



\$~60

* IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision: 9th April, 2025

+

W.P.(C) 4576/2025

M/S. VALLABH TEXTILES

.....Petitioner

Through: Mr. Vivek Sarin, Mr. Akash Gupta,
Ms. Divyanshi Singh, Mr. Dhruv Dev
Gupta & Mr. Satish C. Kaushik,
Advocates.

versus

ADDITIONAL COMMISSIONER CENTRAL TAX GST, DELHI
EAST AND ORS

.....Respondents

Through: Ms. Anushree Narain, Sr. Standing
Counsel with Mr. Ankit Kumar, Adv.

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. 21170/2025 (for exemption)

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

W.P.(C) 4576/2025 & CM APPLs. 21169/2025 (for directions)

3. The present petition has been filed by the Petitioner - Vallabh Textiles under Article 226 of the Constitution of India *inter alia* seeking setting aside of the orders dated 20th January, 2025 and 29th January, 2025 and 1st February, 2025 as arbitrary and in violation of the provisions of the CGST Act, 2017 and Article 14, 19(1)(g), 265, 300A of the Constitution of India.

4. First of all, the present petition has been filed challenging the impugned order dated 29th January, 2025 by which the Adjudicating Authority has confirmed the GST liability of the Petitioner to the tune of Rs. 7,13,05,165/-



and has imposed an equivalent penalty. Penalties have also been imposed on Petitioner's Directors.

5. At the outset, Mr. Sarin, Id. Counsel for the Petitioner submits that this is the second round of the litigation by the Petitioner. Earlier, this Show Cause Notice (hereinafter 'SCN') dated 29th May, 2024 from which the impugned demand order dated 29th January, 2025 arose was challenged by the Petitioner on the ground that consolidation of investigation for different financial years is not permissible. The said writ petition being **W.P.(C) 13855/2024** and the order dated 3rd October, 2024 passed therein, has not been mentioned in the present writ petition. He apologises for the same unconditionally and submits that it was an inadvertent error. The Court has perused the order dated 3rd October, 2024 passed in the said writ petition, wherein on the question of consolidation, the Court has disposed of the matter.

6. The second grievance which is now being raised in this petition is that the SCN proceedings continued before the Adjudicating Authority, however, the Petitioner's right to cross-examine certain third parties was denied *vide* impugned order dated 20th January, 2025.

7. Ms. Narain, Id. Senior Standing Counsel for the Respondent No.1 (hereinafter '*Department*') in response submits that the said order is an appealable order under Section 107 and the same contention can be raised even as a ground before the Appellate Authority. Therefore, she submits that the Petitioner ought to be relegated to the appellate remedy.

8. Heard the parties. The brief facts of the case are that the Directorate General of Goods and Services Tax Intelligence (hereinafter as '*DGGI*') gathered intelligence that M/S. Vallabh Textiles *i.e.*, the Petitioner was acting as a commission agent for selling of third-party goods to various clients in the



local markets. The said sales were being made, according to the Department, on a *kaccha* ledger and the details of various entities who were the purchasers of the said goods from the Petitioner, was mentioned in the said Ledgers. Thus, as per the Department, there was evasion of GST.

9. A SCN dated 29th May, 2024 contained all the evidence, which was collected during the course of search including the hand-written *kaccha* ledgers, *parchas* etc.

10. The Petitioner had challenged the issuance of SCN on the ground that the same was issued as a consolidated notice for multiple years. This writ petition, being **W.P.(C) 13855/2024**, was disposed of *vide* order dated 3rd October, 2024. The said order reads as under:

“1. The instant writ petition seeks to assail the validity of a Show Cause Notice [“SCN”] dated 29 May 2024 and which raises issues pertaining to Financial Years [“FYs”] 2017-18 to 2021-22.

2. The principal ground of challenge which was addressed before us was with respect to the action of the respondents who have proceeded to issue a consolidated notice for the aforesaid period.

3. On an ex-facie perusal of Section 74 of the Central Goods & Services Tax Act, 2017 [“CGST”]/Delhi Goods & Services Tax Act, 2017 [“DGST”], we find ourselves unable to sustain that challenge in the absence of any prohibition that may have been statutorily engrafted in this respect. That in any case would not constitute a jurisdictional challenge warranting the writ petition being entertained against a SCN.

4. Insofar as FY 2017-18 is concerned, it was the submission of learned counsel for the writ petitioner that the same would not sustain bearing in mind the provisions contained in Section 74(10) of the CGST Act, 2017/DGST Act, 2017. Insofar as that question is concerned, we leave it open to the writ petitioner to



initiate appropriate proceedings independently.

5. Bearing in mind the well settled principles which govern situations and contingencies in which a SCN challenge may be entertained by a Court under Article 226 of the Constitution, we find no ground to entertain the instant writ petition.

6. It shall, subject to the aforesaid observation, stand dismissed.”

11. After the writ petition was disposed of on 3rd October, 2024, the Show Cause Notice proceedings continued before the Adjudicating Authority and the Petitioner made a request for cross-examination of five persons, namely, Sh. Vinod Baid, Sh. Kamal Kishore Karnani, Sh. Saurabh Aggarwal, Sh. Deepak Kumar Jha and Sh. Anil Kumar. The said prayer for cross-examination was denied/ rejected by the Adjudicating Authority on 20th January, 2025, *inter alia*, on the ground that the statements in question were only corroborative of undisputed documentary evidence already on record, and thus, did not warrant cross-examination.

12. The Adjudicating Authority in this regard has relied on the decision of the High Court of Telangana in ***Mohammed Muzzamil and Another vs. The CBIC (W.P(C) 18081/2020)*** which held that cross-examination cannot be claimed as a matter of right especially if it does not make any material difference. The observation of the Adjudicating Authority is as under :-

“Further the request for cross examination of said individuals or witnesses has been carefully examined. It is observed that –

- i. The evidence relied upon is documentary in nature and does not require corroboration through oral testimony.*
- ii. The statements in questions are supported by independence evidences/ documents such that are*



undisputed, rendering cross examinations unnecessary.

iii. The requested cross examination is irrelevant to the specific under adjudication.

Therefore the request for cross examination is denied under the principles laid down in K.L. Tripathi V. SBI, 1984(1)SCC 43 and other relevant precedents, as it is not essential for ensuring natural justice in this case.

In view of the above facts and case laws cited, it appears that the request made by the noticee vide mail dated 11.01.2025 do not contain merit for acceptance and are liable to be rejected.”

13. Accordingly, the right for cross-examination was denied and, thereafter the impugned orders dated 29th January, 2025 and 1st February, 2025 were passed raising the demand upon the Petitioner.

14. It can be seen that the impugned order is a very detailed order passed by the Adjudicating Authority running into more than 60 pages, which has discussed all the evidence which clearly as per the Authority demonstrates that undeclared sales were being made by the Petitioner to avoid the payment of GST. Moreover, the question as to whether in a particular year, the proper declaration was given, whether the facts given by a particular witness are right or wrong and whether the Petitioner needs to be permitted to rebut are all factual issues that cannot be considered in writ jurisdiction.

15. While cross-examination can be granted in certain proceedings, if it is deemed appropriate, the right to cross-examine cannot be an unfettered right. This has been so held recently by this Court in ***Sushil Aggarwal v. Principal Commissioner Of Customs (2025:DHC:698-DB)***. The relevant portion of the decision reads as under:

“15. Accordingly, this Court is of the opinion that in



order to ensure that there is compliance of Section 138(B) of the Act, though the same cannot be claimed as an unfettered right in all cases, in the facts of the present case, both Mr. Sushil Aggarwal and Mr. Aidasani are afforded an opportunity to cross examine Mr. Bhalla.”

16. The rationale behind setting aside an order/judgment on the grounds of non-provision of the right to cross-examine is to safeguard the affected party from being prejudiced due to non-providing of cross examination. Therefore, such reasoning presumes/implies the existence of prejudice. In other words, if the alleging party fails to prove any substantial prejudice caused to it due to such non-provision, it shall not have the inherent right to set aside such an order/judgment. This view has been upheld by the Supreme Court in various judgments including ***M/s. Telestar Travels Pvt. Ltd. v Special Director Of Enforcement 2013(9) SCC 549***. The relevant portion of the said judgment reads as under:

“23. That brings us to the third limb of the attack mounted by the appellants against the impugned orders. It was argued by Mr Divan that while holding that Bountiful Ltd. was a paper company and was being controlled and operated from India by the appellants through Shri Sirish Shah, the adjudicating authority had relied upon the statements of Miss Anita Chotrani and Mr Deepak Raut, and a communication received from the Indian High Commission in London. These statements and the report were, according to Mr Divan, inadmissible in evidence as the appellant’s request for an opportunity to cross-examine these witnesses had been unfairly declined, thereby violating the principles of natural justice that must be complied with no matter the strict rules of the Evidence Act had been excluded from its application. ...

...



24. Mr Malhotra, on the other hand, argued that the right of cross-examination was available to a party under the Evidence Act which had no application to the adjudication proceedings under FERA. ... He also placed reliance upon a decision of this Court in *Surjeet Singh Chhabra v. Union of India*(1997(1) SCC 508=1997 SCC (Cri) 272) to argue that cross-examination was unnecessary in certain circumstances such as the one at hand where all material facts were admitted by the appellants in their statements before the authority concerned.

25. There is, in our opinion, no merit even in that submission of the learned counsel. It is evident from Rule 3 of the Adjudication Rules framed under Section 79 of FERA that the rules of procedure do not apply to adjudication proceedings. That does not, however, mean that in a given situation, cross-examination may not be permitted to test the veracity of a deposition sought to be issued against a party against whom action is proposed to be taken. It is only when a deposition goes through the fire of cross-examination that a court or statutory authority may be able to determine and assess its probative value. Using a deposition that is not so tested, may therefore amount to using evidence, which the party concerned has had no opportunity to question. Such refusal may in turn amount to violation of the rule of a fair hearing and opportunity implicit in any adjudicatory process, affecting the right of the citizen. **The question, however, is whether failure to permit the party to cross-examine has resulted in any prejudice so as to call for reversal of the orders and a de novo enquiry into the matter. The answer to that question would depend upon the facts and circumstances of each case.**”

17. In the present case, the request to cross-examine certain witness statements was rejected, as mentioned above, on the grounds that the statements in question were only corroborative of undisputed documentary



evidence already on record, and thus, did not warrant cross-examination. The Supreme Court in *Telestar Travels (Supra)* while, in fact, dealing with similar circumstances has observed as under:

*“28. Coming to the case at hand, the adjudicating authority has mainly relied upon the statements of the appellants and the documents seized in the course of the search of their premises. **But, there is no dispute that apart from what was seized from the business premises of the appellants, the adjudicating authority also placed reliance upon the documents produced by Miss Anita Chotrani and Mr Raut. These documents were, it is admitted, disclosed to the appellants who were permitted to inspect the same. The production of the documents duly confronted to the appellants was in the nature of production in terms of Section 139 of the Evidence Act, where the witness producing the documents is not subjected to cross-examination. Such being the case, the refusal of the adjudicating authority to permit cross-examination of the witnesses producing the documents cannot even on the principles of the Evidence Act be found fault with. At any rate, the disclosure of the documents to the appellants and the opportunity given to them to rebut and explain the same was a substantial compliance with the principles of natural justice. That being so, there was and could be no prejudice to the appellants nor was any demonstrated by the appellants before us or before the courts below.** The third limb of the case of the appellants also in that view fails and is rejected.” (emphasis supplied)*”

18. A perusal of the above decisions reveals that while cross-examination would be required in certain cases, it need not be given as a matter of right in all cases. The provision of the opportunity to cross-examine depends on the facts and circumstances of each case and is warranted only when the party seeking such an opportunity is able to demonstrate that prejudice would be



caused in the absence thereof.

19. The Court is of the considered view that parties cannot, by praying for cross-examination, convert Show-cause Notice proceedings into mini-trials. Persons seeking cross-examination ought to give specific reasons why cross-examination is needed in a particular situation and that too of specific witnesses. A blanket request to cross-examine all persons whose statements have been recorded by the Department, many of whom are typically employees, sellers, purchasers, or other persons connected to the entity under investigation, cannot be sustained. If a prayer for cross-examination is made, the Authority has to consider the same fairly and if the need is so felt in respect of a particular person, the same ought to be permitted. If not, the Authority can record the reasons and proceed in the case. Moreover, cross examination need not also be of all persons whose statements are recorded. It could be permitted by the Authority in case of some persons and not all.

20. In the present case, the mere rejection of the Petitioner's request for cross-examination cannot, in and of itself, be treated as a sufficient ground to bypass the statutorily prescribed appellate remedy and invoke the writ jurisdiction of this Court.

21. Therefore, the Court is of the opinion that the Petitioner ought to avail of its appellate remedy in accordance with law in respect of both orders dated 20th January, 2025 and 29th January, 2025 including the demand raised on 1st February, 2025.

22. The Petitioner is, accordingly, permitted to approach the Appellate Authority by way of an appeal under Section 107 of the CGST Act within thirty days. If the appeal is filed within the said period, the same shall be considered on merits and shall not be dismissed on the ground of being barred



2025:DHC:2559-DB



by limitation.

23. Needless to add, that the appeal, which may be filed by the Petitioner shall be considered on its own merits without being influenced by any observations made today in this order.

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

PRATHIBA M. SINGH
JUDGE

RAJNEESH KUMAR GUPTA
JUDGE

APRIL 9, 2025/nd/Ar.
(corrected & released on 15th April, 2025)