

Pallavi

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION NO.3977 OF 2025

Ms. DHL Express India Private Limited ...Petitioner

Versus

Union of India

...Respondent

Mr. Rohan Shah, Senior Advocate a/w Mr. Mohammed Anajwala, Ms. Chandni Tanna and Mr. Prathamesh Chavan i/b. India Law Alliance for Petitioner.

Mr. Himanshu Takke, AGP for Respondent Nos.3 and 4.

**CORAM : M.S. Sonak &
Advait M. Sethna, JJ.**

DATED : 19 November 2025

P.C.:-

1. Heard learned counsel for the parties.
2. By this Petition, the Petitioner seeks a refund of taxes, claiming they were paid under a mistake of law.
3. We find that, before instituting this Petition, the Petitioner had not filed any application for a refund or even raised a demand for justice. Mr Shah admitted that the Petitioner failed to raise any demand for a refund. Typically, this is what the Petitioner should have done. This is a requirement, and not merely a formal procedure, before seeking a writ of mandamus. Therefore, this serves as a reason to refuse the mandamus.

4. A Coordinate Bench in the case of **Sansar Texturisers Pvt. Ltd. v. Union of India**¹, where a mandamus was sought for the refund of anti-dumping duty without a preceding demand for justice, declined to entertain the writ Petition. This decision relies on the rulings of the Hon'ble Supreme Court on this issue. The discussion on this issue is in paragraphs 14 to 18, and they are now transcribed below for the convenience of reference:

“I. Demand for Justice

14. *At the outset, we find from the frame of the petition that the basic requirement for maintaining a writ of mandamus, namely, a request for demand for justice, which would be the first and foremost consideration, before any party could approach the Writ Court is not fulfilled by the petitioner. We find that there was no prior representation made by the petitioner to the appropriate department of Government of India, pointing out any illegality on the notifications, much less of making a refund application which in the normal course of law a prudent litigant and that too an importer would follow.*

15. *In such context, we may observe that it is well settled that a prayer for a writ of mandamus is not maintainable in the absence of an enforceable legal right as well as a legally protected right. In such context, the Supreme Court in **Mani Subrat Jain & Ors. vs. State of Haryana & Ors.**² has observed thus:*

“9. The High Court rightly dismissed the petitions. It is elementary though it is to be restated that no one can ask for a mandamus without a legal right. There must be a judicially enforceable right as well as a legally protected right before one suffering a legal grievance can ask for a mandamus. A person can be said to be aggrieved only when a person is denied a legal right by someone who has a legal duty to do something or to abstain from doing something.”

16. *Further, it is also well settled that unless there has been a distinct ‘demand for justice’ in maintaining a prayer for mandamus, and after such demand being made when the*

¹ W.P. No. 343 of 2024 decided on 22 January 2024

² (1977) 1 SCC 486

authorities did not act in accordance with the law, only in such event, a prayer for a writ of mandamus would be maintainable. In **Saraswati Industrial Syndicate Ltd. & Ors. vs. Union of India**³, the Supreme Court referring to the Halsbury's Laws of England, observed that the powers of the High Court under Article 226 are not strictly confined to the limits to which proceedings for prerogative writs are subject in English practice. The relevant observations of the Supreme Court are required to be noted, which reads thus:

"24. The powers of the High Court under Article 226 are not strictly confined to the limits to which proceedings for prerogative writs are subject in English practice. Nevertheless, the well recognized rule that no writ or order in the nature of a mandamus would issue when there is no failure to perform a mandatory duty applies in this country as well. Even in cases of alleged breaches of mandatory duties, the salutary general rule, which is subject to certain exceptions, applied by us, as it is in England, when a writ of mandamus is asked for, could be stated as we find it set out in Halsbury's Laws of England (3rd Edn.), vol. 13, p. 106):

As a general rule, the order will not be granted unless the party complained of has known what it was he was required to do, so that he had the means of considering whether or not he should comply, and it must be shown by evidence that there was a distinct demand of that which the party seeking the mandamus desires to enforce, and that demand was met by a refusal.

25. In the cases before us, there was no such demand or refusal. Thus, no ground whatsoever is shown here for the issue of any writ, order, or direction under Article 226 of the Constitution."

17. In **Amrit Lal Berry vs. Collector of Central Excise, New Delhi & Ors.**⁴, the Supreme Court observed that there was no assertion that any representation was made against any violation of a petitioner's right, hence, the rule recognized by the Supreme Court in **Kamini Kumar Das Choudhury vs. State of West Bengal**⁵ that a demand for justice and its refusal must precede the filing of a petition asking for direction or a

³ (1974) 2 SCC 630

⁴ (1975) 4 SCC 714

⁵ (1972) 2 SCC 420

writ of mandamus, would operate against the petitioners. The relevant observation of the Supreme Court reads thus:

“25. In the petition of K.N. Kapur and Others, we do not even find an assertion that any representation was made against any violation of a petitioner’s right. Hence, the rule recognized by this Court in *Kamini Kumar Das Choudhury vs. State of West Bengal*, that a demand for justice and its refusal must precede the filing of a petition asking for direction or writ of mandamus, would also operate against the petitioners.”

18. In *Federation of Retail Traders Welfare Associate and Anr. vs. State of Maharashtra and Ors.*⁶, the Division Bench of this Court has observed that it seems to have become a habit in this Court to seek a high prerogative remedy of a mandamus without averring that the petitioner has made a demand for justice and the same having been denied or has even not made a demand at all, let alone explaining how the case fits in the few limited and well-known exceptions to the general rule. The Division Bench in making such observations also took into consideration the decisions which we have referred hereinabove.”

5. The above decision, after considering the law laid down by the Hon’ble Supreme Court, also holds that normally a writ petition for a money claim simpliciter would not be maintainable. The Coordinate Bench relied on the Constitution Bench decision in **Suganmal v. State of Madhya Pradesh** [AIR 1965 SC 1740], in which it was held that a petition under Article 226 of the Constitution solely praying for issue of a writ of mandamus directing the state to refund the money, is not ordinarily maintainable for the simple reason that a prayer for such refund can always be made in a suit against the authority which had illegally collected money as a tax.

⁶ 2022 SCC OnLine Bom 388

6. In such matters, several issues typically require consideration, including, but not limited to, limitation, delay, and laches. In a given case, there may be issues of unjust enrichment and so on. Therefore, it is important that before a petitioner seeks such relief through a writ of mandamus, there is a demand for justice followed by a refusal. This will give the writ court an idea of the State's defence. The petitioner's claim and the State's defence would bear on the question of exercising discretion to entertain a writ petition for a monetary claim simpliciter.

7. For all the above reasons, we are not inclined to entertain this petition. However, this shall not prevent the petitioner from applying for a refund in accordance with the law, if the law so permits or from raising a demand for justice in accordance with the law. If such an application is made or a demand is raised, it should be dealt with in accordance with the law within a reasonable period of say three months or so. This observation is not intended to assist the petitioner in reviving some belated claim. The Hon'ble Supreme Court has cautioned the High Courts against issuing seemingly innocuous orders "*to consider representations*" based on which attempts are invariably made to revive stale claims or urge fresh accrual of cause of action. Therefore, we clarify that this is not our intention, and our observation should not be construed in that manner.

8. Therefore, if the Petitioner files an application for refund or demand in that regard, then the appropriate

authority should dispose of such Application in accordance with law and on its own merits within a reasonable period of say three months of its receipt. Since there would be a verification issue, the appropriate authority should consider hearing the Petitioner/representative before communicating its response to the Petitioner.

9. Further, if the Petitioner is still aggrieved, the Petitioner will have the liberty to challenge such a decision in accordance with the law before the appropriate forum. However, we repeat that all contentions of all parties, including those of the Respondents based on the bars of limitation, delay, or laches, are expressly kept open.

10. As noted above, the purpose of this order is to assist the petitioner, if it has a legitimate claim, but not to enable the Petitioner to seek any revival of a time-barred or belated claim based on the response of the third respondent by urging that such a response creates a fresh cause of action.

11. The Petition is disposed of in the above terms without any costs order.

12. All concerned are to act on an authenticated copy of this order.

(Advait M. Sethna, J)

(M.S. Sonak, J.)