |
| 15 | 07EHSPM6847L1ZB | Naveen Kumar Meena |
| 16 | 07AIVPB8445K2ZN | Technext Solutions |
| 17 | 07ATCPA2820R1ZP | Anuj |
| 18 | 07CLJPN7689C1ZL | Neetu Solar Industries |

*• That as per GSTR-lM returns of the above-mentioned bogus firms registered by him for Shri Sanjay Sehgal and associates, input tax credit Rs.30 Crore (approx.) has been passed on, he inter-alia admitted that no actual supply of goods have been made along with the sale bills of these firms. Shri Sanjay Sehgal and associates had taken registration of these firms only for paper transactions_*

*• That, during search at his residence located at H No.-366, Near old Shiv Mandir, Ghevra, Delhi, SIM cards number 7017679261, 7042156681, 8930836615 and 8930829318 have been resumed to which he inter-alia accepted that these SIM cards are being used in GST registration of fake firms. He stated that KYC enabled SIM cards were arranged by Shri Sanjay Sehgal.*

*• During recording of statement, he also tendered his Motorola Phone Sr.No.-ZF6525CLC4,IMEI-*

*354406161391116/23, 354406161391124/23, on scrutiny, it was found that there were various records/documents/whatsapp chat which were· relevant to the investigation. Therefore vide Panchnama dated 29.01.2022 drawn in the office of DGGI, Ghaziabad Regional Unit, the same has been resumed.* ***(ANNEXURE: A9)****.*

*• That on being asked that whether he had contacted Sh.Sanjay Sehgal on phone or have meet him physically, he stated that normally Sh.Sanjay Sehgal contacted him on his mobile number 8882452753 through whatsapp. However, He used to meet Sh. Sanjay Sehgal physically in his bar namely Boot Legger, Hauz Khas Village, Delhi also.*

*• That on being shown the printout of the whatsapp chat with a person namely Sanjay* ***(Annexure: A10)*** *the said printout was taken in his presence from his phone and proceedings were recorded in Panchnama dated 02.02.2022****(Annexure: A11)*** *drawn in the office of DGGI, Ghaziabad Office. In the said whatsapp printout documents/ records of some companies/firms i.e. registration Certificate of M/s Amit and Mohit Trading Pvt. Ltd.(GSTIN-07AATCA4013D1ZY), M/ s Gardena Trading Pvt.*

*Ltd. (GSTIN-07AAICG4470B1ZU) E-pan CARD of M/s Consummate IT solutions Pvt. Ltd.(PAN-AAGCGCN4703Q), M/s Bebrown engineering Pvt. Ltd. (e-Pan-AAICG4470B), M/S Dravmore Infrastructure Pvt. Ltd.(e-PANAATCA4013D) Certificate of Incorporation Pursuant to Change of name of M/s Navgrah Trade Venture Pvt. Ltd, were sent by Mr. Sanjay, he*

*inter-alia stated that he has seen the printout of his whatsapp chat with Sanjay and put his dated signature in token of having seen the same. In this regard, he stated that this chats belongs to Mr. Sanjay Sehgal and these companies were operated by Mr.Sanjay Sehgal. He facilitates the liaison work in DVAT office as he has worked for around 04 years as DEO in DVAT office. He also admitted that Sh. Sanjay Sehgal wants to reactivate the registration of aforesaid companies as the registration of these companies had been cancelled by*

*the tax authorities.*

*• That on being asked regarding companies i.e. M/s Amit and Mohit trading Pvt. Ltd.(GSTIN-07AATCA4013D1ZY), M/s Gardena Trading Pvt. Ltd. (GSTIN-07AAICG4470B1ZU), M/s Consummate IT solutions Pvt. Ltd.(PAN-AAGCGCN4703Q), M/s Bebrown engineering Pvt. Ltd. (Pan-AAICG4470B), M/s Dravmore Infrastructure Pvt. Ltd.(PAN-AATCA4013D) and M/s Navgrah Trade Venture Pvt. Ltd, he stated that M/s Amit and Mohit trading Pvt. Ltd.(GSTIN-07AATCA4013D1ZV), M/s Gardena Trading Pvt. Ltd. (GSTIN-07AAICG4470BlZU), M/s Consummate IT solutions Pvt. Ltd.(PAN-AAGCGCN4703Q), M/s Bebrown engineering Pvt. Ltd. (Pan-AAICG4470B), M/s Dravmore Infrastructure Pvt. Ltd.(PANAATCA4013D) and M/s Navgrah Trade Venture Pvt. Ltd are nonexistent/fake entities created on the identity of other persons and having business on paper only. These companies were created by Mr. Sanjay Sehgal for passing on fake Input Tax Credit to various beneficiaries units/ firms/ companies.*

*• On being shown the printout of his whatsapp Chat **(ANNEXURE: 12)** with mobile No.-+971524835728. In the said whatsapp printout documents/records of some companies/firms i.e. registration Certificate of M/s Shri Venkatesh G traders (GSTIN-07BLEPJ1357H1Z8), a paper having ARN No.-AA0701220348498, AA070122036224U, AA070122036449E were sent to him, he stated that this Number belongs to Mr. Sanjay Sehgal and M/s Shri Venkatesh G traders (GSTIN-07BLEPJ1357H1Z8) is operated by Mr.Sanjay Sehgal. He also admitted that Sh. Sanjay Sehgal wanted to reactivate the registration of M/s Shri Venkatesh G traders (GSTIN-07BLEPJ1357H1Z8) as the registration of these companies had been cancelled by the tax authorities.*

*• Sh. Bhupender also admitted that M/s Shri Venkatesh G traders (GSTIN-07BLEPJ1357H1Z8) is also a non-existent/fake entity and having business on paper only. The firm was also created by Mr. Sanjay Sehgal for passing on fake Input Tax Credit to various beneficiaries units/ firms/*

*companies.*

*• He also admitted that a paper having ARN No.- AA0701220348498, AA070122036224U, AA070122036449E was sent to him for approval of GST registration from the office of DVAT. The firms created on the above said ARN were also fake/non-existent firms created by Mr. Sanjay Sehgal on the identity of other persons.*

***5. Statement of Sh. Sanjay Sehgal recorded U/s 70 of CGST Act, 2017***

*5.1 Spot summon was issued to Sh.Sanjay Sehgal after conclusion of search at his residential premise and his statement dated 11.02.2022 was recorded in the office of DGGI, GRU* ***(ANNEXURE: A16).*** *The gist of the statement is as under:-*

*• That his name is Sanjay Sehgal and he is 12th pass and his contact number is 8882452753 and he also uses WhatsApp numbers 9599141282 and +971524835728.*

*• That his PAN number is ASLPS6566L and he resides at 73, Radha Krishna Kunj, Amrit Nagar, Ghaziabad, Uttar Pradesh and his email id is sehgal.1974@gmail.com and studdhospitality1975@gmail.com.*

*• That main source of his family income is his business and his brothers are in refrigeration business. He is having retro-bar named Bootlegger situated at Hauz Khas village, New Delhi. He is director/partner in Studd Hospitality India Pvt. Ltd and he is not associated with any other company/firm.*

*• That he knew Sh. Bhupender Kumar, Sh. Naveen Monga and Sh. Anoop Kumar for last 04 years and he met all of them at Delhi State GST office where they worked. He also accepted that Sh. Bhupender Kumar, Sh. Naveen Monga and Sh. Anoop Kumar created fake firms on his direction and he along with some of his associates used to issue bills from these fake firms without actual supply of goods/services and Sh. Bhupender Kumar, Sh. Naveen Monga and Sh. Anoop Kumar gave login IDs and password of some of the active and inactive firms which automatically got migrated into GST in which he along with some of his associates issued*

*bills, e-way bills, filled GST return without actual supply of goods/service from those firms.*

- *That he was shown the statements dated 28.01.2022, 29.01.2022 and 09.02.2022 of Sh. Bhupender Kumar and he put his dated signature in token of having seen the same and agreed with all the content of the said statements. Sh. Sanjay Sehgal also accepted that he had operated the firm M/ s. Beta Design and he is responsible for all the transactions carried out in the said fake firm.*
- *That Sh. Sanjay Sehgal had accepted that all the firms mentioned in the statement of Sh. Bhupender Kumar dated 28.01.2022, 29.01.2022 & 09.02.2022 are known to him and created and operated by him and he is responsible for all the transactions undertaken in all these firms.*
- *That he collected PAN Card, Aadhar Card, mobile number and other documents required for creation of firm from different persons in exchange of commission of Rs. 10,000-15,000/- and with the help of the documents obtained fraudulently he used to create firm from which he issued invoices without actual supply of underlying goods/services*
- *That he had created various fake/ non existing firm/companies and he does not remember the name of all the fake firms created by him. That name of some of the fictitious/fake firms are NAVGRAH TRADE VENTURE PRIVATE LIMITED (GSTN 07AAGCN4703Q1Z2), GARDENA TRADING PRIVATE LIMITED (07AAICG4470B1ZU), DRAVMORE INFRASTRUCTURE PRIVATE LIMITED (07AATCA4013D1ZY), CONSUMMATE IT SOLUTIONS PRIVATE LIMITED (07AAGCN4703Q1Z2), SHRI VENKATESHWARA G TRADERS (07BLEPJ1357H1Z8). That invoices/bill amounting to Rs.100 crores(approx.) had been issued from above mentioned firms without actual supply of underlying goods/services in which around Input Tax Credit (ITC)to the tune of Rs 12 Crores had been passed on to various firms/companies.*

  *Evidences collected from the searches conducted at various premises as mentioned above, analysis of digital evidences*

> *retrieved from the various devices resumed and the statements tendered by Sh. Bhupender Kumar, Sh. Naveen Monga, Sh. Anoop Kumar and Sh, Sanjay Sehgal, it had revealed that Shri Sanjay Sehgal was the mastermind of creation and operation of various fake firms with the active connivance of Sh. Bhupender Kumar, Sh. Naveen Monga and Sh. Anoop Kumar for availment and passing on of Input Tax Credit without concomitant supply of goods.*

16. A perusal of the above statements would show that the Petitioner was all along aware that he was supporting Mr. Sanjay Sehgal in creating fake firms. The exact role which he may have played during this process is a factual analysis which this Court cannot undertake in a writ petition.

17. The Petitioner was thus fully aware and enabled the creation of these fake firms and was aware that ITC was being fraudulently availed of. The Petitioner, being a GST consultant who was also earlier working with the Delhi GST Department has clearly made use of his knowledge and assisted Mr. Sehgal in setting up these fake firms.

18. While the Petitioner claims that he was paid a commission of Rs. 10,000/- to Rs. 15,000/-, which would constitute benefits derived from the incorporation of these fake firms and passing fraudulent ITC. The Petitioner chose to not file any reply to the SCN or to rebut the contention that he had obtained benefit of the alleged fraudulent transactions. Section 122(1A) of the CGST Act would clearly be covered in the broader provision of Section 122 of the CGST Act which is clearly mentioned in the show cause notice.

19. It was up to the Petitioner to appear before the Department, to file a reply to the SCN and to show to the Department that he had not derived any benefit. On a query from Mr. Garg as to why the Petitioner chose not to appear

before the Department and file reply, the response is that under Section 123 of the CGST Act, the maximum penalty is Rs. 25,000/- and therefore the Petitioner chose not to file reply.

20. This Court is clearly concerned about the manner in which the fraudulent availment of large quantum of ITC to the tune of Rs. 285,66,26,459/- through 54 firms has been conspired and connived by the parties involved.

21. The structuring of these firms, the manner in which the transactions have to be done, are all issues in which the Petitioner would have clearly had a role to play, as much as he was a GST consultant. Under such circumstances this Court is unable to accept the explanation given by the Petitioner that he was only paid Rs. 5,000/- for such a massive fraudulent availment of the ITC. All the firms were clearly fraudulent, they did not exist and the Petitioner was fully aware of the manner in which they were created, may be at the behest of the Sh. Sanjay Sehgal, to enable fraudulent availment of ITC.

22. The issues involved are factually complex in nature and not to be gone into under writ jurisdiction. This Court is convinced that in so far as the two grounds raised by the Petitioner i.e. the application of Section 122(1A) of the CGST Act and fulfilment of conditions under the said provisions are concerned, the said grounds can be raised by the Petitioner by way of an appeal.

23. Since the Petitioner has chosen not to rebut the allegations that he was benefitted from the transactions he cannot, today, seek to argue and he did not derive any benefit from the said transactions.

24. In so far as the retrospective application of Section 122(1A) of CGST Act is concerned, the same would be governed by the date of the SCN. The

SCN was issued on 8th March, 2024. The law has been clearly amended to also implicate such individuals who may be involved in such fraudulent transactions and the said law cannot be set at naught by holding the same to not be retrospectively applicable to transactions which took place prior to the date when the law was enacted. On the day when the SCN was issued, the provision Section 122 (1A) was in place.

25. The manner in which fraudulent ITC has been availed would also show that it was a continuous process and not a one time act of the parties involved. Under such circumstances Section 122(1A) of the CGST Act was clearly applicable.

26. This Court has already taken a view in ***W.P.(C) 5737/2025*** titled ***Mukesh Kumar Garg vs. Union of India & Ors.*** that where cases involving fraudulent availment of ITC are concerned, considering the burden on the exchequer and the nature of impact on the GST regime, writ jurisdiction ought not to be exercised in such cases. The relevant portions of the said judgment are set out below:

> *"11. The Court has considered the matter under Article 226 of the Constitution of India, which is an exercise of extraordinary writ jurisdiction. The allegations against the Petitioner in the impugned order are extremely serious in nature. They reveal the complex maze of transactions, which are alleged to have been carried out between various non-existent firms for the sake of enabling fraudulent availment of the ITC.*
>
> ***12. The entire concept of Input Tax Credit, as recognized under Section 16 of the CGST Act is for enabling businesses to get input tax on the goods and services which are manufactured/supplied by them in the chain of***

***business transactions. The same is meant as an incentive for businesses who need not pay taxes on the inputs, which have already been taxed at the source itself. The said facility, which was introduced under Section 16 of the CGST Act is a major feature of the GST regime, which is business friendly and is meant to enable ease of doing business.***

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

*14. As is seen in the present case, the Petitioner and his other family members are alleged to have incorporated or floated various firms and businesses only for the purposes of availing ITC without there being any supply of goods or services. The impugned order in question dated 30th January, 2025, which is under challenge, is a detailed order which consists of various facts as per the Department, which resulted in the imposition of demands and penalties. The demands and penalties have been imposed on a large number of firms and individuals, who were connected in the entire maze and not just the Petitioner.*

***15. The impugned order is an appealable order under Section 107 of the CGST Act. One of the co-noticees, who is also the son of the Petitioner i.e. Mr. Anuj Garg, has already appealed before the Appellate Authority.***

***16. Insofar as exercise of writ jurisdiction itself is concerned, it is the settled position that this***

***jurisdiction ought not be exercised by the Court to support the unscrupulous litigants.***

***17. Moreover, when such transactions are entered into, a factual analysis would be required to be undertaken and the same cannot be decided in writ jurisdiction. The Court, in exercise of its writ jurisdiction, cannot adjudicate upon or ascertain the factual aspects pertaining to what was the role played by the Petitioner, whether the penalty imposed is justified or not, whether the same requires to be reduced proportionately in terms of the invoices raised by the Petitioner under his firm or whether penalty is liable to be imposed under Section 122(1) and Section 122(3) of the CGST Act.***

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

27. Under these circumstances, this Court is not inclined to entertain the present writ petition. However, since the impugned order is of 21st January, 2025, this Court is of the view that though limitation period has expired, he can be given an opportunity to avail of his appellate remedy in accordance with law under Section 107 of the CGST Act, 2017.

28. The said appeal may be filed within a period of one month, as prayed by Mr. Garg along with the requisite pre deposit. If the same is filed within a period of one month, it shall be adjudicated on merits and shall not be dismissed on the ground of limitation.

29. The petition is disposed of in said terms. Pending application(s), if any,

also stand disposed of.

**PRATHIBA M. SINGH**
**JUDGE**

**RAJNEESH KUMAR GUPTA**
**JUDGE**

**JULY 7, 2025**/*da/ss*