IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE VIVEK RUSIA

&

HON'BLE SHRI JUSTICE PRADEEP MITTAL

ON THE 05th OF MAY, 2026

WRIT PETITION No. 9413 of 2023

SNS MINERALS PRIVATE LIMITED

Versus

ASSISTANT COMMISSIONER AND OTHERS

Appearance:

Shri Aditya Khandekar & Shri Vivek Sharma And appeared for petitioner .

Shri Abhijeet Shrivastava, learned counsel for the respondents No.1 to 3.

Reserved on: 22.04.2026

Pronounced on: 05.5.2026

ORDER

Per. Justice Vivek Rusia

The present writ petition has been filed by the Petitioner, a company registered under the Goods and Services Tax laws, challenging the legality and validity of the Order-in-Appeal dated 17.02.2023 passed by Respondent No.3, whereby the refund earlier granted to the Petitioner has been set aside.

FACTS OF THE CASE:

2. The Petitioner is engaged in the business of mining and supply of limestone and is duly registered under the CGST Act. During the period

April 2018 to December 2018, the Petitioner paid GST at the rate of 18% on royalty under reverse charge mechanism, whereas its output supply was taxable at 5%, resulting in accumulation of excess input tax.

3. The Petitioner, having reversed the input tax credit attributable to such excess payment, filed refund claims under Section 54(3) of the CGST Act amounting to ₹84,26,536/-. Show Cause Notice dated 06.01.2020 (Annexure P-2) was issued proposing rejection of the refund claims on the ground that input tax credit had been availed. The Petitioner filed replies clarifying that the credit had already been reversed. However, the refund claims were rejected by the Respondent No.1 vide order dated 05.02.2020, against which the Petitioner preferred an appeal.

4. The Appellate Authority (Respondent No. 3), vide Order-in-Appeal dated 20.05.2021, allowed the appeal and set aside the rejection order, thereby entitling the petitioner to refund. Pursuant thereto, the Petitioner filed a refund application on 03.07.2021. The refund amount of ₹84,26,536/- was sanctioned and disbursed vide order dated 19.08.2021, though the claim for interest was rejected.

5. Subsequently, the Respondent No. 2 initiated review proceedings and directed for filing of an appeal against the refund sanction order. Parallelly, a Show Cause Notice dated 03.02.2022 (Annexure P-12) was issued seeking recovery of the refund under Section 73 of the CGST Act.

6. The Department preferred an appeal before Respondent No. 3

against the refund sanction order. The Petitioner participated in the proceedings and filed detailed objections. Respondent No. 3, however, vide the impugned Order-in-Appeal dated 17.02.2023(Annexure P-1), allowed the Department's appeal and set aside the refund already granted to the Petitioner. Aggrieved by the said order, the Petitioner has approached this Court under Article 226 of the Constitution of India.

SUBMISSIONS ON BEHALF OF THE PETITIONER:

7. Learned counsel for the Petitioner submits that the impugned Order-in-Appeal dated 17.02.2023 is *ex facie* illegal, arbitrary & without jurisdiction, and is liable to be set aside by this Hon'ble Court in exercise of its extraordinary jurisdiction under Article 226 of the Constitution of India. It is contended that Respondent No. 3, while passing the impugned order, has effectively sat in appeal over its own earlier Order-in-Appeal dated 20.05.2021, which had been passed in favour of the Petitioner and had attained finality. Such an exercise, it is submitted, is wholly impermissible in law.

8. Learned counsel further submits that once the appellate authority had adjudicated the *lis* and allowed the refund claim, it became *functus officio* and could not have reopened or re-examined the same issue indirectly while deciding an appeal against the refund sanction order dated 19.08.2021. It is argued that the refund sanction order was merely an execution or implementation of the earlier Order-in-Appeal and, therefore, could not have been independently challenged to nullify the earlier order on merits.

9. It is further contended that the action of the Respondents amounts to a colourable exercise of power and is a clear instance of judicial impropriety, since the same authority has taken contradictory stands on the same issue involving the same parties and the same period. Learned counsel further submits that the Department did not challenge the Order-in-Appeal dated 20.05.2021 before any higher forum, and in the absence of such challenge, the said order had attained finality and was binding upon the Respondents. It is urged that, in the absence of a constituted Appellate Tribunal under the CGST Act, the only remedy available to the Department was to approach this Hon'ble Court, which it failed to do, and therefore, the attempt to unsettle the concluded issue through collateral proceedings is impermissible.

10. Learned counsel also submits that the impugned order travels beyond the scope of the show cause notice and introduces new grounds at the appellate stage, which is contrary to settled principles of law. It is further submitted that parallel proceedings have been initiated by the Respondents by issuance of a show cause notice under Section 73 of the CGST Act for recovery of the same amount, which is impermissible and amounts to abuse of process of law.

11. It is additionally contended that the impugned order has been passed without proper consideration of the detailed submissions and objections filed by the Petitioner and is thus violative of principles of natural justice. According to the Petitioner, the impugned order is a non-speaking

order, as it fails to deal with the specific contentions raised and does not assign cogent reasons for its conclusions. Learned counsel concludes that the Respondents are bound by settled legal principles and departmental circulars, which prohibit reopening of concluded matters and require that such cases be kept pending where higher remedies are contemplated.

12. In view of the aforesaid submissions, learned counsel for the Petitioner prays that the impugned Order-in-Appeal dated 17.02.2023 be quashed and set aside, and the Respondents be restrained from taking any coercive or recovery action against the Petitioner.

SUBMISSIONS ON BEHALF OF THE RESPONDENTS

13. Per contra, learned counsel appearing for the Respondents supports the impugned Order-in-Appeal dated 17.02.2023 and submits that the same has been passed strictly in accordance with law and does not warrant any interference by this Hon'ble Court. It is contended that the refund sanction order dated 19.08.2021 was erroneous and prejudicial to the interest of revenue, and therefore, the Department was fully justified in initiating proceedings to challenge the same.

14. Learned counsel submits that the statutory scheme under the CGST Act empowers the Department to review and examine orders passed by subordinate authorities, and where such orders are found to be legally unsustainable, appropriate appellate remedies can be invoked. It is argued that the appeal filed against the refund sanction order was maintainable under law and has been rightly entertained and adjudicated upon by Respondent

No. 3.

15. It is further submitted that the Petitioner was not entitled to the refund in question, as the benefit of input tax credit had already been availed, and therefore, the claim did not fall within the permissible scope of refund under Section 54 of the CGST Act. Learned counsel contends that the sanction of refund in favour of the Petitioner was contrary to statutory provisions and thus liable to be set aside.

16. Learned counsel for the Respondents refutes the contention of the Petitioner that the appellate authority has reviewed its own earlier order. It is submitted that the earlier Order-in-Appeal dated 20.05.2021 and the subsequent proceedings arising out of the refund sanction order operate in distinct fields, and the appellate authority, while examining the legality of the refund sanction order, has acted within its jurisdiction.

17. It is also contended that the impugned order has been passed after affording due opportunity of hearing to the Petitioner, who had participated in the proceedings, filed written submissions, and was heard in person. Therefore, there is no violation of principles of natural justice.

18. Learned counsel further submits that merely because an earlier appellate order exists, the Department is not precluded from examining the correctness of a refund actually granted, particularly when such refund is found to be erroneous and results in loss to public revenue. It is argued that there is no bar in law against challenging a refund sanction order, even if it is

passed pursuant to an appellate order.

19. It is also submitted that the proceedings initiated under Section 73 of the CGST Act are independent statutory proceedings for recovery of erroneously granted refund, and the same cannot be said to be impermissible or without jurisdiction.

20. In view of the aforesaid submissions, learned counsel for the Respondents prays that the writ petition be dismissed, as the Petitioner has failed to make out any case for interference under Article 226 of the Constitution of India.

Appreciations and Conclusion:

21. The petitioner has raised the issues in this writ petition that the Department did not challenge the Order-in-Appeal dated 20.05.2021 before any higher forum, and in the absence of such a challenge, the said order had attained finality and was binding upon the Respondents. According to the petitioner, in the existence of the earlier Order-in-Appeal dated 20.05.2021, the subsequent proceedings arising out of the refund sanction order dated 19.08.2021 operate in distinct fields, and the appellate authority, while examining the legality of the refund sanction order, has acted without its jurisdiction while passing the impugned Order-in-Appeal dated 17.02.2023.

22. According to the respondents, having participated in the subsequent show cause notice proceedings initiated under section 73 of the GST and filed an appeal, the petitioner is estopped from taking the ground

that the Order-in-Appeal dated 20.05.2021 has become final.

23. We have to decide first as to whether the writ petition is liable to be entertained on the above issues, despite the availability of the remedy of appeal before the GST Appellate Tribunal.

24. The writ petition was filed in the year 2023, when the GST Appellate Tribunal was not established, and this court also entertained the same only on the ground that the petitioner had no other alternate remedy. The fact remains that now the GST Appellate Tribunal has been constituted, and the Presiding Officers have been appointed by the Government of India. In the State of M.P., the GST Appellate Tribunal has also started its functioning. The department has already issued a circular dated 18.3.2020 to give a three-months/six-months limitation to the assessee to file an appeal before the GST Appellate Tribunal from the date the Presiding Officer takes charge in their respective Tribunals. The letter/OM dated 12.3.2020 is reproduced below:-

> *"4.2 The Appellate Tribunal has not been constituted in view of the order by Madras High Court in case of Revenue Bar Assn. v. Union of India [2019] 70 GSTR 277 (Mad) and therefore the appeal cannot be filed within three months from the date on which the order sought to be appealed against is communicated. In order to remove difficulty arising in giving effect to the above provision of the Act, the Government, on the recommendations of the Council, has issued the Central Goods and Services Tax (Ninth Removal of Difficulties) Order, 2019 dated December 3, 2019. It has been provided through the said Order that the appeal to the Tribunal can be made within three months (six months in case of appeals by the Government) from the date of communication of order or date on which the President or the State President, as the case may be, of*

the Appellate Tribunal enters office, whichever is later.

4.3 Hence, as of now, the prescribed time-limit to make application to Appellate Tribunal will be counted from the date on which President or the State President enters office. The appellate authority while passing order, may mention in the preamble that an appeal may be made to the appellate tribunal whenever it is constituted within three months from the President or the State President enters office. Accordingly, it is advised that the appellate authorities may dispose all pending appeals expeditiously without waiting for the constitution of the Appellate Tribunal.

5. It is requested that suitable trade notices may be issued to publicize the contents of this Circular."

25. Therefore, all the legal grounds raised by the petitioner in this petition and the grounds raised by the respondent to support the impugned action are liable to be appreciated by the Duli constituted GST Appellate Tribunal. Once the special statutory forum has been established by the government, the High Court should not entertain the petition and relegate the parties to avail the forum, especially constituted to address their grievances.

26. The Supreme Court in the case of ***Whirlpool Corporation v. Registrar of Trade Marks***, reported in (1998) 8 SCC 1, in its landmark decision on the question of maintainability of writ petition despite availability of alternative remedy held that under Article 226 of the Constitution, the High Court having regard to the facts of the case, has discretion to entertain or not to entertain a writ petition. The High Court has imposed upon itself certain restrictions, one of which is that if an effective and efficacious remedy is available, the High Court would not normally exercise its jurisdiction, but the alternative remedy has been consistently held

by the Supreme Court not to operate as a bar in at least four contingencies, namely, where the writ petition has been filed for the enforcement of any of the fundamental rights or where there has been a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or where the vires of an Act is challenged.

27. The petitioner is not alleging violation of principles of natural justice. He was given opportunity to defend himself by filing a reply to the show cause notice. The petitioner is also not challenging the competency of the respondent's authority to issue show cause notice as well as to decide the appeal. The petitioner is also not challenging the constitutional validity of any statute. Therefore, in the circumstances, the remedy of writ petition cannot be permitted to be availed by passing the statutory remedy of appeal before the GST Appellate Tribunal. Once the GST Appellate Tribunal has been established then the legal objection or grounds under the GST laws raised in this writ petition are liable to be appreciated by the learned Tribunal.

28. In the present case, the petitioner contested the second show cause notice by filing a reply. Thereafter, the order in the original was passed. Thereafter, the petitioner preferred an appeal, which was dismissed. Now the petitioner cannot directly come to the High Court in between by-passing the statutory remedy available before the GST Appellate Tribunal. The Supreme Court in the case of ***Radha Krishan Industries v. State of H.P.,*** reported in (2021) 6 SCC 771 4 has observed that when a right is created by

a statute that prescribes a specific remedy or procedure for its enforcement, recourse must be had to that particular statutory remedy before seeking relief under Article 226 of the Constitution of India. This principle of exhausting statutory remedies is a matter of policy, convenience and discretion, where an alternative remedy is available. The relevant extract of the said decision is culled out as under:—

> *"27. The principles of law which emerge are that:*
> *27.1. The power under Article 226 of the Constitution to issue writs can be exercised not only for the enforcement of fundamental rights, but for any other purpose as well.*
> *27.2. The High Court has the discretion not to entertain a writ petition. One of the restrictions placed on the power of the High Court is where an effective alternate remedy is available to the aggrieved person.*
> *27.3. Exceptions to the rule of alternate remedy arise where : (a) the writ petition has been filed for the enforcement of a fundamental right protected by Part III of the Constitution; (b) there has been a violation of the principles of natural justice; (c) the order or proceedings are wholly without jurisdiction; or (d) the vires of a legislation is challenged.*
> *27.4. An alternate remedy by itself does not divest the High Court of its powers under Article 226 of the Constitution in an appropriate case though ordinarily, a writ petition should not be entertained when an efficacious alternate remedy is provided by law.*
> *27.5. When a right is created by a statute, which itself prescribes the remedy or procedure for enforcing the right or liability, resort must be had to that particular statutory remedy before invoking the discretionary remedy under Article 226 of the Constitution. This rule of exhaustion of statutory remedies is a rule of policy, convenience and discretion.*
> *27.6. In cases where there are disputed questions of fact, the High Court may decide to decline jurisdiction in a writ petition. However, if the High Court is objectively of the view that the nature of the controversy requires the exercise of its writ jurisdiction, such a view would not readily be interfered with."*

29. Hence, in our opinion, the petition is liable to be dismissed with

liberty to the petitioner to file an appeal before the GST Appellate Tribunal against the impugned order. The interim relief available to the petitioner shall continue till the application for stay is decided by the GST Appellate Tribunal. Hence, the petition is dismissed with the above liberty.

(VIVEK RUSIA)
JUDGE

(PRADEEP MITTAL)
JUDGE

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