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

WRIT PETITION NO. 3622 OF 2024
AND
WRIT PETITION NO. 3526 OF 2024

M/s. High Performance Plastics India Pvt. Ltd. ...Petitioner
Vs
The Additional Commissioner (Appeals)-II & Anr. ...Respondents

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Mr. Mahir Chablani, Ms. Dimpal Jangid and Mr. Prasad Avhad i/b. Mr. Kuldeep Nikam for the Petitioner.
Mr. Ram Ochani with Ms. Sangeeta Yadav and Mr. Umesh Gupta for the Respondents.

CORAM: G. S. KULKARNI &
AARTI SATHE, JJ.
DATE: 9 APRIL 2026.

P.C.

1. For convenience, we refer to the facts in the lead petition i.e. Writ Petition No.3526 of 2024.

2. These petitions under Article 226 of the Constitution of India are filed praying for the following substantive reliefs:-

> "**Prayers in Writ Petition No. 3526 of 2024**
>
> a. To issue a writ of Certiorari or any other writ or order or direction of appropriate nature to quash the Order. in-Appeal dated 18.01.2024 issued by the Respondent No. 1 whereby the said Respondent has arbitrarily rejected the appeal filed by the Petitioner without considering endorsement certificates filed by the Petitioner for being illegal, arbitrary, violative of principles of natural justice, and violative of Article 14 and Article 19(1)(g) of the Constitution of India and
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> b. To issue a writ of Mandamus or any other writ or order or direction of appropriate nature directing the Respondent No. 1 to consider and accept the endorsement certificates submitted by the Petitioner and grant refund to the Petitioner along with applicable

interest;

C. To issue any other order(s), direction(s), writ(s) or any other relief(s) as this Hon'ble Court deems fit and proper in the facts and circumstances of the case and in the interest of justice;

d. To award Costs of and incidental to this application be paid by the Respondents;

Prayers in Writ Petition No. 3526 of 2024

a. To issue a writ of Certiorari or any other writ or order or direction of appropriate nature to quash the Order- in-Appeal dated 18.01.2024 issued by the Respondent No. 1 whereby the said Respondent has arbitrarily rejected the appeal filed by the Petitioner without considering endorsement certificates filed by the Petitioner for being illegal, arbitrary, violative of principles of natural justice, and violative of Article 14 and Article 19(1)(g) of the Constitution of India and

b. To issue a writ of Mandamus or any other writ or order or direction of appropriate nature directing the Respondent No. 1 to consider and accept the endorsement certificates submitted by the Petitioner and grant refund to the Petitioner along with applicable interest;

c. To issue any other order(s), direction(s), writ(s) or any other relief(s) as this Hon'ble Court deems fit and proper in the facts and circumstances of the case and in the interest of justice;

d. To award Costs of and incidental to this application be paid by the Respondents."

3. We have heard learned counsel for the parties.

4. By the impugned order, the petitioner's claim for refund has been rejected on the premise as set out in the following paragraphs:-

"From the above, it is crystal clear that in respect of supplies to a Special Economic Zone or a Specific Economic Zone developer, the application for refund shall be filed by the supplier of goods after such goods have been admitted in full in the Special Economic Zone for authorized operations, as endorsed by the specified officer of the zone on the export documents.

Further from the RFD-06 ZH2711220007969 dated 01.11.2022 submitted by the appellant, it is seen that the appellant was not able to submit endorsed copies of invoices by the specified officer for the refund period and the appellant is not able to fulfill all the mandatory conditions of rule 89(1) of the CGST Rules, 2017. It is seen from the RFD-06 that

> the appellant is not able to submit endorsed copies of invoice by the specified officer and the notice is not able to fulfill all the mandatory conditions of rule 89(1). The appellant has casually uploaded the documents without knowing the significance of the endorsement by the specified officer of SEZ. When there are some provisions in the Rules, the same are to be strictly adhered to, to file any claim under the said provisions. Without following the same, there cannot be any legitimate right of getting in return of something. Further the appellant has submitted additional evidence i.e endorsed copies of invoices at appeal stage to substantiate their refund claim.
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> The relevant provision for submission of additional evidence before the Appellate Authority is produced below:
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> "Rule 112. Production of additional evidence before the Appellate Authority or the Appellate Tribunal
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> 112(1) The appellant shall not be allowed to produce before the Appellate Authority or the Appellate Tribunal any evidence, whether oral or documentary, other than the evidence produced by him during the course of the proceedings before the adjudicating authority or, as the case may be....."
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> No additional evidence in appeal to fill up a lacuna. SC in state of UP VManbodhan L Shrivastava - AIR 1957 SC912, has held that additional evidence should not be allowed to be produced to enable a party to fill up a lacuna, especially when the appellant could have produce such evidence before lower authority but failed to do so without sufficient cause. Evidence created after proceedings have commenced is not permissible - Auto Stars v. CC-1993(64) ELT(100) CEGAT. Assessment on basis of fresh material not permissible. Appellate authority cannot take into consideration any fresh or new material which was not before the assessing officer but subsequently comes to light Indian Oil Corpn Ltd v. State of Orissa (2008) 15 VST 497 (Ori HC DB)."

5. Learned counsel for the petitioner has drawn our attention to Rule 112 of the Central Goods and Services Tax Rules, 2017, to contend that the observation made in the impugned order that there is no provision enabling the appellant, in appeal, to produce any evidence, whether oral or documentary, and, therefore, the petitioner's additional evidence (namely, certification by the specified officer) could not be accepted, is wholly untenable considering the provisions of Rule 112, which provides for four exceptions, as set out in clauses (a) to (d) of sub-rule (1), which read thus:-

> “**Rule 112 – Production of additional evidence before the Appellate Authority or the Appellate Tribunal**
>
> 1) The appellant shall not be allowed to produce before the Appellate Authority or the Appellate Tribunal any evidence, whether oral or documentary, other than the evidence produced by him during the course of the proceedings before the adjudicating authority or, as the case may be, the Appellate Authority except in the following circumstances, namely:-
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> (a) where the adjudicating authority or, as the case may be, the Appellate Authority has refused to admit evidence which ought to have been admitted; or
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> (b) where the appellant was prevented by sufficient cause from producing the evidence which he was called upon to produce by the adjudicating authority or, as the case may be, the Appellate Authority; or
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> (c) where the appellant was prevented by sufficient cause from producing before the adjudicating authority or, as the case may be, the Appellate Authority any evidence which is relevant to any ground of appeal; or
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> (d) where the adjudicating authority or, as the case may be, the Appellate Authority has made the order appealed against without giving sufficient opportunity to the appellant to adduce evidence relevant to any ground of appeal.”

6. We find substance in the contention urged on behalf of the petitioner that the perception of the appellate authority is contrary to the four exceptions relied upon, within which the petitioner’s case is contended to fall. In any event, it could have been also appropriate for the appellate authority to remand the proceedings to the original authority, if any additional material produced by the petitioner requires examination by the original authority. The substantive contentions urged on behalf of the petitioner are required to be taken into consideration by the appellate authority before passing any order.

7. Having perused the record, including the affidavit filed on behalf of the respondents, we are of the opinion that the petitions need to be disposed of by setting aside the impugned order passed by the appellate authority and remanding

the proceedings back to the appellate authority to pass an appropriate order after considering the additional evidence in terms of Rule 112 (1)(a) to (d).

8. All contentions of the parties are expressly kept open.

9. In the event the petitioner intends to urge any additional contention, the same be dealt with by the appellate authority, and appropriate evidence be recorded on all such contentions.

10. Let a decision on the appeal be taken as expeditiously as possible and in any event within a period of eight weeks from the date of copy of this order is produced before the appellate authority.

11. Both the writ petitions stand disposed of in the aforesaid terms. No costs.

(AARTI SATHE, J.) **(G. S. KULKARNI, J.)**