

ITEM NO.38

COURT NO.7

SECTION XI

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (C) No(s). 5266/2026

[Arising out of impugned final judgment and order dated 03-11-2025 in WT No. 533/2025 passed by the High Court of Judicature at Allahabad, Lucknow Bench]

M/S SIMLA GOMTI PAN PRODUCTS PVT. LTD. Petitioner(s)

VERSUS

COMMISSIONER OF STATE TAX U.P. & ORS. Respondent(s)

(FOR ADMISSION, IA No. 38830/2026 - EXEMPTION FROM FILING O.T., IA No. 38829/2026 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES)

Date : 20-03-2026 This matter was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE J.B. PARDIWALA
HON'BLE MR. JUSTICE K.V. VISWANATHAN

For Petitioner(s) :

Mr. Mukul Rohatgi, Sr. Adv.
Mr. Balbir Singh, Sr. Adv.
Mr. Kuljeet Rawal, Adv.
Ms. Ruchika Jain, Adv.
Mr. Parminder S. Bhullar, Adv.
Mr. Deepak Agrawal, Adv.
Mr. D.Kumanan, AOR

For Respondent(s) :

UPON hearing the counsel the Court made the following
O R D E R

1. Heard Mr. Mukul Rohatgi, learned senior counsel appearing for the petitioner.

2. It appears from the materials on record that a show

cause notice came to be issued to the petitioner by the department, raising a demand in the sum of Rs.119,98,39,204/- (Rupees One Hundred Nineteen Crore Ninety Eight Lakh Thirty Nine Thousand Two Hundred Four) towards tax, interest and penalty.

3. It further appears that a second show cause notice also came to be issued wherein the demand towards principal tax liability was to the tune of Rs.17,25,49,263/- (Rupees Seventeen Crore Twenty Five Lakh Forty Nine Thousand Two Hundred Sixty Three).

4. Thus, in all, the total demand raised by the department is approximately Rs.67 crore.

5. It is the case of the petitioner that for the purpose of giving appropriate reply to the two show cause notices referred to above, he made a request to the department to furnish few relevant documents. It is a specific case of the petitioner that the said documents have been referred to by the department in their two show cause notices.

6. In pursuance of the request made by the petitioner for supply of the documents, the petitioner was informed by the department that the documents would be uploaded on a particular portal on or before 31.05.2024. The department also informed the petitioner that upon such

uploading of documents, the reply to the two show cause notices may be filed on or before 10.06.2024.

7. According to the petitioner although the documents were uploaded by the department, yet those were uploaded on a different portal. Consequently, the petitioner was unable to access to that particular portal on which the documents were uploaded.

8. In such circumstances referred to above, he was not in a position to file any appropriate reply to the two show cause notices and the department proceeded to pass two final orders of assessment in accordance with the show cause notices, referred to above.

9. If we go by the two assessment orders, the total liability of the petitioner as on date with interest and penalty comes to around Rs. 159 crore.

10. Mr. Rohatgi would submit that the two assessment orders could be said to be *ex parte* orders because his client had no opportunity to participate in the assessment proceedings.

11. In such a situation, as referred to above, the two assessment orders were made a subject matter of challenge before the High Court of Allahabad. The High Court declined to entertain the writ petition, essentially on the ground that the petitioner has an

alternative efficacious remedy of preferring a statutory appeal under Section 107 of the U.P. Goods and Sales Tax Act, 2017 by making a pre-deposit of 10 per cent of the principal amount.

12. Since the High Court declined to entertain the writ petition, the petitioner is here before us with the present petition.

13. It also appears from the materials on record that in the first round, after the High Court declined to entertain the writ petition, seeking to challenge the two assessment orders, the appeal was preferred before the Appellate Authority. However, the Appellate Authority declined to entertain those appeals on the ground of failure to make the pre-deposit.

14. Today, the position is that the principal amount towards the liability as fixed by the department comes to around Rs. 67 crore. If the appeal is to be preferred, the statutory pre-deposit of 10 per cent would come to around Rs. 6.70 crore.

15. Mr. Rohatgi, has manifold contentions to raise with regard to the legality and validity of the two assessment orders and the manner in which the department proceeded with the assessment proceedings. He has also highlighted the financial constraints at the end of his

client in making a pre-deposit.

16. We direct the petitioner to deposit an amount of Rs.3.50 crore with the concerned department within a period of two weeks from today. The department shall acknowledge the receipt of the said amount in writing.

17. Once the amount is deposited, the receipt of the same shall be produced before the Registry of this Court. Upon production of the receipt of deposit, the registry shall issue notice to the respondents, returnable on 11.05.2026.

18. Since the petitioner has agreed to deposit the amount of Rs.3.50 crore within the aforesaid stipulated time, no coercive steps shall be taken pursuant to the two assessment orders.

(DEEPAK SINGH)
ASTT. REGISTRAR-cum-PS

(POOJA SHARMA)
COURT MASTER (NSH)



2025:AHC-LKO:68979

**HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW**

WRIT TAX No. - 533 of 2025

M/S Simla Gomti Pan Products Pvt. Ltd. Lko. thru.
Director Megh Raj Singh

.....Petitioner(s)

Versus

Commissioner of State Tax U.P. Commissioners
Office Lko. and 2 others

.....Respondent(s)

Counsel for Petitioner(s) : Pradeep Agrawal, Amar Mani Tiwari
Counsel for Respondent(s) : C.S.C.

A.F.R.

Court No. - 6

HON'BLE JASPREET SINGH, J.

1. Heard Shri Pradeep Agrawal, learned counsel for the petitioner and Shri Sanjay Sarin, learned Additional Chief Standing Counsel for the State-Revenue.

2. Under challenge is the order dated 24.05.2025 passed by the respondent No.2 for the Assessment Years 2021-22 and 2022-2023 respectively. The petitioner also prays that the order dated 12.06.2024 passed under Section 74 of the U.P. Goods and Sales Tax Act, 2017 (in short, 'the GST Act') has been passed without affording an opportunity of hearing, hence, the same also deserves to be set aside and a further direction has been sought directing the respondent No.3 not to recover the disputed tax for the Assessment Years 2021-22 and 2022-23 respectively.

3. Shri Agrawal, learned counsel for the petitioner has submitted that the impugned orders were passed ex-parte, without notice to the petitioner. The petitioner assailed the said orders by filing an appeal which was dismissed on the ground of limitation.

4. Being aggrieved, the petitioner preferred a writ petition bearing Writ-Tax No.330 of 2024 and the said writ petition was allowed vide order dated 10.04.2025 by a Coordinate Bench of this Court and the Appellate Authority was directed to decide the application for condonation of delay

considering the decisions of the Apex Court.

5. The submission is that the order passed by the Appellate Authority is clearly vague and without jurisdiction inasmuch as the High Court in Writ Tax No.330 of 2024 had directed the Appellate Authority to consider and decide the appeal afresh considering the decisions of the Apex Court in **M.P. Steel Corporation v. Commissioner of Central Excise, (2015) 7 SCC 58** and **Suryachakra Power Corporation Limited v. Electricity Department Represented by Its Superintending Engineer, Port Blair and others, (2016) 16 SCC 152**, but the Appellate Authority dismissed the appeal on the ground of limitation as well as non-compliance of Section 107(1)(b) the GST Act. Accordingly, the order of the Appellant Authority runs contrary to the mandate of this Court, hence, the same deserves to be set aside.

6. It is further urged that the petitioner had already prayed before the Appellate Authority that the petitioner was not in a position to make the pre-deposit and this issue was also considered in the writ petition filed by the petitioner and in such circumstances, the issue of pre-deposit could not have been made a ground to dismiss the appeal rather the same should have been considered on its merit ignoring the delay as provided in the decisions of the Apex Court in **M.P. Steel Corporation** (supra) and **Suryachakra Power Corporation Limited** (supra).

7. On the other hand, Shri Sarin, learned Additional Chief Standing Counsel for the State has refuted the aforesaid submissions and has pointed out that the orders impugned do not suffer from any error. It is urged by Shri Sarin that the chronology as indicated in the petition is not what transpired inasmuch as on the first occasion, the petitioner had filed a writ petition before the Division Bench of this Court bearing Writ-Tax No.220/2024, which came to be dismissed by means of the order dated 04.09.2024 relegating the petitioner to avail the remedy of appeal. Thereafter, the petitioner assailed the said order passed by the Division Bench of this Court dated 04.09.2024 in a Special Leave Petition before the Hon'ble Apex Court bearing SLP No.25574 of 2024 and the said SLP was dismissed on 04.11.2024.

8. The petitioner thereafter preferred the regular appeal after dismissal of his SLP and the same came to be dismissed by the Appellate Authority on the ground of limitation. This order, whereby the appeal of the petitioner was dismissed on the ground of limitation was again challenged by the petitioner before a Coordinate Bench. A Coordinate Bench of this Court in Writ-Tax No.330 of 2024 allowed the petition directing the Appellate Authority to consider the appeal of the petitioner taking note of the dictum of the Apex Court in **M.P. Steel Corporation** (supra) and **Suryachakra Power Corporation Limited** (supra).

9. The Appellate Authority considering the order passed by a Coordinate Bench of this Court dated 10.04.2025 considered the appeal and found that it was non-complaint of Section 107(6)(b) of the GST Act and dismissed the appeal. It is urged that merely pleadings in the petition that the petitioner does not have the capacity to pay 10% of pre-deposit as envisaged in the GST Act does not automatically operate as a way forward for the petitioner to get his appeal heard on merit.

10. It is submitted that at no point of time either when the petitioner had preferred Writ-Tax No.220 of 2024 before the Division Bench of this Court or when the petitioner filed Writ Tax No.330 of 2024, the petitioner did not seek a relief of exemption from making the pre-deposit. The record would indicate that once the Division Bench of this Court had declined to interfere by means of the order dated 04.09.2024 and directed the petitioner to avail the remedy of appeal, it was incumbent upon the petitioner to have made the pre-deposit with the appeal, however, the petitioner choose to assail the order of the Division Bench before the Apex Court which needless to say was dismissed.

11. In this view, the petitioner while preferring the writ petition ought to have claimed (if permissible in law) exemption from pre-depositing 10%, however, it was not made. Accordingly, the appeal filed by the petitioner did not accompany the pre-deposit and not being in accordance with the provisions, hence, it was dismissed as being time barred. Once again, the petitioner filed a Writ-Tax No.330 of 2024 knowing fully well that the appeal had been dismissed on the ground of limitation, the petitioner only claimed the remedy that his appeal may be heard taking note of the

decisions of the Apex Court in **M.P. Steel Corporation** (supra) and **Suryachakra Power Corporation Limited** (supra), but never made any prayer that the petitioner may be exempted from making the pre-deposit. The said petition was allowed and the matter was remitted to the Appellate Authority.

12. This time by the impugned orders, the appeal has been dismissed primarily not on the ground of limitation rather the appeal was dismissed on the ground that it was non-complaint of Section 107(6)(b) of the GST Act. Hence, the instant petition has no merit and deserves to be dismissed.

13. The Court has considered the rival submissions and also perused the material on record.

14. The facts are not disputed between the parties and in order to resolve the controversy raised by the learned counsel for the parties, certain timelines are important to be noticed, hereinafter:-

(i) For the first time, the petitioner assailed the order impugned dated 12.06.2024 relating to the Assessment Years 2021-22 and 2022-23 respectively directly by filing a Writ Tax No.220 of 2024 before the Division Bench of this Court, who by means of its order dated 04.09.2024 dismissed the petition on the ground of statutory remedy being available and it reads as under:-

"Heard learned counsel for the petitioner, learned Standing Counsel who appears on behalf of the State – Respondents.

This petition has been filed with the following main prayers :-

"(i) issue a writ, order or direction in the nature of writ of certiorari quashing the impugned orders for the A.Y. 2021-22 & 2022-23 (01.4.2022 to 30.07.2022) dated 12.06.2024 contained in Annexure No.1

& 2 to the writ petition after summoning the records.

(ii) issue a writ, order or direction in the nature of writ of mandamus directing the opposite party no.2 to supply a copy of the SIB report and the mode of calculation including the supporting documents so that show cause notice is effectively replied.

(iii) Issue a writ, order or direction in the nature of writ of mandamus directing the opposite party no.2 to provide sufficient time for preparation of the reply to the show cause notice and also provide personal hearing before completion of adjudication proceedings."

It is the case of the petitioner that adjudication proceedings for the assessment year 2021-2022, 2022-2023 were taken ex-parte against the petitioner as the petitioner was not given any report of the SIB which the petitioner has specific plea requested by his letter dated 30.4.2024.

Since relevant documents for replying to the show cause notice were not supplied to the petitioner he was handicapped and prejudiced. It has been stated in the impugned order that the petitioner was informed by letter dated 11.5.2024 on the portal to collect the copies of the SIB report from the office of opposite party no.2 and to submit his reply by 10.6.2024, however, such letter dated 11.5.2024 was posted at wrong section of portal and as such it could not be seen by the petitioner.

The petitioner having been denied opportunity of

hearing the order impugned are vitiated and therefore liable to be set aside.

The counsel appearing on behalf of the State-respondent has pointed out that the petitioner has not said that the adjournment letter dated 11.5.2024 by which he was informed that he may approach the office of opposite party no.2 till 31.5.2024 and obtain a copy of the SIB report and other relevant documents and then submit his reply within 10.6.2024 was posted on wrong portal. It is the case of the petitioner that it was posted on his portal but on the wrong side, i.e. in the category of additional notices and orders instead of notices and orders on the wrong portal.

Learned counsel appearing for the State respondents has pointed out that the petitioner has statutory remedy under Section 107 of the State GST Act.

This petition is disposed of with the liberty to the petitioner to file his appeal within 10 days from today. If such an appeal is filed the same shall be considered on its merits and decided as expeditiously as possible. The petitioner is also at liberty to approach the office of opposite party no.2 to procure a copy of the SIB report and other relevant documents relied upon in passing of the impugned order."

(ii) It is not disputed that the petitioner assailed the order passed by the Division Bench as noticed above by filing SLP before the Hon'ble Apex Court, which came to be dismissed by means of the order dated 04.11.2024.

(iii) The impact of dismissal of the SLP would be that the order of Division Bench was upheld and it is in furtherance thereof the petitioner, who was relegated to the Appellate Authority

filed his appeal before the Appellate Authority on 06.11.2024. A copy of the memo of appeal has been brought on record as Annexure No.12 and it is also not in dispute that the appeal was accompanied by an application seeking condonation of delay.

(iv) It is also not disputed that for filing an appeal, the petitioner had to make a pre-deposit in terms of Section 107(6)(b) of the GST Act. It is not disputed and also evident from the record that the petitioner pleaded in his application seeking condonation of delay that the appellant/petitioner had approached the Apex Court against the order passed by the Division Bench of this Court. It was also stated that due to lack of funds relating to pre-deposit, the petitioner had approached the Apex Court with a request to provide an opportunity of hearing, but the same was rejected on 04.11.2024, hence, the appellant/petitioner is submitting his appeal without pre-deposit of 10% of the huge disputed tax, hence, the delay be condoned and the appeal be heard on merits.

(v) It is also not disputed that despite making this contention, the appeal of the petitioner was dismissed on the ground of delay which further prompted the petitioner to file and assail the order relating to dismissal by filing Writ-Tax No.330 of 2024.

15. Now, in the second round, a Coordinate Bench of this Court vide order dated 10.04.2025 allowed the Writ Petition No.330 of 2024 and directed the appellate Authority to consider the appeal as well as application for condonation of delay in light of the dictum of the Apex Court in **M.P. Steel Corporation** (supra) and **Suryachakra Power Corporation Limited** (supra).

16. At this very stage, it will be relevant to notice Paragraph 3 to 15 of the order passed by the Coordinate Bench of this Court dated 10.04.2025 in Writ Tax No.330 of 2024, which reads as under:-

"3. Contention of learned counsel for the petitioner is that an

ex-parte order came to be passed by respondent no.3 in purported exercise of power under Section 74 of the GST Act vide order dated 12.06.2024. He draws my attention to argue that even no opportunity of hearing was granted and the documents which were sought in the form of SIB report, which were proposed to be relied upon, was never provided to the petitioner.

4. It is argued that against the said order, the petitioner had approached this Court by filing a writ petition being Writ Tax No.220 of 2024, however, the same was disposed off vide judgment dated 04.09.2024. In the said judgment, it was observed that in case the petitioner files his reply within a period of ten days from today, the same shall be considered on merits and shall be decided as expeditiously as possible. Further directions for providing the SIB report was also passed.

5. Aggrieved against the said order passed by this Court, the petitioner approached the Hon'ble Supreme Court by filing SLP No.25574 of 2024 which came to be dismissed on 04.11.2024. The SLP was dismissed without going on the merits of the order passed. After the dismissal of the SLP on 04.11.2024, the petitioner preferred the regular appeal under Section 107 of GST Act on 06.11.2024, however, the same came to be dismissed by means of the impugned judgment.

6. In the said order, it was also observed that the petitioner has not deposited the mandatory requirement of 10% of pre-deposit and it was also noticed that the appeal was beyond limitation and the delay could not be condoned. The Tribunal also noticed the order of this Court in the case of M/s A V Construction vs. Commissioner and Ors.; Writ Tax No.819 of 2021 decided on 30.09.2021 wherein it was held that the principles of Section 5 of Limitation Act would have no application in the face of law which is a complete code and apart from the quantum of delay which can be condoned as prescribed under Section 107 of GST Act, the Tribunal did not have the power to invoke the

principles of Section 5 of the Limitation Act to condone the delay.

7. In the light of the said, learned counsel for the petitioner argues that the petitioner was bonafidely pursuing his remedies against the assessment order, firstly by filing a writ petition before this Court and secondly by availing the remedy of SLP before the Hon'ble Supreme Court, and thus, the petitioner was entitled to the benefit of Section 14 of the Limitation Act as has been held in the case of M.P. Steel Corporation vs. Commissioner of Central Excise; (2015) 7 SCC 58. He further argues that the order under Section 74 of the GST Act is wholly arbitrary for the reasons that in the show-cause notice, there was no assertion/allegation that there exist any material so as to justify invoking of larger period of limitation under Section 74. He argues that to invoke the jurisdiction under Section 74, in contradiction to the powers conferred by Section 73, it is essential that power under Section 74 can only be invoked when tax is not paid or short paid by reasons of fraud or any wilful misstatement or suppression of facts. He argues that there were no allegation, leave alone finding, in the impugned order to justify invocation of power under Section 74 of the GST Act. He further argues that even the documents proposed to be relied upon being the SIB report, was never provided and thus, for all the reasons, the impugned orders deserve to be quashed.

8. Learned Standing Counsel, based upon instructions and counter affidavit, argues that the SIB report was directed to be collected by the assessee, however, he did not do so. It is further argued that the petitioner has already approached this Court by filing a writ petition which has been disposed off, thus, the validity of the order of assessment cannot be seen again in a subsequent writ petition. He further argues that the petitioner was granted ten days' time by this Court to file and avail the remedy of appeal which he chose not to do so and thus, it is the petitioner who is to be blamed for him not being

vigilant in pursuing the remedies prescribed under law, as such, the writ petition should be dismissed.

9. As regards the argument with regard to the applicability of Section 14 of the Limitation Act, it is argued that the order is silent on that aspect.

10. Considering the submissions made at the Bar, prima-facie, the petitioner was bonafidely pursuing his remedy before this Court as well as before the Supreme Court as is evident from the two orders passed, and immediately after passing of the order by the Supreme Court on 04.11.2024, the petitioner preferred the appeals on 06.11.2024. The period of the petitioner having spent before the High Court and the Supreme Court could be pleaded by him to be excused in view of the mandate of Section 14 of the Limitation Act. This aspect has not been considered in the impugned orders.

11. Thus, finding the impugned orders dated 11.11.2024 & 23.11.2024 to be improper insofar as it fails to consider the mandatory prescriptions contained in Section 14 of the Limitation Act, the orders impugned cannot be sustained and are quashed.

12. Matter is remanded to the appellate authority to pass orders afresh after considering the mandate of M.P. Steel Corporation (supra) and Suryachakra Power Corporation Limited vs. Electricity Department Represented by Its Superintending Engineer, Port Blair and Ors.; (2016) 16 SCC 152.

13. The said order shall be passed by the appellate authority within a period of three weeks.

14. The petitioner would be at liberty to place any other relevant documents/case-laws that he may think appropriate before the appellate authority.

15. Present petition stands allowed in above terms."

17. After this order was placed before the appellate Authority, the appellate Authority vide impugned order, after noticing the facts and the contentions of the appellant/petitioner found that the directions of the writ Court vide order dated 10.04.2025 was in respect of the limitation and not in respect of exemption of pre-deposit of 10%, hence, in absence of pre-deposit, the appellate Authority dismissed the appeal being not in order.

18. This Court finds that as far as the issue of pre-deposit is concerned, though the petitioner had taken it as a ground of invoking the writ jurisdiction of this Court by filing writ petition bearing Writ Tax No.220 of 2024 which was dismissed by relegating the petitioner to approach the Appellate authority. However, at no point of time, it was ever pressed or a specific relief was sought by the petitioner to exempt the petitioner from making the pre-deposit.

19. It is relevant to notice that while the petitioner had assailed the order of the Division Bench before the Apex Court which was also dismissed. Thereafter, the petitioner filed an appeal and in his appeal, an application for seeking condonation of delay was moved which is at running Page No.254 of the paper-book. What is important is Paragraph 2 to 4 of the said application, which reads as under:-

"2. That the disputed tax is of so huge amount that the appellant is unable to deposit 10% of the disputed tax and also the appellant did not get proper opportunity of hearing of the show cause notice. Hence the appellant approached Honorable High for affording an opportunity for hearing against the notices BUT the Honorable Court rejected the prayer through Order dated 21.9.2024 by directing the appellant to submit this appeal BUT due to lack of funds to deposit 10% of the disputed tax the appellant approached Honorable Supreme court with request to provide an opportunity for hearing of the case by order for remand the case to the respondent because the appellant is unable to deposit 10% of the huge disputed tax BUT Honorable Court rejected the prayer on date 4.11.2024.

3. That the appellant is submitting this appeal without

depositing 10% of the heavy and huge disputed tax because the bank account has also been seized and the business activities has been shut down due to which the appellant is unable to deposit any portion of the disputed tax and to deposit 10% is totally impossible.

4. That if the delay is not condoned and requirement to deposit 10% of the disputed tax is not waived off then the appellant has to completely shut down the business."

20. In the statement of fact preferred by the petitioner in the memo of appeal, which is at running Page No.258, Paragraph-3 thereof is relevant, which reads as under:-

"3. That the main accountant who looks after the accounts and GST Portal was seriously ill for some time. Hence the appellant hired another part time accountant to look after the returns and accounts. The new accountant did not enquire regularly the GST Portal on which the respondent served the disputed order. The counsel of the appellant while filing an appeal against Order U/S 129 finds out that the disputed order has been served after which the appellant approached to Honorable High Court for affording an opportunity for hearing against the notices Issued U/S 74 BUT Honorable High Court rejected the prayer through order dated 21.9.2024 and directed to file appeal against the disputed order BUT the appellant is unable to deposit 10% of the heavy, huge, imaginary and illegal disputed tax hence the appellant approached to Honorable Supreme Court with request to provide an opportunity for hearing of the case by order for remand the case to the respondent because the appellant is unable to deposit 10% of the disputed tax as bank account is also seized by the respondent against the recovery BUT Honorable Supreme Court rejected the prayer on date 4.11.2024 hence the appellant is filing this appeal without depositing the required 10% of the disputed tax."

21. It is clear from the aforesaid averments made by the petitioner that it was specifically aware that it was required to make a pre-deposit with the appeal. Though the petitioner had taken grounds that the petitioner did not have means to make the pre-deposit, hence, it chose to file the writ petition in the first place which was dismissed and its attempt to assail the order before the Apex Court also failed.

22. Apparently, the choice of the petitioner to avail the remedy of writ petition was squarely on the premise that the demand was exorbitant and the petitioner did not have means to pay and that he was not granted an opportunity to contest it on merits.

23. This is a clear case with indication that the petitioner had filed the writ petition in order to avoid making the pre-deposit, hence, the petitioner was availing the remedy of writ. Once the writ petition was dismissed naturally, the same issue would have been raised by the petitioner in SLP which was also dismissed. This gets credence from the fact that after the dismissal of the SLP, the petitioner had filed the appeal and in his application seeking condonation of delay as well as statement of fact, the relevant paragraphs of which have been quoted hereinabove, would reveal that though the special leave petition was dismissed, yet the petitioner wanted to seek exemption from making the pre-deposit. No specific application was moved and even otherwise, once the appeal was dismissed on the ground of limitation and the petitioner filed the writ petition before a Coordinate Bench of this Court bearing Writ Tax No.330 of 2024, then in the said petition, the petitioner ought to have claimed all reliefs which was to be claimed and could not claim it in piecemeal and in this regard, it would be clear that the petitioner did not claim any remedy or relief relating to exemption of pre-deposit, while filing the aforesaid Writ Tax No.330 of 2024.

24. Learned counsel for the petitioner could not dispute the fact that the relief of exemption of pre-deposit was not claimed in Writ Petition No.330 of 2024.

25. Even from a perusal of the order dated 10.04.2024, which has been quoted hereinabove in the earlier part of this judgment, it would reveal

that the Coordinate Bench of this Court in Para-6 while considering the chronology of event noticed that the appeal had been dismissed for want of pre-deposit, yet the direction given while allowing the writ petition was only in respect of limitation and not on the issue of pre-deposit.

26. This Court finds that the issue of pre-deposit was available to the petitioner and that was the basic reason why initially the petitioner filed the writ petition instead of an appeal. The writ Court relegated the petitioner to avail the remedy of an appeal, however, no attempt was made by the petitioner to seek any further relief regarding exemption of pre-deposit. More so, even before the Apex Court, the petitioner, who did not succeed and was aware that it had no further option but to file the appeal, yet failed to seek any relief from the Apex Court regarding exemption of pre-deposit.

27. From the above, it would be clear that this issue was always known to the petitioner and having failed to take it as a cause first before the Division Bench of this Court, secondly, at the time when the SLP was dismissed and even not having prayed for it before the Appellate Authority by moving a separate application and even when the petitioner filed Writ Tax No.330 of 2024.

28. In the aforesaid circumstances, this Court is of the clear view that the petitioner cannot be permitted to file successive writ petitions in respect of a remedy or relief which was always known and available to the petitioner but not having claimed and even otherwise if it was taken then the petitioner ought to have raised all his claim at one place failing which the principles of Order II Rule 2 CPC are attracted to the detriment of the petitioner. [See : **Sarguja Transport Service v. State Transport Appellate Tribunal, M.P., Gwalior and others, (1987) 1 SCC 5**] and the petitioner cannot be permitted to raise the said issue later by a subsequent petition filed under Article 226/227 of the Constitution of India.

29. There is another way to look at the issue inasmuch as the petitioner having informed the appellate authority of the fact that it was unable to make the pre-deposit and the appeal was dismissed on the ground of

limitation then while preferring the Writ Tax No.330 of 2024, the petitioner should have raised the said issue and even while a direction was issued only in respect of the limitation, but there is no direction relating to exemption of pre-deposit.

30. At this stage, it will be apt to notice the 'Henderson principle' which is the core of the doctrine of abuse of process and to ensure that litigant does not indulge in repetitive and vexatious legal challenges. The Apex Court has explained the same in **Celir LLP v. Sumati Prasad Bafna and others, 2024 SCC OnLine SC 3727** as under:-

"135. The 'Henderson Principle' is a foundational doctrine in common law that addresses the issue of multiplicity in litigation. It embodies the broader concept of procedural fairness, abuse of process and judicial efficiency by mandating that all claims and issues that could and ought to have been raised in a previous litigation should not be relitigated in subsequent proceedings. The extended form of res-judicata more popularly known as 'Constructive Res Judicata' contained in Section 11, Explanation VII of the CPC originates from this principle.

136. In *Henderson v. Henderson*, [1843] 3 Hare 999, the English Court of Chancery speaking through Sir James Wigram, V.C. held that where a given matter becomes the subject of litigation and the adjudication of a court of competent jurisdiction, the parties so litigating are required to bring forward their whole case. Once the litigation has been adjudicated by a court of competent jurisdiction, the same parties will not be permitted to reopen the lis in respect of issues which might have been brought forward as part of the subject in contest but were not, irrespective of whether the same was due to any form of negligence, inadvertence, accident or omission. It was further held, that principle of res judicata applies not only to points upon which the Court was called upon by the parties to adjudicate and pronounce a judgment but to every possible or probable point or issue that

properly belonged to the subject of litigation and the parties ought to have brought forward at the time. The relevant observations read as under:—

“In trying this question I believe I state the rule of the Court correctly when I say that, where a given matter becomes the subject of litigation in, and of adjudication by, a Court of competent jurisdiction, the Court requires the parties to that litigation to bring forward their whole case, and will not (except under special circumstances) permit the same parties to open the same subject of litigation in respect of matter which might have been brought forward as part of the subject in contest, but which was not brought forward, only because they have, from negligence, inadvertence, or even accident, omitted part of their case. The plea of res judicata applies, except in special cases, not only to points upon which the Court was actually required by the parties to form an opinion and pronounce a judgment, but to every point which properly belonged to the subject of litigation, and which the parties, exercising reasonable diligence, might have brought forward at the time. [...]”

(Emphasis supplied)

137. The above proposition of law came to be known as the ‘Henderson Principle’ and underwent significant evolution, adapting to changing judicial landscapes and procedural requirements. The House of Lords in *Johnson v. Gore Wood & Co*, [2002] 2 A.C. 1, upon examining the ‘Henderson Principle’ authoritatively approved it with the following observations:—

(i) Lord Bingham of Cornhill integrated the principle with the broader doctrine of abuse of

process and held that the bringing of a claim or the raising of a defence in later proceedings which ought to have been raised earlier will not always be hit by this principle, but rather will apply where such point is sought to be raised as an additional or collateral attack on a previous decision and the bringing forth of such ground amounts to misusing or abusing the process of the court or as a means for unjust harassment of a party. The relevant observations read as under:—

“Henderson v. Henderson abuse of process, as now understood, although separate and distinct from cause of action estoppel and issue estoppel, has much in common with them. The underlying public interest is the same : that there should be finality in litigation and that a party should not be twice vexed in the same matter. This public interest is reinforced by the current emphasis on efficiency and economy in the conduct of litigation, in the interests of the parties and the public as a whole. The bringing of a claim or the raising of a defence in later proceedings may, without more, amount to abuse if the court is satisfied (the onus being on the party alleging abuse) that the claim or defence should have been raised in the earlier proceedings if it was to be raised at all. I would not accept that it is necessary, before abuse may be found, to identify any additional element such as a collateral attack on a previous decision or some dishonesty, but where those elements are present the later proceedings

will be much more obviously abusive, and there will rarely be a finding of abuse unless the later proceeding involves what the court regards as unjust harassment of a party. It is, however, wrong to hold that because a matter could have been raised in earlier proceedings it should have been, so as to render the raising of it in later proceedings necessarily abusive. That is to adopt too dogmatic an approach to what should in my opinion be a broad, merits-based judgment which takes account of the public and private interests involved and also takes account of all the facts of the case, focusing attention on the crucial question whether, in all the circumstances, a party is misusing or abusing the process of the court by seeking to raise before it the issue which could have been raised before. As one cannot comprehensively list all possible forms of abuse, so one cannot formulate any hard and fast rule to determine whether, on given facts, abuse is to be found or not [...]”

(Emphasis supplied)

(ii) Lord Millett construing the Principle held that it does not belong to the doctrine of res-judicata in the strict sense but rather was analogous to the doctrine, as it goes a step further to encompass even those proceedings that either culminated into a settlement or issues which had never been adjudicated previously in order to protect the process of the court from abuse and the defendant from oppression. The relevant observations read as under:—

“As the passages which I have emphasised indicate, Sir James Wigram V-C did not consider that he was laying down a new principle, but rather that he was explaining the true extent of the existing plea of res judicata. Thus he was careful to limit what he was saying to cases which had proceeded to judgment, and not, as in the present case, to an out of court settlement. Later decisions have doubted the correctness of treating the principle as an application of the doctrine of res judicata, while describing it as an extension of the doctrine or analogous to it ... But these various defences [res judicata, issue or cause of action estoppel] are all designed to serve the same purpose : to bring finality to litigation and avoid the oppression of subjecting a defendant unnecessarily to successive actions. While the exact relationship between the principle expounded by Sir James Wigram V-C and the defences of res judicata and cause of action and issue estoppel may be obscure, I am inclined to regard it as primarily an ancillary and salutary principle necessary to protect the integrity of those defences and prevent them from being deliberately or inadvertently circumvented.

In one respect, however, the principle goes further than the strict doctrine of res judicata or the formulation adopted by Sir James Wigram V-C, for I agree that it is capable of applying even where the first

action concluded in a settlement. Here it is necessary to protect the integrity of the settlement and to prevent the defendant from being misled into believing that he was achieving a complete settlement of the matter in dispute when an unsuspected part remained outstanding.

However this may be, the difference to which I have drawn attention is of critical importance. It is one thing to refuse to allow a party to relitigate a question which has already been decided; it is quite another to deny him the opportunity of litigating for the first time a question which has not previously been adjudicated upon. This latter (though not the former) is prima facie a denial of the citizen's right of access to the court conferred by the common law and guaranteed by article 6 ... While, therefore, the doctrine of res judicata in all its branches may properly be regarded as a rule of substantive law, applicable in all save exceptional circumstances, the doctrine now under consideration can be no more than a procedural rule based on the need to protect the process of the court from abuse and the defendant from oppression [...]”

(Emphasis supplied)

138. In *Virgin Atlantic Airways Ltd. v. Zodiac Seats UK Ltd.*, [2014] A.C. 160 Lord Sumption JSC further expounded the ‘Henderson Principle’ as although separate and distinct from cause of action estoppel or res judicata yet having the same

underlying public interest that there should be finality in litigation and that a party should not be twice vexed in the same matter. The relevant observations read as under:—

“The principle in *Henderson v. Henderson* has always been thought to be directed against the abuse of process involved in seeking to raise in subsequent litigation points which could and should have been raised before. There was nothing controversial or new about this notion when it was expressed by Lord Kilbrandon in the *Yat Tung* case [1975] A.C. 581. The point has been taken up in a large number of subsequent decisions, but for present purposes it is enough to refer to the most important of them, *Johnson v. Gore-Wood & Co* [2002] 2 A.C. 1, in which the House of Lords considered their effect. This appeal arose out of an application to strike out proceedings on the ground that the plaintiffs claim should have been made in an earlier action on the same subject matter brought by a company under his control. Lord Bingham of Cornhill took up the earlier suggestion of Lord Hailsham of St Marylebone LC in *Vervaeke (formerly Messina) v. Smith* [1983] 1 A.C. 145, 157 that the principle in *Henderson v. Henderson* was “both a rule of public policy and an application of the law of res judicata”. He expressed his own view of the relationship between the two at p. 31 as follows: “Henderson v. Henderson abuse of process, as now understood, although separate and distinct from cause of action estoppel and issue estoppel, has much in common with them. The underlying public interest is the same : that there should be finality in litigation and that a party should not be twice vexed in the same matter. This public interest is reinforced by the current emphasis on efficiency and economy in the

conduct of litigation, in the interests of the parties and the public as a whole”.”

(Emphasis supplied)

139. Even in a common law action it was said by Blackburn, J.:“I incline to think that the doctrine of res judicata applies to all matters which existed at the time of giving of the judgment, and which the party had an opportunity of bringing before the Court.” [See : *Newington v. Levy*, [L.R.] 6 C.P. 180 (J)].

140. The fundamental policy of the law is that there must be finality to litigation. Multiplicity of litigation benefits not the litigants whose rights have been determined, but those who seek to delay the enforcement of those rights and prevent them from reaching the rightful beneficiaries of the adjudication. The Henderson Principle, in the same manner as the principles underlying res judicata, is intended to ensure that grounds of attack or defence in litigation must be taken in one of the same proceeding. A party which avoids doing so does it at its own peril. In deciding as to whether a matter might have been urged in the earlier proceedings, the court must ask itself as to whether it could have been urged. In deciding whether the matter ought to have been urged in the earlier proceedings, the court will have due regard to the ambit of the earlier proceedings and the nexus which the matter bears to the nature of the controversy. In holding that a matter ought to have been taken as a ground of attack or defence in the earlier proceedings, the court is indicating that the matter is of such a nature and character and bears such a connection with the controversy in the earlier case that the failure to raise it in that proceeding would debar the party from agitating it in the future. The doctrine itself is based on public policy flowing from the age-old legal maxim interest reipublicae ut sit finis litium which means that in the interest of the State there should be an end to litigation and no party ought to be vexed twice in a litigation for one and the same cause.

141. The Henderson Principle was approvingly referred to and applied by this Court in State of U.P. v. Nawab Hussain, (1977) 2 SCC 806 as the underlying principle for res-judicata and constructive res-judicata for assuring finality to litigation. The relevant observations read as under:—

“3. The principle of estoppel per rem judicatam is a rule of evidence. As has been stated in *Marginson v. Blackburn Borough Council* [[1939] 2 K.B. 426 at p. 437], it may be said to be “the broader rule of evidence which prohibits the reassertion of a cause of action”. This doctrine is based on two theories : (i) the finality and conclusiveness of judicial decisions for the final termination of disputes in the general interest of the community as a matter of public policy, and (ii) the interest of the individual that he should be protected from multiplication of litigation. It therefore serves not only a public but also a private purpose by obstructing the reopening of matters which have once been adjudicated upon. It is thus not permissible to obtain a second judgment for the same civil relief on the same cause of action, for otherwise the spirit of contentiousness may give rise to conflicting judgments of equal authority, lead to multiplicity of actions and bring the administration of justice into disrepute. It is the cause of action which gives rise to an action, and that is why it is necessary for the courts to recognise that a cause of action which results in a judgment must lose its identity and vitality and merge in the judgment when pronounced. It cannot therefore survive the judgment, or give rise to another cause of action on the same facts. This is what is known as the general principle of res judicata.

4. But it may be that the same set of facts may give rise to two or more causes of

action. If in such a case a person is allowed to choose and sue upon one cause of action at one time and to reserve the other for subsequent litigation, that would aggravate the burden of litigation. Courts have therefore treated such a course of action as an abuse of its process and Somervell, L.J., has answered it as follows in Greenhalgh v. Mallard [[1947] All ER 255 at p. 257]:“I think that on the authorities to which I will refer it would be accurate to say that res judicata for this purpose is not confined to the issues which the court is actually asked to decide, but that it covers issues or facts which are so clearly part of the subject-matter of the litigation and so clearly could have been raised that it would be an abuse of the process of the court to allow a new proceeding to be started in respect of them.

This is therefore another and an equally necessary and efficacious aspect of the same principle, for it helps in raising the bar of res judicata by suitably construing the general principle of subduing a cantankerous litigant. That is why this other rule has some times been referred to as constructive res judicata which, in reality, is an aspect or amplification of the general principle.”

(Emphasis supplied)

142. This Court in *Devilal Modi v. Sales Tax Officer, Ratlam*, AIR 1965 SC 1150, held that if the underlying rule of

constructive res judicata is not applied to writ proceedings, it would be open to the party to take one proceeding after another and urge new grounds every time, and would be inconsistent with considerations of public policy. The relevant observations read as under:—

“8. [...] the rule of constructive res judicata which is pleaded against him in the present appeal is in a sense a somewhat technical or artificial rule prescribed by the Code of Civil Procedure. This rule postulates that if a plea could have been taken by a party in a proceeding between him and his opponent, he would not be permitted to take that plea against the same party in a subsequent proceeding which is based on the same cause of action; but basically, even this view is founded on the same considerations of public policy, because if the doctrine of constructive res judicata is not applied to writ proceedings, it would be open to the party to take one proceeding after another and urge new grounds every time; and that plainly is inconsistent with considerations of public policy [...].”

(Emphasis supplied)

143. In *Shankara Coop. Housing Society Ltd. v. M. Prabhakar*, (2011) 5 SCC 607, this Court held that the ground of non-compliance of statutory provision which was very much available to the parties to raise but did not raise it as one of the grounds, cannot be raised later on and would be hit by the principles analogous to constructive res judicata. The relevant observations read as under:—

“89. In the present case, it is admitted fact that when the contesting respondents filed WP No. 1051 of 1966, the ground of non-compliance with statutory provision was very much available to them, but for

the reasons best known to them, they did not raise it as one of the grounds while challenging the Notification dated 11-12-1952 issued under the Evacuee Property Act. In the subsequent writ petition filed in the year 1990, initially, they had not questioned the legality of the notification, but raised it by filing an application, which is no doubt true, allowed by the High Court. In our view, the High Court was not justified in permitting the petitioners therein to raise that ground and answer the same since the same is hit by the principles analogous to constructive res judicata.”

(Emphasis supplied)

144. From the above exposition of law, it is clear that the ‘Henderson Principle’ is a core component of the broader doctrine of abuse of process, aimed at enthusing in the parties a sense of sanctity towards judicial adjudications and determinations. It ensures that litigants are not subjected to repetitive and vexatious legal challenges. At its core, the principle stipulates that all claims and issues that could and should have been raised in an earlier proceeding are barred from being raised in subsequent litigation, except in exceptional circumstances. This rule not only supports the finality of judgments but also underscores the ideals of judicial propriety and fairness.

145. There are, four situations where in second proceedings between the same parties doctrine res judicata as a corollary of the principle of abuse of process may be invoked : (i) cause of action estoppel, where the entirety of a decided cause of action is sought to be relitigated; (ii) issue estoppel or, “decided issue estoppel,” where an issue is sought to be relitigated which has been raised and decided as a fundamental step in arriving at the earlier judicial decision; (iii) extended or constructive res judicata i.e., “unraised issue estoppel,” where an issue is sought

to be litigated which could, and should, have been raised in a previous action but was not raised; (iv) a further extension of the aforesaid to points not raised in relation to an issue in the earlier decision, as opposed to issues not raised in relation to the decision itself."

31. Now, applying the aforesaid principles to the instant case, it would reveal that the prayers contained in this petition are quite similar to the prayers contained in Writ Tax No.220 of 2024 and Writ Tax No.330 of 2024. Apparently, no relief was claimed for exemption of pre-deposit either in Writ Tax No.330 of 2024 nor in the instant petition despite knowing the fact that the appeal was denied for want of making the 10% pre-deposit as provided in Section 106(6)(b) of the GST Act. Hence, constructive res-judicata is clearly attracted.

32. Thus, this Court finds that a deliberate attempt has been made by the petitioner by filing a successive writ petition only to evade the pre-deposit of 10% as provided in the GST Act and it is incorrect to state that the appellate Authority by the impugned order rejected the appeal on the ground of limitation as it is clearly indicated in the impugned order that the appeal is dismissed for want of compliance of Section 107(6)(b) of the GST Act, hence, for all the aforesaid reasons, the petition is misconceived and is accordingly **dismissed**. In the facts and circumstances, there shall be no order as to costs.

(Jaspreet Singh,J.)

November 3, 2025

Rakesh/-