IN THE HIGH COURT OF MADHYA PRADESH AT INDORE

BEFORE

HON'BLE SHRI JUSTICE SUBODH ABHYANKAR

&

HON'BLE SHRI JUSTICE ALOK AWASTHI

WRIT PETITION No. 18613 of 2026

NOVUS ANIMAL NUTRITION INDIA PVT. LTD. THROUGH ITS SR. GL COORDINATOR ASIA MR. ROHAN R KUSHTAGI

Versus

THE UNION OF INDIA AND OTHERS

Appearance:

Shri Prasad Paranjape- Advocate with Ms. Nidhi Doshi - Advocate for the petitioner.

Shri Chandan Airen- Advocate with Ms. Smriti Razdan- Advocate for the respondent Nos.2 and 3.

Reserved on : 11.08.2026

Pronounced on : 29.09.2026

….....

This petition having been heard and reserved for orders, coming on for pronouncement this day, the court passed the following:

ORDER

Per*: *Justice Subodh Abhyankar

1] This petition has been filed by the petitioner Company registered under the Companies Act, 2013 under Article 226 of the Constitution of India, against the order dated 27.03.2026, which was received by the petitioner on 30.03.2026, passed by the respondent No.3, Additional Commissioner, CGST and Central Excise, Ujjain, under Sections 74 and 74A of the Central Goods and Services Tax Act, 2017

(hereinafter referred to as 'the CGST Act'), whereby demand to the tune of Rs.21,61,05,458/- has been affirmed being the differential GST payable on the products cleared by availing ineligible exemption from FY 2019-20 to 2025-26.

2] In brief, the facts of the case are that the petitioner is a Company engaged in the supply of goods classified under heading 2309 of The Customs Tariff Act, 1975 (hereinafter referred to as 'The Tariff Act'). Heading No.2309 of the Tariff Act pertains to preparations used in nutritional animal feed supplements/ additives, and these goods are exempted from GST under entry 102 of the Exemption Notification. The petitioner was purchasing the goods in question from one Harshvardhan Laboratory Pvt. Ltd. (HV Lab), for which, it also entered into an agreement dated 30.04.2013. According to this agreement, the petitioner supplied the raw materials to HV Lab, and in turn, HV Lab manufactured the finished goods, the products of the petitioner on a job-work basis. According to the petitioner, majority of the said products are sold in India under heading 2309 of the Tariff Act, and these products do not require any prescription also, and on the packaging of the product also it is clarified that the products are '*Not for medicinal use*'.

3] According to the petitioner, none of the products sold by it contain substances intended for the diagnosis, treatment, cure, or prevention of diseases, and their role is purely nutritional, and they do not exert any pharmacological, immunological, or metabolic effects associated with medicinal usage. Additionally, the Products are not marketed or used as medicaments, but are customarily mixed with animal feed. In this regard, the petitioner has also relied upon a veterinary certificate stating that the products do not contain medicinal or therapeutic substances. According to the petitioner, it has always disclosed the

classifications adopted by it in Form GSTR- 1, which has also been accepted by the respondent from time to time.

4] However, Directorate General of GST Intelligence ("DGGI'), Coimbatore Unit initiated proceedings against one Himalaya Wellness Company (Himalaya Wellness) for alleged non-payment of GST for misclassifying the product "Liv 52 Protec" under heading 2309 instead of heading 3004 of the Tariff Act, and as it was also informed to the DGGI that other products of Himalayan Wellness are similar to 'Liv 25 Protec', hence an enquiry was initiated, in which it was revealed that the products Him-C (Poultry) Vet Powder, Him-C Aqua Powder, Himchelate Poultry/Animal Powder, Phytogrow and Him Trace Aqua Powder, *viz.*, the Himalayan Products, are also manufactured by the same HV Lab which is manufacturing the goods for the petitioner. The Bengaluru Commissionerate informed the same to the office of Respondent No. 3 Additional Commissioner, CGST and Central Excise, Ujjain, and Respondent No. 3, on the basis of such information initiated the enquiry against HV Lab. A show cause notice dated 25.09.2025 was issued to HV Lab for alleged misclassification of the Himalayan Products under heading 2309 instead of heading 3004 of the Tariff Act.

5] Based on the information that HV "Lab 'supplied the Products to the Petitioner, the office of Respondent No. 3 initiated proceedings against the petitioner also by way of summons dated 29.09.2025. The said summons dated 29.09.2025 required the Petitioner to submit the following documents-

a) Details of supplies made under Chapter 23 from FY 2019-20 till date in excel sheet format.

b) Copies of the Annual GST Returns filed viz., GSTR-1, GSTR-3B and GSTR-2A.

6] However, without analysing the documents or even affording an opportunity to the Petitioner to make submissions, Respondent No. 3 proceeded to issue the Show Cause Notice on the next day itself, *i.e.*, on 30.09.2025. According to the petitioner, the Show Cause Notice was issued in evident haste considering that the last date for issuing a show cause notice under Section 74 of the CGST Act for financial year 2019-20 was 30.09.2025. Furthermore, the Show Cause Notice was substantially reproduced from the show cause notice dated 25.09.2025 issued to HV Lab. The Show Cause Notice contains the names of the Himalayan products and not the products which are actually sold by the petitioner. In this regard, the Petitioner has also submitted the details of Himalayan products, along with the photographs of the same (as sourced from the website of Himalayan Wellness) to evidence the fact that they are distinct from the petitioner's products.

7] Being aggrieved of the show cause notice, the petitioner also preferred W.P. No.49186/2025 on 15.12.2025, however, the said petition was disposed of by this Court on 22.04.2026, with a liberty to file reply to the impugned show cause notice raising all the contentions within a period of fifteen days. Thus, the petitioner also submitted his detailed reply, however, according to the petitioner, without considering the detailed reply filed by the petitioner, the impugned order has been passed.

8] Counsel for the petitioner has also relied upon the decision rendered by the Supreme Court in the case of ***Commissioner of Customs, Mumbai Vs. Toyo Engineering India Limited*** reported as ***2006 (201) E.L.T. 513 (S.C.), Saci Allied Products Ltd. U.P. Vs. Commissioner of Central Excise, Meerut,*** reported as ***(2005) 7 SCC 159, Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai,***

reported as ***(1998) 8 SCC 1,*** and ***Krishnadatt Awasthy Vs. State of M.P. & Ors.,*** reported as ***(2025) 1 S.C.R. 1173,*** as also the decision rendered by the High Court of Judicature at Allahabad in the case of ***M/s S.A.B. India Constructions Limited Thru. Director Rajendra Pal Singh Vs. State of U.P., Thru. Prin. Secy. State Tax LKO. And 2 others,*** passed in ***Writ Tax No.877/2025*** dated ***27.10.2025*** and ***Prayagraj Power Generation Company Limited Vs. Joint Commissioner (Corporate Circle) State Tax, Sambhag- B, Gautam Budh Nagar and Another,*** passed in ***Writ Tax No.70/2025*** dated ***01.12.2025;*** and the decision rendered by the Bombay High Court in the case of ***Nutan Warehousing Company Pvt. Ltd. Vs. The Commissioner, Central Tax, Pune-II and Others.*** passed in ***W.P. No.12775/2019*** dated ***11.12.2023*** to contend that the authority has erred in passing the order against the petitioner.

9] A reply to the petition has also been filed raising a preliminary objection regarding maintainability of the petition, contending that the order is appealable under Section 107 of the CGST Act and Rule 108 of the CGST Rules, 2017, and the petitioner has bypassed the aforesaid statutory remedy, and has directly approached this Court, and thus, the petition is liable to be dismissed on the ground of maintainability itself.

10] Counsel for the respondent has also submitted that a detailed order has been passed, wherein, all the objections raised by the petitioner have also been taken into consideration, and the validity of the same can only be decided in the statutory appeal. Thus, no case for interference is made out, as it was clearly a case of suppression and wilful misstatement forcing the authorities to invoke Section 74 of the CGST Act.

11] A rejoinder to the reply has also been filed, and it is denied that there is an alternative remedy available under Section 107 of the CGST Act, and it is contended that rule of exhaustion of alternative remedy is a rule of policy, convenience and discretion, and is a self-imposed restraint. Counsel has also relied upon the decision rendered by the Supreme Court in the case of ***Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai,*** reported as ***(1998) 8 SCC 1*** and ***Godrej Sara Lee Vs. Excise and Taxation Officer,*** reported as ***2023(2) TMI 64 (SC).*** It is also submitted that the case also involves violation of principles of natural justice, and the cross-examination of the persons, whose statements were relied upon, was also declined without any reason.

12] Heard counsel for the parties and perused the record.

13] From the record, we find that so far as para 3 of the petition is concerned, which relates to details of remedies exhausted, the petitioner has made the following averments:-

> **"3. <u>DETAILS OF REMEDIES EXHAUSTED:</u>**
>
> The Petitioner is challenging the Impugned Order on the grounds that the same has been issued without jurisdiction. Seeking the reliefs sought by the Petitioner in the present petition from the statutory authority could be a futile exercise since the department does not have the requisite power to set aside an order passed without jurisdiction. This Hon'ble High Court possesses the requisite jurisdiction to grant the relief sought in the present Writ Petition. Therefore, the Petitioner has invoked the extraordinary jurisdiction of this Hon'ble Court under Article 226 of the Constitution."

14] It is apparent from the aforesaid that the counsel for the petitioner, while drafting the petition, has steered clear from referring to Section 107 of the CGST Act, the relevant excerpts of which read as under:-

> **"107. Appeals to Appellate Authority**.—(1) Any person aggrieved by any decision or order passed under this Act or the State Goods and Services Tax Act or the Union Territory Goods and Services

Tax Act by an adjudicating authority may appeal to such Appellate Authority as may be prescribed within three months from the date on which the said decision or order is communicated to such person.

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(4) The Appellate Authority may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of three months or six months, as the case may be, allow it to be presented within a further period of one month.

(5) Every appeal under this section shall be in such form and shall be verified in such manner as may be prescribed.

(6) No appeal shall be filed under sub-section (1), unless the appellant has paid—

(*a*) in full, such part of the amount of tax, interest, fine, fee and penalty arising from the impugned order, as is admitted by him; and

(*b*) a sum equal to ten per cent of the remaining amount of tax in dispute arising from the said order, [subject to a maximum of [twenty] crore rupees,] in relation to which the appeal has been filed:

[Provided that in case of any order demanding penalty without involving demand of any tax, no appeal shall be filed against such order unless a sum equal to ten per cent of the said penalty has been paid by the appellant.]

(7) Where the appellant has paid the amount under sub-section (6), the recovery proceedings for the balance amount shall be deemed to be stayed.

(8) The Appellate Authority shall give an opportunity to the appellant of being heard.

Xxxxxx"

(Emphasis Supplied)

15] So far as the jurisdiction of the Additional Commissioner, CGST and Central Excise, Ujjain is concerned, we find that in the grounds of petition, the following averments have been made :-

> **"6.1 BECAUSE the products on which demand of GST was proposed in the Show Cause Notice, are not the products on which the demand of GST has been confirmed in the Impugned Order.**
>
> 6.1.1 That it is settled by the Hon'ble Supreme Court in Commissioner v. Toyo Engineering India Limited, 2006 (201) ELT. 513 (S.C.) that if an allegation or a ground is not made at the time of issuance of Show Cause Notice, the authority cannot go beyond the scope of show cause notice and canvass different grounds at the later stage of adjudication. In the present case, the Impugned Order has demonstrably travelled beyond the allegations raised in the Show Cause Notice and hence, is unsustainable on the

ground that the same contravenes Section 75(7) of the CGST Act.

Proposals made in the Show Cause Notice

6.1.2. At the outset, the Show Cause Notice proposed reclassification of the Himalayan Products. The specific extracts from the Show Cause Notice corresponding to the paragraph reference are tabulated as follows:

Sr. No.	Paragraph No.	Relevant extracts
1.	2.1	*....that during the course of enquiry it is revealed that products in question namely Him-C (Poultry) Vet Powder, Him-C Aqua Powder, Himchelate Poultry/Animal Powder, Phytogrow & Him Trace Aqua Powder are manufactured by M/s. Harshvardhan's Laboratory Pvt. Ltd., Plot No. 162-D, Sector-1, Industrial Area, Pithampur, Distt. Dhar (MP) 454775 (GSTIN: 23AABCH1269C1Z5).* ***The same are supplied to the M/s NOVUS ANIMAL NUTRITION INDIA PRIVATE LIMITED.***
2.	3.1	*The investigation into the taxability of the products including Him-C (Poultry) Vet Powder including Him-C Aqua Powder, Himchelate Poultry/Animal Powder, Phytogrow, Him Trace Aqua Powder and other similar products was undertaken based on the scrutiny of the key documents and records.*
3.	3.2	*There is a mixing ratio of the products in questions available at online market. The data appears to indicate the fact that their products are basically additives but can be consumed directly also. However, in contrary to his claim, mixing ratio is defined and displayed on the packages which are as under-*
4.	3.12	*From the above discussions, it appears that the usage and ingredients of the products Him-C (Poultry) Vet Powder, Him-C Aqua Powder, Himchelate Poultry /Animal Powder, Phytogrow, Him Trace Aqua Powder and other similar products are similar and all these products*

		have therapeutic value. ***While it appears that the Noticee have proceeded to misclassify these product under chapter 2309 and supplied it without payment of GST by wrongly claiming exemption.***
5.	3.13	*Therefore the product Him-C (Poultry) Vet Powder, Him-C Aqua Powder, Himchelate Poultry/Animal Powder, Phytogrow, Him Trace Aqua Powder and other similar products appears to be an ayurvedic medicament and is liable to be classified under chapter heading 30 and appropriate GST is liable to be discharged in respect of the said product.*
6.	8.1	*From the discussions above, it appears that the Noticee very well aware of the nature of the supplies/ clearances effected by them.* ***However, the Noticee have misclassified and wrongly availed exemption for clearance of products*** *namely "Him-C (Poultry) Vet Powder, Him-C Aqua Powder, Himchelate Poultry/Animal Powder, Phytogrow, Him Trace Aqua Powder and other similar products" under chapter heading 2903 under GST.*
7.	10	*The findings arrived at from the Investigation are as follows:* *i) the Noticee were supplying products namely "Him-C (Poultry) Vet Powder, Him-C Aqua Powder, Himchelate Poultry/Animal Powder, Phytogrow, Him Trace Aqua Powder and other similar products" by declaring them as feed supplements and misclassifying them HSN 2903 instead of 3004 and availing exemption under Sl. No.102 of Notification No. 02/2017-Central Tax (Rate) Dated 28.06.2017 during the period from FY 2019-20 to 2025-26 (upto 30.08.2025.)* .....

6.1.3. On perusal of the above extracts, it is *prima facie*, evident that Respondent No. 3 sought to reclassify and demand GST on the Himalayan Products i.e., Him-C.

(Poultry) Vet Powder, Him-C Aqua Powder, Himchelate Poultry/Animal Powder, Phytogrow, Him Trace Aqua Powder.

6.1.4. The examination of mixing ratios and ingredient profiles in the Show Cause Notice in paragraph 3.2, and the reasoning as to why the products appeared to be ayurvedic medicaments (in paragraph 3.12) is expressly confined to and built around the Himalayan Products. The Show Cause Notice contains no allegation, no reasoning and no proposal whatsoever-in respect of any other products supplied by the Petitioner.

6.1.5. The Show Cause Notice specifically, at paragraph 11 (ii), called upon the Petitioner to show cause as to why the aforesaid Himalayan Products (in lieu of the preceding summary findings in paragraph 10), allegedly misclassified under heading 2309, should not be reclassified under heading 3004 of the Tariff Act. The aforesaid defect has arisen because the Show Cause Notice had been duplicated from the show cause notice dated 25.09.2025 (as submitted in Ground 6.2 of the Writ Petition)."

16] A bare perusal of the aforesaid averments would also make it clear that it is not a simple case of passing of the impugned order by the concerned authority without jurisdiction, but the petitioner has tried to make out a case contending that the products on which demand of GST was proposed in the Show Cause Notice, are not the products on which the demand of GST has been confirmed in the impugned order, whereas, we find that even the aforesaid contention of the petitioner cannot be decided without appreciating the facts on the anvil of the relevant chapter headings and the classification as also the relevant notifications, which, in our considered opinion, can only be gone into by the Appellate Authority and not by us while exercising the jurisdiction under Article 226 of the Constitution of India.

17] So far as the opportunity of hearing and cross-examination are concerned, on perusal of the averments made in this regard in the petition, which we are not reproducing herewith for the sake of brevity, we find that even these are not the issues which are apparent

on the face of record and it would also require us to comment on the factual aspects of the matter.

18] Thus, on due consideration of submissions, and on perusal of the record, we find that the extensive arguments advanced by the counsel for the petitioner were based on the factual aspects of the matter, as also the legal ones, which, in the considered opinion of this Court can only be decided by the Appellate Authority under Section 107 of the CGST Act. Apart from that, we also find that while filing the appeal, the appellant is also required to deposit 10% of the amount involved, and only with a view to avoid payment of the aforesaid amount of pre-deposit, the remedy of appeal has not been availed by the petitioner.

19] Under the facts and circumstances of the case, we are not inclined to entertain this petition on merits, as the grounds raised by the petitioner in this petition can very well be raised before and decided by the Appellate Authority itself, thus, no interference at this juncture is called for.

20] So far as the judgements cited by the counsel for the petitioner are concerned, the same are distinguishable on facts.

21] In view of the same, the petition being misconceived is hereby ***dismissed***. However, with liberty reserved to the petitioner to approach the Appellate Authority to ventilate his grievances.

22] It is made clear that we have not reflected upon the merits of the matter and the time spent by the petitioner in prosecuting this petition shall be excluded from the period of limitation to file the appeal.

(SUBODH ABHYANKAR)
JUDGE

(ALOK AWASTHI)
JUDGE

Bahar