



WP-2510/2026 &
WP-2532/2026

**IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE**

BEFORE

HON'BLE SHRI JUSTICE VIJAY KUMAR SHUKLA

&

HON'BLE SHRI JUSTICE ALOK AWASTHI

ON THE 22nd OF APRIL, 2026

WRIT PETITION No. 2510 of 2026

***M/S SUBHASH CHANDRA NARENDRA KUMAR NAHAR
THROUGH ITS PROPRIETOR/AUTHORIZED SIGNATORY AJAY
KUMAR NAHA***

Versus

THE STATE OF MADHYA PRADESH AND OTHERS

WITH

WRIT PETITION No. 2532 of 2026

***M/S. NAHAR TRADERS THROUGH ITS PROPRIETOR, SHRI
MITHUN KUMAR NAHAR***

Versus

STATE OF M.P. AND OTHERS

Appearance:

Shri Shashwat Seth – Advocate for the petitioner in both the petitions.

Shri Rahul Sethi – Additional Advocate General for the respondent(s) / State.

ORDER

Per: Justice Vijay Kumar Shukla

Regard being had to the similitude of the controversy involved in Writ Petition Nos.2510/2026 & 2532/2026, they have been heard analogously and disposed of by this common order. For the sake of convenience and disposal of both the present petitions, facts are being



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taken from Writ Petition No.2510/2026.

02. The petitioner has prayed for quashment of the impugned order dated 30.12.2025 passed by the respondent No.4, whereby a total liability of Rs.7,01,61,092/- has been imposed on the petitioner.

03. Counsel for the petitioner argued that the said order has been passed by the respondent No.4, who is the Assistant Commissioner of State Tax Anti-Evasion Bureau, Indore and also prayed other consequential reliefs on the ground that he is not the Proper Officer as defined under the provisions of Section 2(91) of the Central Goods and Services Tax Act, 2017 (hereinafter referred as "CGST Act, 2017"). He is not the Competent Authority / Proper Officer to pass the impugned order and, therefore, the impugned order suffers jurisdictional error and order being without jurisdiction is liable to be *quashed*.

04. This Court directed the counsel for the respondent / State to seek instructions on 02.02.2026. The respondents have filed the reply and raised preliminary objection regarding availability of alternative and efficacious remedy of appeal under Section 107 of the CGST Act, 2017 by submitting that the authority is competent to pass the impugned order. It is submitted that an inspection was conducted under Section 67(1) of the M.P. Goods and Services Tax Act, 2017 (hereinafter referred as "M.P.GST Act, 2017") at the business premises of M/s Dakshraj Enterprises, during which it was revealed that the said dealer had claimed inadmissible / missing ITC in its GSTR 2A/2B returns and passed on such ITC to various recipients including M/s Subhash Chandra Narendra Kumar Nahar. Investigation established a supply chain mechanism for wrongful passing of ITC, wherein M/s Dakshraj Enterprises availed and passed on ITC without actual tax being paid to



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the Government, thereby violating Section 16(2)(c) of the M.P.GST Act, 2017. Since payment of tax by the supplier to the Government is a mandatory precondition for availing ITC and as the supplier failed to discharge the tax liability collected from recipient dealers, the petitioner, being the recipient, failed to fulfill the statutory conditions prescribed under Sections 16(2)(b) & 16(2)(c) of the M.P.GST Act, 2017, rendering the ITC availed by it inadmissible. He also relied on the provisions of Section 6 of the Union Territory GST Act, 2017.

05. The petitioner also filed additional documents by an application, in rebuttal to the aforesaid objections. Alongwith the said, he filed the tax audit report for financial year 2024-25 and also order No.03/2024 dated 18.04.2024 passed by the Commissioner, Commercial Tax, M.P., Para 5 of the said report is reproduced as under:

"5. That as per the Schedule contained in the annexed Order No. 03/2024, the pecuniary jurisdiction of an Assistant Commissioner of State Tax to determine tax under Section 74/74A is strictly capped at an annual turnover of Rs.20 Crores. The exclusive jurisdiction to adjudicate matters for suppliers having a turnover between Rs. 20 Crores and Rs.100 Crores vests solely with the Deputy Commissioner of State Tax."

06. After hearing learned counsel for the parties on the objection regarding the maintainability of the writ petition on the ground of the availability of alternative and efficacious remedy, law is no longer *res-integra* that if the order is without jurisdiction, there is no absolute bar under Article 226 of the Constitution of India. A reference may be made to the judgment passed by the Hon'ble Apex Court in the case of ***Whirlpool Corporation v. Registrar of Trademark & Ors (1998) 8 SCC 1.***

07. It is not in dispute that the provisions for CGST and for SGST are *pari materia*. In regard to the consideration, competence of the



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authority, it is relevant to refer the provisions of Section 2(91) of the CGST Act, 2017, which is reproduced as under:

"(91) "proper officer" in relation to any function to be performed under this Act, means the Commissioner or the officer of the central tax who is assigned that function by the Commissioner in the Board;"

08. For ready reference, Section 6 of the Union Territory GST Act, 2017 is reproduced as under:

"Authorisation of officers of State tax or Union territory tax as proper officer in certain circumstances:

6(1) Without prejudice to the provisions of this Act, the officers appointed under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act are authorised to be the proper officers for the purposes of this Act, subject to such conditions as the Government shall, on the recommendations of the Council, by notification, specify.

(2) Subject to the conditions specified in the notification issued under sub-section (1),-

(a) where any proper officer issues an order under this Act. he shall also issue an order under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act, as authorised by the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act, as the case may be, under intimation to the jurisdictional officer of State tax or Union territory tax;

(b) where a proper officer under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act has initiated any proceedings on a subject matter, no proceedings shall be initiated by the proper officer under this Act on the same subject matter.

(3) Any proceedings for rectification, appeal and revision, wherever applicable, of any order passed by an officer appointed under this Act shall not lie before an officer appointed under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act."

09. Counsel for the respondent / State heavily relied on abovementioned Section 6.

10. Upon perusal of the aforesaid sections, it is clear that officers of the State Tax or Union Territory Tax can be authorized as Proper Officer in certain circumstances, which are enumerated from Section 6(1) to



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6(3) quoted hereinabove.

11. Counsel for the respondent / State argued that the respondent No.4 is authorized under Section 6(1) of Union Territory GST Act, 2017 and, therefore, the order is by a Competent Authority.

12. From the provisions of said Section 6(1), it is axiomatic that the officers appointed under the State Goods and Services Tax can be authorized to be the Proper Officer for the purposes of this Act subject to such conditions as the Government shall, on the recommendation of the Council, by notification, specify. A specific query was made that whether there is any recommendation of the Council to the State Government for notification of the respondent No.4 as Proper Officer.

13. Counsel for the respondent / State fairly admitted that there is no such recommendation by the Council and the order on the ground of competence cannot be supported, therefore, the liberty be granted to pass fresh order.

14. In view of the aforesaid submissions of the counsel for the respondent / State, the impugned order dated 30.12.2025 passed by the respondent No.4 is *quashed*, being an order by an incompetent authority. The liberty is granted to the Competent Authority to pass a fresh order in accordance with the law.

15. With the aforesaid, the Writ Petition No.2510/2026 is **allowed** and disposed of.

16. As a consequence, Writ Petition No.2532/2026 also stands **allowed** and disposed of.

(VIJAY KUMAR SHUKLA)
JUDGE

(ALOK AWASTHI)
JUDGE