

**HIGH COURT OF SIKKIM : GANGTOK**  
Record of Proceedings

**WA No. 01/2024**

M/S SICPA INDIA PRIVATE LIMITED & ANR.

APPELLANT (S)

VERSUS

UNION OF INDIA AND OTHERS.

RESPONDENT (S)

For Appellants : Mr. Ankit Kanodia and Mr. Passang Tshering  
Bhutia, Advocates.

For Respondents : Ms. Sangita Pradhan, Deputy Solicitor General of  
India with Ms. Natasha Pradhan and Ms. Purnima  
Subba, Advocates.

**Date: 28/05/2024**

**CORAM:**

**HON'BLE MR. JUSTICE BISWANATH SOMADDER, CHIEF JUSTICE**  
**HON'BLE MRS. JUSTICE MEENAKSHI MADAN RAI, JUDGE**

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**JUDGMENT : (per the Hon'ble, the Chief Justice)**

This appeal arises in respect of an order dated 05<sup>th</sup> December, 2023, passed by the learned Single Judge of this Court in WP(C) No.54 of 2023. By the impugned order, the learned Single Judge has proceeded to dispose of the writ petition permitting the petitioners to approach the statutory tribunal, once constituted. The writ petitioners are now in appeal before us.

The short ground of challenge in the present Intra-Court Mandamus Appeal is whether the hands of the High Court — exercising its extraordinary jurisdiction under Article 226 of the Constitution of India — are tied simply because remedies sought for by the writ petitioners are available before a statutory appellate Tribunal (which, in the facts of the instant case, is yet to be even constituted). The answer is obviously 'no'. It is well settled that alternative remedy is not an absolute bar for the writ Court to take up a matter. The extraordinary powers of the Court under Article 226 of the Constitution of India cannot be ordinarily fettered under the facts and circumstances of this case since the appellants (being the writ petitioners) would remain without any forum till a statutory appellate Tribunal is constituted and thereby injustice would be caused if the

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appellants have nowhere to go for redressal of their grievances in accordance with law. Simply because the writ petitioners can seek refund of the unutilised Input Tax Credit in terms of section 49 (6) of the Central Goods and Services Tax Act, 2017, as and when the statutory appellate Tribunal is constituted, the writ Court cannot lose sight of the fact that a valuable right to seek refund has accrued in favour of the writ petitioners and any delay in exercising that right may cause prejudice. Whether they eventually succeed or not, however, is a different matter altogether.

In a given situation such as this, we are of the view that it is the High Court — which exercises its extraordinary jurisdiction under Article 226 of the Constitution of India — that becomes the proper forum where the writ petitioners may approach since no statutory appellate Tribunal has been constituted by the Government of India, yet.

In such circumstances as stated above, we allow the appeal filed by the writ petitioners and set aside the impugned judgment and order passed by the learned Single Judge.

The learned Single Judge may hear the writ petition on its merit without being influenced by any observation made herein.

The writ appeal stands disposed of accordingly.

**(Meenakshi Madan Rai)**  
**Judge**

**(Biswanath Somadder)**  
**Chief Justice**