2026:DHC:8413-DB

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

% ***Date of Decision: 24.09.2026***

\# **CNR No. DLHC010460282025**

\+ W.P.(C) 10175/2025, CM APPL. 42268/2025

STAR TRADERS THROUGH ITS PROPRIETOR MR. ATIMUKT JAIN .....Petitioner

Through: Mr. Rakesh Kumar, Mr. Parveen Kumar Gambhir, Mr. Naveen, Advs.

versus

COMMISSIONER OF CENTRAL GOODS AND SERVICE TAX AND ANOTHER AND ANOTHER .....Respondents

Through: Mr. Aakarsh Srivastava, Senior Standing Counsel with Mr. Ashish Bansal, Mr. Anand Pandey, Advs. for R-1.
Mr. Sumit K. Batra, Ms. Priyanka Jindal, Advs. for GNCTD.
Mr. Rishabh Sahu, SPC for UOI.

CORAM:
HON'BLE MR. JUSTICE ANIL KSHETARPAL
HON'BLE MR. JUSTICE BHARAT PARASHAR

J U D G M E N T (ORAL)

ANIL KSHETARPAL, J.:

1. While filing the present Writ Petition, the Petitioner prays for following substantive reliefs:

> *"i. Your Lordship may be pleased to issue any appropriate Writ Under Article 226 of the Constitution of India requesting this Hon'ble Court to set aside show cause Notice Dated 05/08/2024 (Annexure P-*

2) and order dated 30/01/2025 (Annexure P-4) issued u/s CGST/DGST Act for AY 2017-18 in volition of provisions of CGST/DGST Act,

ii. And also requesting to declare 16(2) (c) of the CGST Act, ultra-virus of Article 14 of the Constitution as the petitioner cannot not be held liable for not depositing tax by the suppliers."

FACTUAL MATRIX:

2. Pursuant to a letter received from the Delhi East Commissionerate, an investigation was initiated against the Petitioner by CGST Delhi West Commissionerate. In furtherance thereof, a search was conducted at the premises of the Petitioner on 23.07.2019, during which a sum of Rs. 11,00,000/- was seized. On the same day, the proprietor of the Petitioner-firm, namely, Mr. Atimukt Jain, had his statement recorded.

3. He, *inter alia*, stated that the firm had been registered in 2017; that it had issued only invoices without any corresponding supply of goods; that no actual business activity was being carried out by the firm; and that one Mr. Pawan Singla was engaged in dealing in such invoices for a commission of 0.25%.

4. Thereafter the Impugned Show Cause Notice (SCN) came to be issued under Section 74 of the Act of 2017. The SCN alleged, *inter alia*, that the Petitioner: (i) had utilised Input Tax Credit (ITC) amounting to Rs.3,53,40,345/- on inward supplies received from suppliers who were either non-existent or whose registrations were retrospectively cancelled, and (ii) had passed on ITC of Rs.3,24,67,297/-by issuing invoices without any corresponding supply of goods. Accordingly, the SCN proposed the recovery of an aggregate amount of Rs. 6,78,07,642/- towards allegedly inadmissible

ITC, along with applicable interest and penalties.

5. Pursuant to the issuance of the Impugned SCN, the Adjudicating Authority proceeded to adjudicate the matter *ex parte* and, by way of the Impugned Order-in-Original (OIO), confirmed the demands proposed against the Petitioner. Aggrieved thereby, the Petitioner has approached this Court seeking our indulgence.

<u>SUBMISSION</u>:

6. Learned counsel representing the Petitioner does not dispute that the Petitioner has an efficacious alternative statutory remedy of an Appeal against the Impugned OIO. However, he raised the following three grounds in support of his case.

7. *Firstly*, it is his case that the proceedings culminating in passing of the Impugned OIO are *non est* in law, being barred by Section 6(2)(b) of the Central Goods and Services Tax Act, 2017 (to be read as Act of 2017). It is contended that proceedings had already been initiated by the Respondent No.2 prior in point of time in respect of the same subject matter. Consequently, the initiation and continuation of parallel proceedings by the Respondents are impermissible in view of the statutory bar contained in Section 6(2)(b) of the Act of 2017.

8. *Secondly*, it is contended that the AA has acted in violation of the principle of natural justice while passing the Impugned Order. *Thirdly*, the Petitioner has raised a specific challenge to the constitutional validity of Section 16(2)(c) of the Act of 2017.

ANALYSIS:

9. Section 6(2)(b) of the Act of 2017 bars the proper officer under the Act from initiating proceedings on a subject matter upon which a proper officer under the State Goods and Services Tax Act, 2017 has already initiated proceedings. This statutory bar is attracted only if, *(i)*, the proceedings under the State enactment were initiated prior in point of time; and *(ii)* the subject matter of both the proceedings is the same.

10. Upon perusal of record placed before this Court, it is borne out that the proceedings initiated by the Respondent No.2 pertain to the alleged wrongful availment of ITC by the Petitioner on its inward supplies, arising from a reconciliation of the turnover declared by the Petitioner in its GSTR-3B returns for the Financial Year (FY) 2017-18.

11. On the other hand, the proceedings initiated by the Respondent No.1, are founded upon an intelligence gathered by the Department and material emanating from the search conducted at the premises of the Petitioner.

12. A further perusal of the Impugned OIO makes it evident that the Petitioner, *inter alia*, was engaged in issuing invoices without any corresponding supply of goods, was not carrying out any actual business activity, and had suppliers who were either non-existent or whose registrations were subsequently cancelled with retrospective effect. In addition to the aforestated, the OIO also records wrongful availment and utilisation of ITC amounting to Rs. 3,53,40,345/- and the passing on of ITC amounting to Rs. 3,24,67,297/-. It is against this

backdrop that the Impugned SCN came to be issued under Section 74 of the Act of 2017.

13. Thus, the allegations, the material relied upon and the nature of the default are different in the two proceedings. In particular, the allegation of passing on ITC through invoices issued without any corresponding supply of goods has no connection with the reconciliation of turnover undertaken by the Respondent No.2. Therefore, the subject matter of the two proceedings cannot be termed the same. Consequently, ***W.P.(C) 89/2025*** titled ***Star Traders Thr its Proprietor, Mr. Atimuk Jain v Commissioner DGST and Ors.*** and the present Petition arises out of different proceedings, thereby raising different issues. Since the essential condition of Section 6(2)(b) is not satisfied, it is not necessary to examine which of the two proceedings was initiated first. In view thereof, the Impugned SCN and OIO cannot be termed as *non est*.

14. Insofar as the argument pertaining to violation of natural justice is concerned, it may be highlighted that as per the Impugned OIO, the Petitioner was sent repeated notices through speed-post for 13.11.2024, 27.11.2024 and 13.12.2024, with a further notice being sent to it on its registered e-mail ID for 08.01.2025. Despite multiple opportunities being granted to the Petitioner, it failed to appear on any of the aforesaid dates. Notably, it also failed to file any detailed reply to the Impugned SCN, and its reply dated 02.09.2024 only sought further time and a personal hearing. Thereafter, the Petitioner having failed to avail the opportunities afforded cannot at this stage contend that it was left unheard.

15. Insofar as the constitutional validity of Section 16(2)(c) of the Act of 2017, is concerned, it may be noted that a Division Bench of Gujarat High Court, by way of its judgment dated 01.05.2026, in ***Maruti Enterprise v Union of India and Ors.***[1] held the provision to be *intra vires* and not unconstitutional. Whereafter, the Supreme Court, *vide* a speaking Order dated 24.07.2026 in ***SLP(C) No.23931/2026*** titled ***Bhandari Scrap Traders v Union of India & Ors*** affirmed the aforesaid view taken by the Gujarat High Court. In view of the position being settled by the Supreme Court, we are not inclined to interfere with the same and find no reason to take a different view.

CONCLUSION:

16. In view of the aforestated, no ground is made out to entertain the present Petition, bypassing the statutory alternative remedy. It is clarified that this Court has not expressed any opinion on the merits of the demand raised in either of the proceedings brought to our notice.

17. Needless to observe that it shall be open to the Petitioner to take all objections before the Appellate Authority, which shall proceed to decide the Appeal, if any, filed by the Petitioner independently and uninfluenced by the observations made in this Order.

18. If the Petitioner files an application under Section 14 of the Limitation Act, 1963 for exclusion of the period for which the present Petition has remained pending, the same shall be considered by the Appellate Authority in accordance with law.

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[1] 2026 SCC OnLine Guj 4013

19. With these observations, the present Petition, along with pending application, is disposed of with liberty to the Petitioner to approach the Appellate Authority.

ANIL KSHETARPAL, J.

BHARAT PARASHAR, J.

SEPTEMBER 24, 2026
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