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

% ***Date of Decision: 15.09.2026***

\# **CNR No. DLHC010231162026**

\+ W.P.(C) 7098/2026 and CM APPL. 34999/2026

RISHIRAJ SINGH RATHORE .....Petitioner

Through: Mr. Kishore Kunal, Ms. Runjhun Pare and Mr. Akshay Agarwal, Advs.

versus

COMMISSIONER OF CGST, DELHI WEST COMMISSIONERATE & ANR. .....Respondents

Through: Ms. Monica Benjamin, SSC with Ms. Laiba Arif and Ms. Prerika Narang, Advs.

(47)

\# **CNR No. DLHC010233512026**

\+ W.P.(C) 7137/2026 and CM APPL. 34990/2026

KHUSHNUD KHAN .....Petitioner

Through: Mr. Kishore Kunal, Ms. Runjhun Pare and Mr. Akshay Agarwal, Advs.

versus

COMMISSIONER OF CGST, DELHI WEST COMMISSIONERATE & ANR. .....Respondents

Through: Ms. Monica Benjamin, SSC with Ms. Laiba Arif and Ms. Prerika Narang, Advs.

CORAM:
HON'BLE MR. JUSTICE ANIL KSHETARPAL
HON'BLE MS. JUSTICE SHAIL JAIN

J U D G M E N T (ORAL)

ANIL KSHETARPAL, J.

1. The present two Petitions have been filed by the Petitioners, Directors of M/s Sterne India Pvt. Ltd., seeking issuance of a writ in

the nature of *certiorari*, to quash a common Order-in-Original dated 31.03.2026 passed by the Respondent No.1, whereby a penalty of Rs. 27,11,59,404/- came to be imposed upon the Petitioners under Section 122(1A) of the Central Goods and Services Tax, 2017[1].

FACTUAL BACKGROUND:

2. In order to comprehend the issues involved in the present case, relevant facts in brief are required to be noticed.

3. Mr. Rishiraj Singh Rathore[2] and Mr. Khushnud Khan[3], were at the relevant time, Directors of M/s Sterne India Private Limited[4], a company, *inter alia*, engaged in the trading of mobile phones and electronic goods, registered under the Act of 2017 at various places of business in Delhi, Maharashtra, West Bengal, Telangana and Karnataka.

4. Upon an intelligence received by the Competent Authority regarding fraudulent availment/passing of Input Tax Credit (ITC) involving issuance of fake invoices without any corresponding supply of goods or services, an investigation was initiated by Directorate General of GST Intelligence (DGGI), Gurugram Zonal Unit into certain suppliers of mobile phones. During the course of investigation, it was found that several firms shown as suppliers to the Petitioners Company were non-existent at their declared places of business.

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[1] hereinafter referred to as 'Act of 2017'
[2] hereinafter referred to as 'Petitioner No.1'
[3] hereinafter referred to as 'Petitioner No.2'
[4] hereinafter referred to as 'the Petitioners Company'

5. A further physical verification of these bogus firms revealed that they had no genuine inwards supplies and were merely created to pass on fraudulent ITC without any actual movement of goods. On the strength of the above findings, an investigation was also initiated against the Petitioners Company, in its capacity as the beneficiary/availer of the fraudulent ITC. Thereafter, summons dated 22.02.2022 and 10.03.2022 were issued to the Petitioner No.2 at the Petitioners Company at Delhi address but were returned undelivered. Whereafter, another summons came to be issued on 28.03.2022, at the Petitioners Company's registered address in Karnataka.

6. In response thereto, the Petitioners Company by way of email dated 04.04.2022 and 05.04.2022, submitted its ledgers, purchase orders, bank particulars and allied documents of its claimed suppliers. Subsequently, upon verification of the aforesaid documents, it was revealed that the account details furnished belonged to a different supplier, indicating that no genuine payment had been made against the invoices on which ITC had been claimed.

7. Following which, summons dated 20.05.2022 was issued to Petitioner No.2 for appearance on 31.05.2022, which was sought to be deferred on medical grounds. Pursuant to a further summons dated 02.06.2022, the Petitioner No.2 appeared on 07.06.2022 but declined to have his statement recorded when confronted with the material gathered during investigation.

8. During further investigation, tracing of the IMEI numbers through the manufacturers and authorised distributors, namely, M/s

Apple India Pvt Ltd, M/s Samsung India Electronics Pvt Ltd., M/s Savex Technologies Pvt Ltd and M/s Infiniti Retail Pvt Ltd (Croma), it was revealed that the goods covered by the disputed invoices had either been supplied to different entities or sold directly to B2C customers and had not been passed through the Petitioners Company's suppliers. Consequently, the Petitioner No.2, was arrested on 07.06.2023. Subsequently, summons dated 22.05.2023 came to be issued to both the Petitioners, in their capacity as Directors.

9. The Statement of Petitioner Nos.1 and 2, were recorded on 12.06.2023 and 07.06.2023 respectively. On this basis, a Show Cause Notice (SCN) dated 21.03.2025 came to be issued against the Company and the Petitioners individually. In response thereto, a reply dated 26.03.2026 was filed by the Petitioners Company, highlighting that the Company was undergoing Corporate Insolvency Resolution Process and a moratorium under Section 14 of the Insolvency and Bankruptcy Code, 2016 was subsisting.

10. Personal hearings fixed on 28.01.2026, 16.02.2026 and 23.03.2026 were attended only by the Mr. Prakash V. Kukreja, Resolution Professional; no separate reply or appearance is reflected on record on behalf of the Petitioners in their individual capacity.

11. Upon completion of the investigation and consideration of the documents and material available on record, the Impugned Order came to be passed. Aggrieved thereby, the Petitioners have approached this Court seeking our indulgence.

SUBMISSIONS:

12. Learned counsel representing the Petitioners does not dispute that the Petitioners have a statutory remedy of Appeal under Section 107 of the Act of 2017 against the Impugned Order. However, it is his case that since no SCN was issued, the entire proceedings which led to the passing of the Impugned Order suffers from jurisdictional error, warranting this Court's interference notwithstanding the availability of an appellate remedy.

13. Notwithstanding the aforestated, it is also his case that the present case if relegated to the Appellate Authority, would not be fruitful inasmuch as the said Authority does not have the power to remand the matter for fresh consideration.

14. It is further his case that notice for the first personal hearing was never served upon the Petitioners, while the second notice was addressed only to the Petitioners Company. With respect to the third notice, it has been argued that although the same was received, it bore the same subject line and Company e-mail addresses, *bona fide* leading the Petitioners to believe that it concerned the Petitioners Company alone.

ANALYSIS:

15. Having heard learned counsel for the parties and having perused the record, this Court is of the considered view that the present Petitions do not warrant interference under Article 226 of the Constitution, and the Petitioners must be relegated to avail of the

alternative remedy of Appeal under Section 107 of the Act of 2017, for the reasons recorded hereinafter.

16. It is trite law that the mere availability of an alternative remedy does not oust the writ jurisdiction of this Court, particularly where there is a breach of natural justice or a want of jurisdiction. However, this exception is to be invoked sparingly, and not where the grievance is factual in nature and capable of being cured by the Appellate Authority itself.

17. On facts of the present case, it is not disputed that the SCN named both the Petitioners as Noticees in their individual capacity as Directors, who were called upon to show cause why penalty ought not be imposed upon them. However, whether the said notice was, in fact, served upon the Petitioners, and if so, in what manner, is a matter that requires an examination of records and allied material, which exercise is more appropriately undertaken by the Appellate Authority.

18. Insofar as the denial of personal hearing is concerned, and whether the opportunity of hearing, was, in substance, denied to the Petitioners in their individual capacity, would require a close scrutiny of the hearing notices actually issued, the manner and mode of their service, and the timeline in which they came to be issued and received.

19. In the opinion of this Court, the aforestated, is essentially a question of fact, the determination of which would necessitate examination of the underlying notices and allied record, to be produced by the parties, and is not a matter that ought to be

adjudicated for the first time in the exercise of writ jurisdiction. In any event, even if the grievance regarding personal hearing is accepted, such an infirmity is curable and does not go to the root of jurisdiction so as to warrant bypassing the statutory appellate remedy.

20. Insofar as the contention pertaining to Appellate Authority's lack to remand matter is concerned, this Court is unable to accept the said contention. The absence of a power to remand does not exempt the Appellate Authority of jurisdiction to entertain the Appeal, to consider the grounds now sought to be urged before this Court. The power to decide an Appeal on merits, upon a fresh and independent appreciation of the record, is distinct from the power to remand, and the want of the latter does not translate into an incapacity to exercise the former.

CONCLUSION:

21. For the aforesaid reasons, this Court is not inclined to exercise its writ jurisdiction, thereby relegating the Petitioners to avail of the alternative remedy of Appeal, upon a finding that indulgence at this stage is not found appropriate thereby permitting the Petitioners to bypass the remedy of Appeal before filing a Writ Petition.

22. The Petitioners, if so advised, shall be at liberty to file an application under Section 14 of the Limitation Act, 1963 seeking exclusion of the period for which the present Petitions have remained pending. The said application shall be considered by the Appellate Authority in accordance with law.

23. Needless to observe that the aforesaid observations are confined to the maintainability of the present Petitions and shall not be construed as an expression of opinion on the merits of the case. It shall be open to the Appellate Authority to examine the Petitioners' objections, independently and on their own merits.

24. In view of the aforesaid position, the present Petitions, along with pending applications, is disposed of in the above terms.

ANIL KSHETARPAL, J.

SHAIL JAIN, J.

September 15, 2026
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