



\$~55

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

Date of Decision: 06th May, 2025

+

W.P.(C) 6006/2025

M/S MAHESH FABRINOX PVT. LTD

.....Petitioner

Through: Mr. N.K. Sharma and Mr. Kapil
Gautam, Advocates.

versus

UNION OF INDIA & ANR.

.....Respondents

Through: Ms. Neha Rastogi, SPC with Mr.
Animesh Rastogi, Mr. Vibhav Singh,
Mr. Shashank Pandey and Mr. Rajat
Dubey, Advocates for R-1.
Mr. Akash Verma, Sr. SC, CBIC with
Ms. Aanchal Uppal, Advocate.

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. 27487/2025 (for exemption)

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

W.P.(C) 6006/2025

3. The present petition has been filed by the Petitioner – M/s Mahesh Fabrinor Pvt. Ltd. (hereinafter “*the Petitioner Firm*”) under Articles 226 and 227 of the Constitution of India, challenging the Order-in-Original dated 1st February, 2025, passed by the Additional Commissioner, Central Goods and Services Tax (hereinafter “*the impugned order*”). Vide the impugned



order a demand has been raised against the Petitioner Firm for fraudulent availment of Input Tax Credit (hereinafter “ITC”).

4. The grievance of the Petitioner Firm is that the reply was filed by the Petitioner Firm, however, the same was not considered and no personal hearing was given prior to passing of the impugned order. Ld. Counsel for the Petitioner Firm points out that in the said reply, it was clearly stated that in the year 2017-18, which is the relevant financial year, the Petitioner Firm had not even commenced its operations. Hence, there was no question of any supplies being taken from any other firm or entity in the said financial year.

5. This position is disputed by Id. Counsel for the Respondent, who submits that three hearing notices were issued to the Petitioner Firm for hearing on 27th November, 2024, 4th December, 2024 and 27th December, 2024,. However, the said hearings were not attended by the Petitioner Firm. In addition, it is submitted that prior to passing of the impugned order, the concerned authority had verified from the portal that no reply had been uploaded. In this regard the Id. Counsel has also handed over a screenshot of the portal taken prior to passing the impugned order.

6. Ld. Counsel for the Petitioner Firm has countered this position and has laid reliance on the Form GST DRC-06, attached with the petition, wherein it is reflected that the Petitioner personal hearing was requested.

7. Heard Id. Counsels for the parties.

8. The impugned order has been passed pursuant to the show cause notice dated 4th August, 2024. The allegation in the show cause notice and in the impugned order is that one Mr. Karan Kumar Agarwal had created a network of firms in order to fraudulently avail of ITC by paying



commissions to such firms. It is alleged that invoices were purportedly fabricated and raised by the said firms without supply of any goods and on the strength of the said invoices, ITC was availed. The Petitioner Firm is one such firm which had raised invoices against one of the fake firms set up by Mr. Karan Kumar Agarwal and was passed on the benefit of ITC.

9. The Court has perused the reply of the Petitioner Firm. The stand of the Petitioner Firm in the said reply is that it has had no dealings with Mr. Karan Kumar Agarwal. The relevant portion of the said reply reads as under:

“Respected Officer,

We are in receipt of show cause notice in form No. CST DRC 01, dated 04/08/2024, issued under section 74 of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as the 'CGST Act') regarding availing of ineligible ITC on the strength of goods to the extent of Rs. 2,62,66,466/- (CGST Rs. 1,31,66,233/- SGST Rs. 1,31,66,233/-) and requiring us to show as to why interest U/s 50 of the 'CGST Act' and penalty under the provisions of section 74, 122(1)(ii), 122(1)(vii), 122(1)(x), 122(1)(xii) and 122(1)(xvi) of CGST Act, should not be imposed. In this connection, it is respectfully submitted as under:

1. *In the SCN at Table-I, a list of 14 concerns is mentioned which are alleged as registered and operated. by Sh. Karan Kumar Agarwal to avail and pass on ineligible ITC on the strength of invoices issued without actual supply of goods/services.*

Further, at Table-2 of SCN, a detailed concern-wise list of various taxpayers who have availed ITC (recipients registered in the jurisdiction of Delhi West) on the basis of goodsless invoices from 14 firms being operated by Sh. Karan Kumar Agarwal, is given.

The name of our Company 'Mahesh Fabrinex Private limited' is appearing at Table-2 at page no. 3 of SCN and at Table 49 at page no. 149 of the SCN, where the Company is alleged to have taken in-eligible ITC on the basis of invoices



issued by 'M/S Jai Shri Banke Bihari Traders' (07 AAQFJ5387F1ZV). In this connection it is respectfully submitted that:

Our Company was registered in GST w.e.f. 28/11/2017 and during the F/y 2017-18, the Company was not having trading and manufacturing activity. The manufacturing unit of the Company at - KH No. 93/15, Gali No. 1, Mundka Industrial Area, South Side, New Delhi-110041, was under the process of installation and only machinery and other assets were being purchased. **Therefore, question of purchasing goods from the parities mentioned in the SCN and availing ITC should not arise.** Copy of summary of supply declared and ITC claimed along with copy of GSTR-2A is **enclosed herewith**. In view of this it is very kindly requested to please vacate the notice.

for Mahesh Fabrinox Private Limited.”

10. However, in contrast to this position, the impugned order records as under:

“b. In pursuance of summons dated 06.08.2022 **voluntary statement of Sh. Vishu Goyal director in M/s Mahesh Fabrinox Private Limited was recorded where under he interalia stated that he had met Sh. Karan Kumar Agarwal once and he offered to supply him goods less invoices;** that he agreed for the same and he used to pay him 6% of the total tax value against the said goods less invoices that they have received both types of consignments for certain invoices were received without goods whereas majority of invoices were received along with goods; that he was aware of the fact that purchasing goods less invoices is illegal under the GST Act however during the covid period, his business got down and to sustain the expenses he agreed to the offer of Sh. Karan Kumar Agarwal; that they have purchased total goods of value of Rs.13,84,56,745/- from M/s Jai Shree Banke Bihari Traders.”

11. A perusal of the reply and the statement of Mr. Vishu Goyal, Director



of the Petitioner Firm shows that the stands taken in the same are completely at variance with each other. In the statement which was recorded pursuant to summons of 6th August, 2022 the Director of the Petitioner is stated to have clearly admitted that he knew Mr. Karan Kumar Agarwal and for fraudulent availing of the ITC, he was paid 6% commission. The said Mr. Goyal was also aware of the fact that goods-less invoices were being raised by the Petitioner Firm which is illegal.

12. On a query from the Court, Id. Counsel for the Petitioner admits that the statement of Mr. Goyal was recorded, by the Department.

13. The GST number of the Petitioner is also clearly set out in the impugned order. The impugned order also reveals a complex maze, which has been created by the main person *i.e.*, Mr. Karan Kumar Agarwal, in order to avail fraudulent ITC by showing sale/purchase of goods, when actually in reality, there was no sale or purchase or movement of goods.

14. This Court in the present writ petition is exercising jurisdiction under Article 226 of the Constitution of India and when there is an allegation of such large-scale fraud, to the tune of more than Rs. 56.2 crores, being committed with the involvement of a total of 527 firms including the Petitioner Firm, the Court has to be circumspect in exercise of its powers.

15. This Court notices a pattern in which such persons, who had either availed of fraudulent ITC or have enabled the availment of fraudulent ITC repeatedly have challenged orders imposing penalty under Section 74 of the Central Goods and Services Act, 2017 before this Court, invoking the writ jurisdiction, on some technical grounds.

16. This Court also takes note, with some consternation, that such large scale fraudulent availment of ITC without actual passing of goods or



services may, if left unchecked, can lead to severe damage to the GST framework itself, which is meant to encourage legally entitled persons and businesses to avail of ITC and other similar facilities such as drawbacks etc.

17. We are of the opinion that in such cases, so long as there is no violation of natural justice or jurisdictional error, writ jurisdiction ought not to be exercised, especially if the Petitioner has not come with clean hands. In the present case there is no infraction, as the show cause notice was duly issued to the Petitioner Firm and the personal hearing notices have also been provided.

18. There is also no arbitrary exercise of power by the Department, which would require exercising of writ jurisdiction. As is evident from the impugned order, various persons and entities including that of the Petitioner have either facilitated availment of or in fact availed ITC, by entering into arrangements with the main proponent - Mr. Karan Kumar Agarwal.

19. In these circumstances, having seen the hearing notices, the screenshot of the portal and the reply of the Petitioner Firm along with the statement of the Director of the Petitioner Firm, which is recorded in the impugned order, the Court is not inclined to entertain the present writ petition.

20. In the opinion of the Court, *prima facie*, considering the contradictory stand taken in the reply and the statement of the Petitioner's Director, the stand of the Department cannot be held to be incorrect or untenable. The impugned order does no warrant interference by this Court, in exercise of writ jurisdiction.

21. In the facts and circumstances of this case, the present petition is dismissed with costs of Rs. 1 lakh to be paid to the Delhi High Court Bar



Association within two weeks.

22. If the costs are not paid, Mr. Vishu Goyal, Director of the Petitioner Firm, shall remain present in the Court on the next date of hearing.

23. At this stage, Id. Counsel for the Petitioner Firm seeks permission to withdraw the present petition, which, this Court is not inclined to grant considering the nature of the matter. The Petitioner is however free to avail of its remedies in accordance with law, including by way of Appeal, if so available.

24. Pending application(s), if any, also stand disposed of.

25. List for reporting compliance on 27th May, 2025.

PRATHIBA M. SINGH
JUDGE

RAJNEESH KUMAR GUPTA
JUDGE

MAY 06 2025/nd/msh