IN THE HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD

THE HON'BLE THE CHIEF JUSTICE SRI APARESH KUMAR SINGH
AND
THE HON'BLE SRI JUSTICE G.M.MOHIUDDIN

WRIT PETITION No.3663 of 2026

[CNR No. HBHC010070742026]

DATE: 08.09.2026

BETWEEN:

M/s. ADV Industrial Services Private Limited

....Petitioner

AND

The Union of India Through its secretary, Ministry of Finance, Department of Revenue and others

....Respondents

ORDER

Heard Sri Avinsah Desai, learned Senior Counsel representing Sri Kopal Sharraf, learned counsel for the petitioner; Ms. Bokaro Sapna Reddy, learned Senior Standing Counsel for Central Board of Indirect Taxes and Customs (CBIC) appearing for respondent Nos.2 and 3; and Mr. Dominic Fernandes, learned counsel for respondent Nos.4 to 6 – Directorate General of GST Intelligence (DGGI) and perused the record.

2. The present writ petition is filed with the following prayer:

> *"……to issue a writ or an order or a direction, more particularly a writ in the nature of Mandamus: i) Declaring the actions of Respondent No. 7 is passing the Refund Rejection Order dated 12.01.2026 in Form GST-RFD-06 bearing ARN number AA361025043086J as being*

> *illegal, arbitrary, unconstitutional and without jurisdiction and in contravention to the provisions of the Central Goods and Services Act, 2017 and consequently; Direct the Respondent No.7 to sanction the refund application of the Petitioner for Rs. 19,33,34,320/- paid/reversed by the Petitioner vide DRC-03, by setting aside the Refund Rejection Order dated 12.01.2026 in Form GST-RFD-06 bearing ARN number AA361025043086J; and pass such other order or orders as this Court may deem fit and proper in the circumstances of the case."*

Factual Matrix

3. The petitioner is a private limited Company engaged in the business of renting and leasing pre-fabricated warehouse buildings to its clients/customers. The petitioner is duly registered under the Central Goods and Services Tax Act, 2017 (for short 'CGST Act') and has been regularly filing its GST returns for the relevant periods, including from 2017-18 to 2021-22.

4. The genesis of the present dispute lies in an investigation initiated by the Directorate General of GST Intelligence (DGGI), Hyderabad Zonal Unit. On 16.09.2022, the petitioner received a summons under Section 70 of the CGST Act, calling upon it to produce certain documents in connection with an enquiry into the alleged availment of ineligible Input Tax Credit (ITC) purportedly in contravention of Section 17 of the CGST Act.

5. During the course of investigation, the DGGI authorities alleged that the petitioner had availed ineligible ITC amounting to Rs.19,33,34,320/- in respect of works contract services received for construction of warehouses, which according to the Department was blocked under Section 17(5) of the CGST Act. The petitioner states that during the investigation and under protest, it was compelled to reverse/pay the aforesaid amount, as follows:

a) Rs. 15,99,60,570/- was reversed from the unutilized ITC balance through Form GST DRC-03; and
b) Rs. 3,33,73,750/- was paid in cash through Form GST DRC-03 in instalments.

6. The petitioner consistently maintained that it was legally entitled to avail the said ITC and communicated the same to the respondents. In particular, the petitioner relied upon the judgment of the Orissa High Court in ***Safari Retreats Private Limited v. Chief Commissioner of Central Goods and Service Tax***[1], which was then pending consideration before the Hon'ble Supreme Court.

7. Thereafter, following the investigation, a show-cause notice dated 15.12.2023 was issued to the petitioner under Section 74 of the CGST Act, alleging irregular availment of ITC and proposing recovery of the said amount together with applicable interest and penalty.

8. The petitioner duly filed its reply to the show-cause notice and participated in the personal hearings. However, respondent No.3 passed Order-in-Original No.75/2024-25-Adjn(ADC)-GST dated 13.09.2024 (for short 'Order-in-Original'), confirming the

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[1] 2019 SCC Online Ori 443

demand of Rs.19,33,34,320/- along with applicable interest and penalty. The Order-in-Original further appropriated the entire amount of Rs.19,33,34,320/- which had already been paid/reversed by the petitioner through Form GST DRC-03.

9. Aggrieved by the Order-in-Original dated 13.09.2024, the petitioner preferred an appeal before respondent No.2. The appeal was numbered as Appeal No.80/2024-RR-GST-Comm. After hearing the parties and considering the material placed on record, respondent No.2 passed Order-in-Appeal No. HYD-GST-RRC-APP1-41-2025-26, dated 16.09.2025 (for short 'Order-in-Appeal'), allowing the appeal and setting aside the Order-in-Original.

10. In the Order-in-Appeal dated 16.09.2025, the appellate authority undertook a detailed examination of the applicability of Section 17(5)(c) and (d) of the CGST Act and recorded, *inter alia*, the following findings:

a) The restriction contemplated under Section 17(5)(c) was held to operate in the context of works contract services and the relevant statutory scheme and the appellate authority found that the provision could not sustain the demand against the petitioner in the facts of the present case.

b) In respect of Section 17(5)(d), the appellate authority examined whether the relevant goods and services had been received for construction of an immovable property on the taxpayer's “own account”.

c) Relying upon the judgment of the Hon'ble Supreme Court in ***Chief Commissioner of Central Goods and Service Tax and others v. Safari Retreats Private Limited and others***[2], the appellate authority held that construction intended to be sold or given on lease or licence could not be regarded as construction undertaken on the taxpayer's own account in the manner contemplated under Section 17(5)(d).

d) Applying the tests laid down by the Hon'ble Supreme Court in ***Bharati Airtel Limited v. Commissioner of Central Excise, Pune***[3], the appellate authority examined the nature of annexation, object of annexation, intention of the parties, functionality, permanency and marketability of the relevant components and concluded that the superstructure and Kirby steel constituted movable property.

e) The appellate authority further held that items such as electrical installations, fire hydrants, sprinklers and painting were not covered by the restriction contained in Section 17(5)(d).

f) In respect of the sub-structure, 1.5 meter wall, dock area, flooring and apron, although the appellate authority treated

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[2] (2025) 2 SCC 523
[3] 2025 (391) ELT.3 (S.C.)

these components as immovable property, it held that the restriction under Section 17(5)(d) did not apply since the construction was not undertaken on the petitioner's own account but was intended for leasing.

On the basis of the aforesaid findings, the appellate authority concluded that the demand confirmed by the adjudicating authority was unsustainable and accordingly passed the following operative order:

"The appeal is allowed and the impugned order is set aside."

11. Consequent upon the Order-in-Appeal, the petitioner filed an application for refund in Form GST-RFD-01 dated 28.10.2025, seeking refund of Rs.19,33,34,320/-. The application was acknowledged by the Department *vide* Form GST-RFD-02 dated 11.11.2025.

12. On 05.12.2025, respondent No.7 issued a notice for Rejection of Application for Refund in Form GST-RFD-08, seeking certain information and documents, including copies of the DRC-03 challans, details of the payments reflected in the GSTR-3B returns and a certificate relating to unjust enrichment. The petitioner duly responded to the said notice *vide* its reply dated 10.12.2025 and furnished the information and documents sought by the respondent, including the Chartered Accountant's (CA) Certificate relating to unjust enrichment.

13. Thereafter, instead of deciding the refund application on the basis of the material already furnished, respondent No.7 issued a further notice for Rejection of Application for Refund dated 24.12.2025 raising additional grounds for proposed rejection. The petitioner submitted a detailed reply dated 29.12.2025 dealing with and refuting the grounds raised therein. Respondent No.7 thereafter passed the impugned Refund Rejection Order dated 12.01.2026 in Form GST-RFD-06, rejecting the petitioner's refund claim in its entirety.

Submissions on behalf of the petitioner

14. The learned Senior Counsel for the petitioner advanced the following submissions:

i) That Section 107(16) of the CGST Act, 2017 provides that subject to Sections 108, 113, 117 and 118 of the CGST Act, an order passed by the appellate authority under Section 107 shall be final and binding on the parties. Section 107(16) reads:

> *"Subject to the provisions of section 108 or section 113 or section 117 or section 118, an order passed by the Appellate Authority under this section shall be final and binding on the parties."*

ii) That, as on the date of the impugned order dated 12.01.2026, no order had been passed under Sections 108, 113, 117 or 118 of the CGST Act modifying, staying or setting aside the Order-in-Appeal dated 16.09.2025.

Therefore, the Order-in-Appeal remained operative and binding upon the parties and was required to be given effect to by the subordinate authorities. The record itself shows that the respondents had merely reviewed the Order-in-Appeal, formed an opinion that the same was not legal and proper, and decided to prefer an appeal before the GSTAT.

iii) That the petitioner relies upon the settled principles, that an order passed by a competent appellate authority remains operative unless and until it is stayed, modified or set aside by a competent authority; The mere contemplation or filing of an appeal does not, by itself, operate as a stay of the order under challenge; and Subordinate authorities are required to follow and implement the orders of superior appellate authorities and cannot refuse to do so merely because the Department proposes to challenge, or disagrees with, such order.

iv) That respondent No.7 could not have rejected the refund application on the ground that the Order-in-Appeal was "not legal and proper" or that the Department had decided to prefer an appeal before the GSTAT. Such an approach effectively permits the refund adjudicating authority to question and disregard the findings of the competent appellate authority, which is impermissible.

v) That the relief sought in the appeal before the appellate authority included setting aside of the Order-in-Original with all consequential reliefs. The Order-in-Appeal dated 16.09.2025 allowed the appeal and set aside the Order-in-Original dated 13.09.2024, pursuant to which the demand of Rs.19,33,34,320/- had been confirmed and the amounts paid/reversed through DRC-03 had been appropriated.

vi) That the setting aside of the demand gave rise to the petitioner's claim for consequential refund, subject to the following statutory requirements governing refund under Section 54 of the CGST Act, which are as follows:

a) The petitioner furnished the documents and particulars in support of its refund claim, including the DRC-03 challans and other relevant records;

b) The petitioner furnished the CA's Certificate concerning unjust enrichment; and

c) The refund application was filed within the period prescribed under Section 54(1) of the CGST Act, read with the relevant-date provision applicable to a refund arising pursuant to an appellate order.

That the observation of respondent No.7 that the Order-in-Appeal "does not direct refund" is misconceived. The absence of an express direction for refund in the Order-in-

Appeal does not, by itself, authorize a subordinate refund authority to disregard the appellate findings or to reopen the substantive question of admissibility of the ITC which stood adjudicated by the appellate authority.

vii) That the impugned order discloses that the decision-making process was materially influenced by the review section and the opinion of the "competent authority". Paragraph 11.3 of the impugned order records that the refund processing officer communicated with the review section and that the competent authority had opined that the refund could not be granted and that the Department had decided to file an appeal against the Order-in-Appeal.

viii) That while respondent No.7 was required to independently adjudicate the refund application on the basis of the material placed before it, the impugned order indicates that the decision was materially guided by the Department's proposed challenge to the Order-in-Appeal. The petitioner had specifically submitted replies dated 10.12.2025 and 29.12.2025 to the notices dated 05.12.2025 and 24.12.2025 respectively.

ix) That if the respondents apprehended that implementation of the Order-in-Appeal and consequent grant of refund would adversely affect the revenue because of the Department's proposed challenge, the respondents were required to act strictly within the statutory framework governing withholding of refund.

x) That the following statutory requirements under Section 54(11) were wholly absent:

a) As on 12.01.2026, no appeal against the Order-in-Appeal had been filed before the GSTAT. The Department subsequently filed an appeal on 25.03.2026, i.e. after the impugned order; and

b) The impugned order does not allege any malfeasance or fraud on the part of the petitioner.

xi) That the respondents could not treat the mere decision or intention to challenge the Order-in-Appeal as equivalent to an order staying, modifying or setting aside the same. If the respondents sought to withhold the refund under Section 54(11), the statutory conditions governing such withholding, including the requisite opinion of the Commissioner and an opportunity of hearing to the taxable person, were required to be satisfied. The impugned order does not demonstrate compliance with those statutory requirements.

xii) That the refund application dated 28.10.2025 was filed within the prescribed period of limitation from the relevant date, the Department itself having recorded in the RFD-06 that, in the case of a refund arising as a consequence of an appellate order, the relevant date is the date of communication of such order and that the petitioner's application was filed within the prescribed period. The petitioner also furnished the CA's Certificate in support of its claim that the incidence of tax had not been passed on to any other person, thereby addressing the requirement relating to unjust enrichment. Further, the Petitioner furnished the DRC-03 challans, relevant Electronic Credit Ledger and Electronic Cash Ledger extracts and other supporting documents in support of its refund claim.

xiii) That the refund proceedings under Section 54 could not be converted into a collateral proceeding for reconsidering the substantive findings recorded by the competent appellate authority in relation to the admissibility of the ITC.

xiv) That the availability of an alternative statutory remedy is not an absolute bar to the exercise of jurisdiction under Article 226 of the Constitution, particularly where the impugned action allegedly suffers from jurisdictional error, violation of principles of natural justice, or failure to exercise jurisdiction in accordance with law.

xv) That the present case raises a jurisdictional and public-law issue concerning the authority of respondent No.7 to disregard the operative Order-in-Appeal and to rely upon the Department's proposed challenge to that order as a ground for refusing the refund. The grievance is not merely against an erroneous appreciation of facts but against the manner in which the refund jurisdiction has been exercised.

Submissions on behalf of the respondents

15. The learned Standing Counsel appearing for the respondents has advanced the following submissions:

i) That the present Writ Petition ought not to be entertained, as the petitioner has an efficacious statutory remedy of appeal under Section 107 of the CGST Act against the impugned order. It is contended that the petitioner cannot bypass the statutory appellate mechanism and directly invoke the writ jurisdiction of this Court.

ii) By placing reliance upon the judgment of the Hon'ble Supreme Court in ***Assistant Commissioner of State Tax & Others v. Commercial Steel Limited***[4], it is contended that ordinarily, a High Court should not entertain a writ petition under Article 226 of the Constitution where an efficacious statutory remedy is available. At the same time, the Hon'ble Supreme Court recognized that the existence of an

[4] (2021) 13 SCC 1

alternative remedy is not an absolute bar to the exercise of writ jurisdiction in exceptional circumstances.

iii) That no such exceptional circumstances arise in the present case and that the impugned order was passed by the competent authority upon consideration of the petitioner's refund claim, the documents on record and the circumstances relevant to the determination of refund eligibility.

iv) That the proceedings for refund under Section 54 of the CGST Act constitute an independent statutory process. According to the respondents, the setting aside of the demand by the Order-in-Appeal does not dispense with the statutory requirements governing a claim for refund, and the petitioner was required to establish its entitlement in accordance with Section 54 of the CGST Act and the Rules made thereunder.

v) That the Order-in-Appeal merely set aside the demand and did not specifically adjudicate upon the petitioner's entitlement to refund or direct sanction of the refund amount. It is therefore submitted that the refund sanctioning authority was required to examine the refund application independently and determine whether the statutory requirements for grant of refund had been satisfied.

vi) That the Order-in-Appeal dated 16.09.2025 is the subject matter of further proceedings, inasmuch as the Department has filed an appeal before the GSTAT on 25.03.2026. It is contended that in view of the pendency of such proceedings, grant of refund at this stage may result in financial consequences for the Revenue and may give rise to multiplicity of proceedings.

vii) That the competent reviewing authority, upon examination of the Order-in-Appeal, formed the view that the said order was not legal and proper and consequently decided to pursue the statutory appellate remedy. On this basis, the respondents contend that the refund claim ought not to be sanctioned during the pendency of the further proceedings.

viii) That, during the course of processing the refund claim, the proper officer examined the petitioner's financial statements and depreciation schedules and observed that the value of the goods, services and works contract services stated to have been used in the construction of the warehouse buildings appeared to have been capitalized as immovable property in the petitioner's books of account, with depreciation being claimed thereon under the Income Tax Act.

ix) That the aforesaid accounting treatment and claim of depreciation constituted a relevant circumstance for examining the petitioner's entitlement to refund and that the said aspect had not been examined by the appellate authority. It is therefore submitted that the refund sanctioning authority was entitled to examine the petitioner's refund claim with reference to the material available on record, including the financial statements and depreciation schedules.

x) That the impugned order does not amount to sitting in appeal over the Order-in-Appeal and does not violate the principles of judicial discipline. According to the respondents, the refund sanctioning authority did not seek to reopen the adjudication of the original demand, but merely examined the petitioner's claim for refund in accordance with the statutory requirements of Section 54 of the CGST Act.

xi) That the Order-in-Appeal was given effect to insofar as the demand confirmed in the adjudication proceedings stood set aside, but that the question of refund was required to be separately examined under Section 54 of CGST Act. Since the Order-in-Appeal did not specifically determine the admissibility of the refund claimed by the petitioner, the respondents submit that the proper officer was justified in examining the petitioner's entitlement to refund on the basis of the material placed before the refund authority, including the financial statements and depreciation schedules.

16. We have taken note of the respective submissions urged and perused the material on record.

Consideration by this Court

17. The first and foremost question that arises for consideration is whether the Order-in-Appeal dated 16.09.2025 was operative and binding upon the respondents as on the date of the impugned order dated 12.01.2026, and whether respondent No.7 was justified in declining to give effect to the findings recorded therein.

18. In this regard, it is apposite to reproduce the Section 107(16) of the CGST Act which reads as under:

> *(16) Every order passed under this section shall, subject to the provisions of Section 108 or Section 113 or Section 117 or Section 118 be final and binding on the parties.*

A plain reading of the said provision demonstrates that the statutory scheme makes an order passed by the appellate authority under Section 107 of the CGST Act binding upon the parties, subject to the specific statutory remedies contemplated under Sections 108, 113, 117 and 118 of the CGST Act. Consequently, merely because a further statutory remedy may be available or contemplated, the appellate order does not cease to operate unless it is modified, stayed, or set aside in accordance with law.

19. In the present case, the following facts are material:

i) The Order-in-Appeal was passed on 16.09.2025;

ii) The impugned order rejecting the petitioner's refund claim was passed on 12.01.2026;

iii) As on 12.01.2026, there was no order passed under Section 108, nor was there any order of the GSTAT, High Court or Hon'ble Supreme Court modifying, staying or setting aside the Order-in-Appeal; and

iv) The Department's appeal before the GSTAT was filed only subsequently, on 25.03.2026. The filing of such appeal is recorded in the proceedings before this Court.

In these circumstances, the Order-in-Appeal dated 16.09.2025 remained operative and binding upon the parties as on 12.01.2026. The subsequent filing of an appeal before the GSTAT, does not retrospectively render the Order-in-Appeal inoperative as on the date when the impugned order was passed. In the absence of any order staying, modifying or setting aside the Order-in-Appeal, the respondents were required to give due effect to the appellate decision in accordance with law.

20. It is pertinent to note that the observation contained in para 11.4 of the impugned order that the Order-in-Appeal *"has not* *attained the finality"* cannot, therefore, justify the rejection of the petitioner's refund claim. Even assuming that the Department was entitled to pursue the statutory remedy against the Order-in-Appeal, the mere decision to challenge the appellate order, or the subsequent filing of an appeal, did not amount to a stay or suspension of the operation of the Order-in-Appeal. The said para 11.4 is extracted hereunder for ready reference:

> *11.4 In the instant case the amounts were paid by the taxpayer voluntarily. during the investigation. Hence, the ratio laid down in the said case laws is not applicable to the present case. The present Order-in-Appeal has not attained the finality inasmuch as the competent authority has reviewed the same, found it not legal and proper and decided to file an appeal before Hon'ble GSTAT. Further, the Case laws cited by the taxpayer during the personal hearing pertain to the appeals against refund sanction order. Appellate orders against refund sanction are treated as orders u/s 54(5) of the CGST Act, 2017. While the present order of appellate authority is-against the confirmed demand of irregular ITC*

21. The respondent No.7, while processing the petitioner's refund claim, has effectively reopened and disregarded findings which had already been adjudicated upon by the appellate authority, which are evident from the following:

i) The respondent No.7 relied upon the fact that the *"competent authority has reviewed the same, found it not legal and proper and decided to file an appeal before the Hon'ble GSTAT"*. Such an internal review or administrative decision to challenge the Order-in-Appeal could not have the effect of nullifying, suspending or rendering inoperative the appellate order. The correctness of the Order-in-Appeal could be challenged only in accordance with the statutory remedies provided under the CGST Act and could not be re-examined by the refund sanctioning authority while processing the consequential refund claim.

ii) The respondent No.7 further relied upon the *"Depreciation Schedule"* and the alleged capitalization of the warehouse-related expenditure as "Building" in the petitioner's books of account. The impugned order proceeds on the premise that this material had not been placed before or considered by the appellate authority. The petitioner submits that even assuming that such material was available for consideration, the refund sanctioning authority could not use the refund proceedings as a means of reopening or indirectly questioning the substantive determination already rendered by the appellate authority in respect of the disputed ITC. If the respondents considered that the appellate determination required reconsideration in the light of any additional material, the remedy lay in pursuing the statutory appellate/revisional mechanism and not in disregarding the operative appellate order at the stage of processing the refund.

iii) The respondent No.7 further declined to sanction the refund on the ground that the refund claim was premature and that the Order-in-Appeal had “not attained the finality”. As submitted hereinabove, the Order-in-Appeal remained operative as on 12.01.2026 and had not been stayed, modified or set aside by any competent forum. The subsequent filing of the Department’s appeal before the GSTAT on 25.03.2026 could not retrospectively affect the legal position prevailing on the date of the impugned order.

22. The aforesaid course of action is contrary to the principle of judicial discipline. A subordinate or implementing authority cannot, while exercising a distinct statutory function, disregard the operative findings of a superior appellate authority merely because the Department considers those findings to be incorrect or proposes to challenge them. The statutory remedy of appeal is available to the Department precisely for the purpose of challenging an appellate order. Until such order is modified, stayed or set aside by the competent forum, the subordinate authorities are required to give effect to the operative order in accordance with law.

23. The Hon’ble Supreme Court in ***Union of India v. Kamalakshi Finance Corporation Ltd.***[5], emphasized the importance of judicial discipline and held, in substance, that the orders of higher appellate authorities are binding upon subordinate

[5] 1992 Supp (1) SCC 443

authorities and cannot be disregarded merely because the Department considers them erroneous. The Apex Court also recognized that the Department has its statutory remedies for challenging an order and cannot, pending such challenge, permit subordinate authorities to act contrary to the binding decision.

24. Likewise, in ***M/s Godrej Sara Lee Ltd. v. Excise and Taxation Officer-cum-Assessing Authority & others***[6], the Hon'ble Supreme Court held that *"Once the issue stands finally concluded, the decision binds the State, a fortiori, the Revisional Authority. The decision of the Tribunal may not be acceptable to the Revisional Authority, but that cannot furnish any ground to such authority to perceive that it is either not bound by the same or that it need not be followed."*

25. In the present case, respondent No.7 has no power to reopen, indirectly questioning or refusing to give effect to the substantive findings of the operative Order-in-Appeal on the very issue which formed the basis of the demand. The impugned order, to the extent that it proceeds on such an approach, is contrary to the principles of judicial discipline and the statutory scheme governing appellate orders, and is liable to be set aside.

26. The petitioner submits that the refund claimed by it constitutes consequential relief flowing from the Order-in-Appeal.

[6] (2025) 11 SCC 808

The relief sought by the petitioner in the appeal before the appellate authority was for setting aside the Order-in-Original, together with all consequential reliefs and the appellate authority, having considered the matter, allowed the appeal in its entirety and set aside the Order-in-Original. Consequently, the demand of Rs.19,33,34,320/- confirmed therein ceased to have any legal effect and the amounts paid by the petitioner towards the said demand could not thereafter continue to be retained by the respondents, merely on the basis of a demand which had been set aside. The setting aside of the demand thus gave rise to the petitioner's claim for consequential refund of the amounts paid and appropriated towards the said demand, subject to the statutory procedure prescribed under Section 54 of the CGST Act. The fact that the Order-in-Appeal did not separately direct payment of refund does not alter the nature of the relief claimed, since the refund arises as a consequence of the demand itself having been set aside by the appellate authority.

27. The observation of respondent No.7 in paragraph 11.6 of the impugned order that the Order-in-Appeal *"does not direct refund nor adjudicate refund eligibility under Section 54"* is misplaced. The absence of an express direction to grant refund in the Order-in-Appeal does not extinguish the petitioner's right to seek consequential refund. The appellate authority allowed the appeal in its entirety and set aside the Order-in-Original; the petitioner thereafter invoked the statutory refund mechanism under Section 54 for obtaining the consequential monetary relief arising from the appellate decision. Thus, the question before the refund authority was whether the petitioner satisfied the statutory requirements for processing the consequential refund claim, and not whether the substantive demand which had already been set aside could be re-adjudicated.

28. It is to be noted that under Section 54 of the CGST Act, the scheme itself recognizes refund claims arising as a consequence of appellate orders. Section 54(1), read with the Explanation thereto, prescribes the period within which an application for refund is required to be made and specifically recognizes, for purposes of determining the relevant date, cases where the tax becomes refundable as a consequence of an order of an appellate authority. The Department itself, in the impugned order, has treated the date of communication of the appellate order as the relevant date for the petitioner's consequential refund claim and has recorded that the application dated 28.10.2025 was filed within the prescribed period. Therefore, the respondent No.7 could not construe the Order-in-Appeal narrowly on the ground that it did not contain an express direction for refund.

29. Further, the setting aside of the demand constituted the legal basis for the petitioner's consequential refund claim, which was thereafter required to be processed in accordance with Section 54 of the CGST Act. Thus, the refund application was not an independent attempt to reopen the substantive dispute relating to the demand, but a statutory claim for consequential relief arising from the Order-in-Appeal.

30. The petitioner's submission that respondent No.7 ought to have invoked the specific power under Section 54(11) of the CGST Act, if the respondents intended to withhold the refund, is well-founded. Section 54(11) of the CGST Act provides a specific statutory mechanism for withholding a refund where the order giving rise to such refund is the subject matter of an appeal or further proceeding, or where any other proceedings under the Act are pending, subject to the conditions stipulated therein. The said provision reads as under:

> *(11) Where an order giving rise to a refund is the subject matter of an appeal or further proceedings or where any other proceedings under this Act is pending and the Commissioner is of the opinion that grant of such refund is likely to adversely affect the revenue in the said appeal or other proceedings on account of malfeasance or fraud committed, he may, after giving the taxable person an opportunity of being heard, withhold the refund till such time as he may determine.*

31. It is to be noted that Section 54(11) contemplates, *inter alia*, that if the order giving rise to the refund is the subject matter of an appeal or further proceeding, or that other proceedings under the Act are pending; and the Commissioner is of the opinion that grant of the refund is likely to adversely affect the revenue in such appeal or proceedings on account of malfeasance or fraud; an opportunity of being heard has to be afforded to the person concerned, before the refund is withheld.

32. In the present case, the statutory requirements under Section 54(11) were not satisfied as on the date of the impugned order dated 12.01.2026, for the following reasons:

i) No appeal was pending against the Order-in-Appeal as on 12.01.2026. The respondents admittedly filed an appeal before the GSTAT only on 25.03.2026, i.e., subsequent to the passing of the impugned order.

ii) The impugned order does not record any finding or opinion of the Commissioner that grant of the refund was likely to adversely affect the revenue on account of any malfeasance or fraud on the part of the petitioner.

iii) The petitioner was not afforded an opportunity of being heard before the refund was withheld on the ground that the Order-in-Appeal was under review or was proposed to be challenged.

33. The respondents could not circumvent the specific statutory mechanism under Section 54(11) by rejecting the refund application under Section 54(8) on the ground that the Order-in-Appeal had been subjected to review or that the Department proposed to pursue further proceedings. If the respondents intended to withhold the refund pending further proceedings, they were required to fulfill the statutory requirements of Section 54(11), including recording of the requisite opinion contemplated therein and affording the petitioner an opportunity of being heard before withholding the refund. However, no such exercise was undertaken in the present case.

34. Moreover, the action of respondent No.7 in rejecting the refund application under Section 54(8) merely on the ground that the Order-in-Appeal was under review is untenable. The mere fact that the Department subsequently preferred an appeal before the GSTAT could not retrospectively validate the impugned order dated 12.01.2026. In the absence of a pending appeal or other proceeding as on the date of the impugned order, and in the absence of compliance with the statutory requirements of Section 54(11), the respondents could not withhold the refund by treating the Order-in-Appeal as incapable of being given effect to.

35. The respondents' contention that the present Writ Petition is not maintainable in view of the availability of an alternative remedy under Section 107 of the CGST Act is misconceived.

36. It is well-settled that the availability of an alternative remedy is not an absolute bar to the exercise of jurisdiction under Article 226 of the Constitution. The High Court may exercise its writ jurisdiction, *inter alia*, where the impugned order is passed without or in excess of jurisdiction, in breach of the principles of natural justice, is manifestly arbitrary or perverse, or where the alternative remedy is not efficacious in the facts and circumstances of the case. The present case falls within the recognized exceptions to the rule of alternative remedy.

37. The impugned order suffers from, *inter alia*, the following fundamental infirmities:

i) Lack of jurisdiction: The Refund Authority, while processing the refund claim under Section 54, could not reopen or disregard the substantive findings rendered by the appellate authority in the Order-in-Appeal.

ii) Failure to independently apply mind: The impugned order itself records that the refund processing officer had communicated with the Review Section and that the competent authority had opined that the refund could not be granted in view of the proposed challenge to the Order-in-Appeal. The decision-making process was thus materially influenced by the Review Section, rather than being confined to an independent consideration of the petitioner's refund claim and its reply.

iii) Arbitrariness and legal infirmity: The impugned order rejects the petitioner's refund claim on the basis that the Order-in-

Appeal had not attained finality and that the Department proposed to challenge the same, without demonstrating any statutory basis for withholding the refund on such ground. The impugned order also seeks to rely upon issues concerning capitalization and depreciation which, as pleaded by the respondents themselves, were being relied upon to question the petitioner's substantive entitlement to ITC, notwithstanding the setting aside of the underlying demand by the appellate authority.

38. In ***M/s. Godrej Sara Lee Ltd*** (supra 5), the Hon'ble Supreme Court reiterated that although the existence of an alternative remedy is a relevant consideration in the exercise of writ jurisdiction, it does not operate as an absolute bar. The jurisdiction under Article 226 of the Constitution may be exercised in appropriate cases, including where the proceedings are instituted without jurisdiction, there is a violation of the principles of natural justice, or the vires of legislation are under challenge.

39. It is also to be noted that the alternative remedy of filing an appeal against the impugned order would not constitute an efficacious remedy in the facts of the present case. The appeal would lie before the Additional Commissioner-I, who is subordinate to the Principal Commissioner, the competent authority who had already expressed its opinion against grant of the refund and had directed that the Order-in-Appeal be challenged. Thus, relegating the petitioner to an appellate remedy before an authority subordinate to the very authority which has already formed and expressed its view on the subject would render the alternative remedy ineffective and illusory.

40. The petitioner, therefore, ought not to be relegated to such alternative remedy, particularly when the impugned order is challenged on grounds of jurisdiction, non-application of mind and failure to comply with the statutory mechanism under Section 54(11) of the CGST Act.

Conclusion

41. For the foregoing reasons, this Court is of the considered view that the impugned order dated 12.01.2026 is unsustainable in law, having rejected the petitioner's consequential refund claim on the basis of a proposed departmental appeal, without complying with the statutory mechanism under Section 54(11) of the CGST Act. The impugned order is, therefore, liable to be set aside, with consequential directions for grant of the refund in accordance with law.

42. Accordingly, the Writ Petition is disposed of, with the following directions:

i) The impugned order dated 12.01.2026 in Form GST-RFD-06 bearing ARN No. AA361025043086J, passed by respondent No.7, is hereby quashed and set aside.

ii) The matter is remanded to respondent No.7 for fresh consideration and disposal of the petitioner's refund application in Form GST-RFD-01 dated 28.10.2025, in accordance with law.

iii) If the respondents seek to withhold the refund on the ground of any pending or further proceedings, they shall act strictly in accordance with the provisions of Section 54(11) of the CGST Act, including satisfaction of the statutory conditions prescribed therein and compliance with the requirement of affording an opportunity of hearing.

iv) Respondent No. 7 shall pass a fresh, reasoned and speaking order on the petitioner's refund application within a period of four (4) weeks from the date of receipt of a copy of this judgment.

As a sequel, miscellaneous petitions, pending if any, stand closed. No costs.

APARESH KUMAR SINGH, CJ

G.M.MOHIUDDIN,J

Date: 08.09.2026
szt