



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR
WRIT PETITION NO.229/2024

Ascension Mercantile Pvt. Ltd. vs. Union of India and Ors.

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. Parth Parikh with Mr. S.N. Chichbankar, Advocates for petitioners.
Mrs. Ketki Jaltare, Advocate for respondent Nos. 4 to 6.

CORAM : **ANIL L. PANSARE AND NIVEDITA P. MEHTA, JJ.**
DATE : **MARCH 27, 2026.**

On 13.03.2026, following order was passed.

“The request for refund duty made by the petitioner is rejected only on the count that an incorrect provision is mentioned. It appears that the petitioner applied for refund under Rule 18 of the Central Excise Rules, 2002 (for short “Rules of 2002”), whereas, the request ought to have been made under Section 11B of the Central Excise Act, 1944 (for short “Act of 1944”).

2] Thus, apparently, the request to refund duty is rejected on technical ground. Respondent no.3, in our view, was under an obligation to assist entities/persons, like petitioner, to enable it to get legitimate dues, and accordingly, ought to have advised the petitioner to submit the request for refund under appropriate provision, in fact, the proper course was to process the request under Section 11B of the Act of 1944, though the refund was claimed under Rule 18 of the Rules of 2002.

3] The Counsel for respondent nos. 4 to 6 shall take instructions, as also, instruct respondent no.3 to take corrective steps.

4] List on 27/3/2026.”

2. Counsel for respondent Nos.4 to 6 submits that request was rejected not only on the ground that the petitioner did not seek refund but it was rejected on other grounds as well viz. amount involved is not duty but mistaken payment was made by petitioner using cenvat credit.

3. When inquired, it is not the case of the Revenue that the petitioner is not entitled for refund. In that sense, the revenue emphasizes on filing the proceedings under a particular provision. Thus, the respondents intend to take a technical plea to not process refund claim of the petitioner, which otherwise the petitioner is entitled to.

3. We will test the grounds put forth by the revenue in not complying our order dated 13.03.2026, subject however respondent No.3 depositing costs of Rs.50,000/-, which he shall deposit from his own pocket.

4. We have also noted that the affidavit in response to our order is filed by the Commissioner of CGST and Central Excise and not by respondent No.3. It, thus appears that respondent No.3 is taking the Court for granted. Nonetheless, we will consider the plea put forth by respondent No.3 through Commissioner, who is otherwise not party to the proceeding and whose affidavit cannot be looked into. We also call upon the Commissioner to show cause as to why has he filed affidavit without seeking permission of the Court.

5. We may emphasize here that the respondents herein are acting as public servant and, therefore, their principal duty is to serve the people and not to take them to task without valid reason. The approach, however, appears to be otherwise. One such example is the Commissioner filing affidavit though not called for by the Court.

6. Stand over to 17.04.2026.

7. We, however, hope and accordingly request respondent No.3 to take corrective steps before 17.04.2026.

(JUDGE)

(JUDGE)