$~64

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

% ***Date of Decision: 17.09.2026***

\# **CNR No. DLHC011107342025**

\+ W.P.(C) 13622/2026, CM APPL. 63641/2026

M/S JAIN CEMENT UDYOG (THROUGH PROPRIETOR SH. SANJAY JAIN) .....Petitioner

Through: Mr. R. P. Singh, Mr. Yash Aggarwal, Mr. Nirmal Dixit, Mr. Aman Sinha, Mr. Rahul Ranjan, Mr. Anant Vijay and Ms. Purva Dewangan, Advs.

versus

UNION OF INDIA & ANR. .....Respondents

Through: Mr. Kamal Kant Jha, CGSC along with Ms. Priya Singh, GP, Mr. Deepak Singh Rawat, Mr. Nikhil Kumar and Ms. Aakriti, Advs.

Mr. Sumit K. Batra and Ms. Priyanka Jindal, 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. By way of the present Petition, the Petitioner seeks issuance of writ in the nature of *certiorari*, for quashing of Show Cause Notice

(SCN) dated 22.11.2024[1] issued by the Respondent No.1 and the consequential Order-in-Original (OIO) dated 27.02.2025[2]. In addition, the Petitioner has also challenged the constitutional validity of Section 16(2)(c) of the Central Goods and Services Tax Act 2017[3], to the extent that it denies Input Tax Credit (ITC) to a *bona fide* recipient on account of non-payment of tax by the Supplier, inasmuch as this provision is arbitrary, unreasonable and violative of Articles 14 and 19(1)(g) of the Constitution of India.

BRIEF FACTUAL BACKGROUND:

2. In order to appreciate the present controversy, the relevant facts in brief, are required to be noticed.

3. The Petitioner is engaged in the business of trading in cement and allied products and is registered under the GST regime bearing GSTIN 07AAGPJ3860K2ZI. Upon receipt of information, regarding fraudulent availment of ITC on the strength of fake and goods-less invoices, the Directorate General of Goods and Services Tax Intelligence (DGGI), conducted searches at the residential and office address of the Petitioner on 02.12.2020.

4. During the course of such investigation, it was found that (06) six non-existent firms were being used as a façade by Mr. Sanjay Jain, proprietor of the Petitioner Company, for receiving fake supplies into (07) other firms, created and operated by Sh. Sanjay Jain himself, or either through his wife, his son or his employees. Pursuant thereto,

---

[1] hereinafter referred to as 'Impugned SCN'
[2] hereinafter referred to as 'Impugned OIO'
[3] hereinafter referred to as 'Act of 2017'

summons were issued to Mr. Sanjay Jain in the course of the said investigation.

5. Pursuant to the aforesaid investigation, the DGGI issued a SCN dated 05.04.2023, proposing, *inter alia*, imposition of penalties under Sections 122(1)(ii), 122(1)(vii), 122(1)(x), 122(1)(xvi), 122(1)(xvii) and 122(2)(b) of the Act of 2017. The said proceedings culminated in passing of the OIO dated 29.01.2025, whereby the demand proposed in the said SCN came to be confirmed. Aggrieved thereby, the Petitioner filed an Appeal against the OIO, which is presently pending adjudication before the Appellate Authority.

6. During the pendency of the aforesaid appellate proceedings, the Respondent No.2 issued the Impugned SCN under Section 73 of the Act of 2017, allegedly, on the basis of information available in the Petitioner's GSTR-3B, GSTR-1, GSTR-2A, e-way bills and other records, that the Petitioner had not correctly declared its tax liability and had wrongly availed ITC in respect of supplies received from certain suppliers whose GST registration were subsequently cancelled. The total tax liability proposed under the Impugned SCN was quantified at Rs. 7,26,59,252/-, comprising SGST of Rs. 3,60,93,588/, CGST of Rs. 3,60,93,588/- and IGST of Rs. 4,72,076/-.

7. The aforesaid proceedings culminated in passing of the Impugned OIO, whereby the aforesaid tax liability proposed in the Impugned SCN came to be confirmed. Aggrieved thereby, the Petitioner has approached this Court seeking our indulgence.

SUBMISSIONS:

8. Learned counsel representing the Petitioner, argues that the Impugned OIO mechanically invokes Section 16(2)(c) of the Act of 2017 to deny ITC on the ground that the supplier allegedly failed to deposit the tax. It is his case that the provision cannot automatically disentitle a *bona fide* recipient, particularly in the absence of any allegation or material indicating fraud, collusion, or lack of bona fides. The Petitioner, as a bona fide purchaser, cannot reasonably be expected to monitor or ensure the tax compliance of an independent supplier.

9. He further argues that the Impugned OIO also violates the principles of natural justice, as the Petitioner's detailed reply was not duly considered and no effective opportunity of personal hearing was afforded. Consequently, the Impugned OIO is consequently non-speaking, cryptic, and reflects non-application of mind.

10. It is also his case that the Impugned SCN and consequential Impugned OIO further violate Section 6(2)(b) of the Act of 2017, as the same transactions had already been investigated by the DGGI. Fresh proceedings by another proper officer on the same subject matter are therefore barred.

11. Lastly, he argues that the Impugned proceedings also subject the Petitioner to duplicated proceedings and demands concerning the same transactions. The Respondents cannot maintain parallel proceedings or impose a duplicated tax burden on the same subject matter. Therefore, the Impugned SCN and OIO are liable to be set

aside.

ANALYSIS:

12. Having heard learned counsel for the parties and having perused the record, this Court is of the considered view that the present Petition does not warrant interference under Article 226 of the Constitution, and the Petitioner must be relegated to avail of the alternative remedy of Appeal under Section 107 of the Act of 2017, for the reasons recorded hereinafter.

13. Insofar as the challenge to the constitutional validity of Section 16(2)(c) of the Act of 2017 is concerned, the issue is no longer res integra. The provision has specifically been upheld by the Supreme Court in ***Bhandari Scrap Traders v. Union of India***[4], wherein the Court rejected the argument that the provision must be read down merely because the supplier may default. The condition is neither arbitrary nor disproportionate, inasmuch as it merely requires the recipient to establish, through cogent material, that the tax charged has been actually deposited by the supplier.

14. 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.

15. On facts of the present case, it is not disputed that the Impugned

[4] (2026) 161 GSTR 150

SCN was issued on the basis of the Petitioner's own GSTR-3B, GSTR-1, GSTR-2A and e-way bill data, disclosing that ITC had been availed from suppliers whose registrations stood cancelled prior to the date of invoice. Whether the Petitioner, in fact, discharged the burden of proving actual receipt of goods and actual payment of tax by such suppliers, is a matter requiring appreciation of material such as transport records, delivery challans and payment trails, which exercise is more appropriately undertaken by the Appellate Authority.

16. Insofar as the plea of denial of personal hearing is concerned, the record indicates that a hearing was in fact afforded and the Petitioner's reply was considered, though not accepted. Whether such consideration was adequate, or whether the Impugned OIO suffers from non-application of mind, would require a close scrutiny of the reply filed, the hearing notings, and the reasoning recorded, which is essentially a question of fact.

17. In the opinion of this Court, the aforestated is essentially a question of fact, the determination of which would necessitate examination of the underlying 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 any infirmity in the hearing is made out, such infirmity is curable and does not go to the root of jurisdiction so as to warrant bypassing the statutory appellate remedy.

18. Insofar as the contention regarding the bar under Section 6(2)(b) of the Act of 2017 is concerned, this Court is unable to accept the same at this stage. The proceedings culminating in the DGGI's

SCN dated 05.04.2023 pertained to penalties under Section 122 of the Act of 2017 arising out of fraudulent availment and passing on of ITC through non-existent firms.

19. Whereas, the Impugned SCN, issued under Section 73 of the Act of 2017, pertains to wrongful availment of ITC from suppliers whose registrations were subsequently cancelled, quantified independently. Whether the 'subject matter' of the two proceedings is, in substance, identical so as to attract the bar under Section 6(2)(b) of the Act of 2017, is a mixed question of fact and law requiring appreciation of the scope of both proceedings and is more appropriately examined by the Appellate Authority.

20. For the same reasons, the plea of parallel or duplicated proceedings is also misconceived at this stage. Whether any element of duplication or double taxation has, in fact, occurred is a matter requiring factual verification, which exercise is not appropriate for a writ court exercising jurisdiction under Article 226, particularly when an efficacious alternative remedy by way of appeal is available.

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

22. The Petitioner, 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 Petition has 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 Petition 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 Petitioner's objections, independently and on their own merits.

CONCLUSION:

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

ANIL KSHETARPAL, J.

SHAIL JAIN, J.

SEPTEMBER 17, 2026
s.godara/hr