

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 3414 OF 2016

M/s. Infra Dredge Services Pvt. Ltd. .. Petitioner

v/s.

Union of India & Ors. .. Respondents

Mr. V. Sridharan, Senior Counsel a/w Mr. Prakash Shah and Mr. Jas Sanghavi i/b PDS Legal for the petitioner

Mr. Swapnil Bangur a/w Mr. Sham Walve for respondent nos. 2 & 3

**CORAM : S.V. GANGAPURWALA &
A.M. BADAR, J.J.**

DATED : 7th JULY, 2017

PC.

1. The present petition is filed against the order in original dated 30th September 2015. Mr. Sridharan, learned Senior advocate for the petitioner strenuously contends that the order in original is ex-parte one. The petitioner at no material point of time was served with the notices of hearing. The learned Counsel submits that after the show-cause notice was served upon the petitioner, the petitioner filed an application with the respondent to the effect that the petitioner be heard. Though, it is stated that the notices were issued to the petitioner for hearing of the matter, the said notices were

never served upon the petitioner. The learned Counsel submits that the petitioner on 6th January 2014, had intimated the Commissioner of Service Tax-II about its change of address. Even, the statement recorded shows the changed address of the petitioner. In spite of the fact that on 6th January, 2014 the petitioner had intimated about the change of address, it appears that the notices were issued on the old address. The notices were received with the postal remark “left”. According to the learned Counsel, the same is not a proper service. The learned Senior Counsel relies on Section 37(C) of the Central Excise Act.

2. According to the learned Senior Counsel, the order being ex-parte without affording opportunity to the petitioner, this Court may exercise its jurisdiction under Article 226 of the Constitution of India. The learned Counsel, on instructions, states that the petitioner would deposit Rs.25 lakhs with the respondent within a period of three months, just to show its *bona fide* and without prejudice to its rights. According to the learned Counsel, the contractor has already paid the tax, as such, nothing is recoverable from the petitioner.

3. The learned Counsel for the respondent strenuously contends that the petitioner has remedy of appeal in view of that this Court need not entertain the present writ petition. The learned Counsel further submits that the department cannot make a positive statement about the receipt of the letter dated 6th January, 2014 regarding change of address of the petitioner because of the unavailability of the said letter in the record of the respondent. The learned Counsel for the respondent further submits that even otherwise, the registered address of the petitioner even today, is the same on which the notices were issued by the respondent. As such, it cannot be said that the notices were not served / not issued to the petitioner on the proper address. The notices were issued to the petitioner on the proper address. The petitioner is interested in protracting the matter. The conduct of the petitioner is improper. The petitioner even did not file its reply to the show-cause notice. All these aspects taken together, would necessarily show that the conduct of the petitioner is not *bona fide*.

4. We have considered the submissions canvassed by the learned

Counsel for the respective parties.

5. This Court certainly would be loath to exercise its jurisdiction under Article 226 of the Constitution of India in case, the party has efficacious alternate remedy. In the present case, the petitioner does have an alternate remedy in the form of a statutory appeal, wherein the petitioner has to comply with the condition of the pre-deposit.

6. The rule of alternate remedy is a rule of self-restraint. This Court may exercise the writ jurisdiction under Article 226 of the Constitution of India inspite of availability of an alternate remedy in exceptional cases such as transgression of the principles of natural justice, order being without jurisdiction; of course the conduct of the party would also be relevant.

7. In the present case, it is a matter of record that thrice, the notice of hearing were issued to the petitioner i.e. on 30th October, 2014, 12th November, 2014 and 14th September, 2015. However, the said notices have been issued on the old address of the petitioner, whereas prior to the said notices of hearing being issued to the

petitioner, the petitioner on 6th January, 2014 had intimated the respondent Authority of its address being changed and had also intimated the new address. It appears that the notices were not issued on the new address and all the notices issued to the petitioner on the old address were returned with an endorsement "left". Naturally, there was no service to the petitioner of the said notices. Even, there is nothing on record to show that the notices were affixed on the conspicuous part of the office of the petitioner. There is another aspect which is required to be considered that the show-cause notice was issued by the Commissioner-II, however it appears that the impugned order is passed by the Commissioner-VI. Be that as it may, it is a fact that at no material point of time, the notices were served upon the petitioner. The petitioner did show his *bona fide* by undertaking to deposit Rs.25 lakhs within three months without prejudice to his rights. Considering the totality of the circumstances and the fact that the notice of hearing was never served upon the petitioner, we are inclined to grant one more opportunity to the petitioner to represent himself before the Authority. In the light of the above, we pass the following order :-

ORDER

- (i) The impugned order is quashed and set aside.
- (ii) The petitioner shall deposit Rs.25 lakhs within a period of three months from today as undertaken by the petitioner. The said deposit is subject to the decision in the proceedings before the Authority.
- (iii) Upon deposit of the said amount, the Authority shall decide the show-cause notice afresh, expeditiously.
- (iv) The deposit of Rs.25 lakhs as undertaken is condition precedent. If the petitioner fails to deposit the said amount as undertaken by him within a stipulated period then, the order in original shall stand.
- (iv) The Writ Petition is partly allowed.

(A.M. BADAR, J.)

(S.V. GANGAPURWALA, J.)