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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\# **CNR No. DLHC010504172026**

\+ W.P.(C) 15488/2026 & CM APPL. 72610/2026

AIRPORTS AUTHORITY OF INDIA .....Petitioner

Through: Mr. Prakash Sinha and Mr. Ayush Kumar, Advs.

versus

THE ASSISTANT COMMISSIONER CGST SOUTH EXTENSION DIVISION DIVISION-I DELHI EAST COMMISSIONERATE & ANR. .....Respondents

Through: Mr. Anurag Ojha, SSC with Mr. Dipak Raj, Adv.

CORAM:
HON'BLE MR. JUSTICE AVNEESH JHINGAN
HON'BLE MR. JUSTICE AMIT SHARMA

O R D E R

% 29.10.2026

1. This petition is filed challenging the decision dated 29.05.2026, rejecting the sanctioning of interest on the alleged period of delay in sanctioning the refund.

2. The brief facts are that there was a dispute as to whether the monthly annual fee received by the petitioner for operation, management and development agreements, was leviable to service tax or not.

3. The issue was decided on 14.02.2017 by this court in W.P.(C) 2516/2008 **Delhi International Airport Private Limited vs. Union of India & Ors.** and W.P.(C) 2707/2008 **Mumbai International Airport**

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Private Limited vs. Union of India & Ors. and it was held that no service tax is leviable on the amount received from Delhi International Airport Service Private Limited (DIAL) and Mumbai International Airport Private Limited (MIAL). The petitioner on 22.01.2018 succeeded before the Customs, Excise and Service Tax Appellate Tribunal (CESTAT), following the decisions of this court in Delhi International Airport Private (Supra) and Mumbai International Airport Private Limited (Supra) and the Order-in-Original dated 26.03.2014 was set aside.

4. The petitioner filed an application and the refund was sanctioned on 31.08.2023. Aggrieved of the non-sanctioning of interest on the delayed refund, petitioner filed a representation dated 22.09.2023. By impugned order dated 29.05.2026, the prayer for interest was rejected.

5. The impugned order is appealable under Section 35 of the Central Excise Act, 1944. An appeal against any decision and order passed by a Central Excise Officer lower in rank to the Principal Commissioner of Central Excise or Commissioner of Central Excise and the appeal shall lie to the Commissioner of Central Excise (Appeals).

6. There is no pleading in the writ petition bringing the case within the ambit of the exceptions carved out for exercising writ jurisdiction despite the availability of an alternate remedy.

7. In ***Whirlpool Corpn. v. Registrar of Trade Marks,*** (1998) 8 SCC 1 the apex court has held that the writ petition should be entertained despite there being an alternative statutory remedy in case of exceptions stated therein. The relevant paragraph is as under: -

> "**15.** Under Article 226 of the Constitution, the High Court, having regard to the facts of the case, has a

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discretion to entertain or not to entertain a writ petition. But 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 this Court not to operate as a bar in at least three 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 the vires of an Act is challenged.** There is a plethora of case-law on this point but to cut down this circle of forensic whirlpool, we would rely on some old decisions of the evolutionary era of the constitutional law as they still hold the field."

3.1 In ***M/s. Godrej Sara Lee Ltd. vs. The Excise and Taxation Officer-cum-Assessing Authority & Ors***. (2025) 11 SCC 808 held as under:

"6. The power to issue prerogative writs under Article 226 is plenary in nature. Any limitation on the exercise of such power must be traceable in the Constitution itself. Profitable reference in this regard may be made to Article 329 and ordainments of other similarly worded articles in the Constitution. Article 226 does not, in terms, impose any limitation or restraint on the exercise of power to issue writs. While it is true that exercise of writ powers despite availability of a remedy under the very statute which has been invoked and has given rise to the action impugned in the writ petition ought not to be made in a routine manner, yet, the mere fact that the petitioner before the High Court, in a given case, has not pursued the alternative remedy available to him/it cannot mechanically be construed as a ground for its dismissal. It is axiomatic that the High Courts (bearing in mind the facts of each particular case) have a discretion whether to entertain a writ petition or not. One of the self-imposed restrictions on the exercise of power under Article 226 that has evolved through judicial precedents is that the

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> *High Courts should normally not entertain a writ petition, where an effective and efficacious alternative remedy is available. At the same time, it must be remembered that mere availability of an alternative remedy of appeal or revision, which the party invoking the jurisdiction of the High Court under Article 226 has not pursued, would not oust the jurisdiction of the High Court and render a writ petition "not maintainable"*

8. This writ petition is dismissed relegating the petitioner to the alternative remedy.

9. Pending application(s), if any, are also disposed of.

AVNEESH JHINGAN, J

AMIT SHARMA, J

OCTOBER 29, 2026*/kp*

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