R.M. AMBERKAR
(Private Secretary)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.

WRIT PETITION NO. 3161 OF 2018

Overseas Infrastructure Alliance (I) P Ltd .. Petitioner

Versus

Union of India & Ors. .. Respondents

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- Mr. Bharat Raichandani a/w Ms. Pragya Koalwad i/by UBR Legal for the Petitioner
- Mr. Himanshu Takke, AGP for Respondent Nos. 2, 3 & 4
- Mr. Ram Ochani for Respondent No. 5

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CORAM : AKIL KURESHI &
M.S. SANKLECHA, JJ.

DATE : DECEMBER 21, 2018.

P.C.:

1. This petition under Article 226 of the Constitution of India challenges an order dated 19.3.2018 passed by respondent No. 4 - Dy. Commissioner of State Tax. The impugned order dated 19.3.2018 has been passed under Section 23 of the Maharashtra Value Added Tax Act,2002 ("**MVAT Act**").

2. Brief facts as stated by the petitioner are that the impugned order dated 19.3.2018 was passed consequential to the petitioner filing a reply on 17.3.2018 to the show cause notice dated 12.3.2018. The grievance of the petitioner is that the Dy. Commissioner of State Tax passed the impugned order dated 19.3.2018 confirming the show cause notice without considering the various submissions made by the petitioner in its reply dated 17.3.2018. Thus, it is submitted that as there is breach of principle of natural justice, the impugned order dated 19.3.2018 be set aside and the Dy. Commissioner of State Tax be directed to pass a fresh order after considering petitioner's submission.

3. It is the case of the respondent that there has been no breach of natural justice and the relevant submissions of the petitioner has been considered in the impugned order dated 19.3.2018. It is also submitted that an alternate remedy of an appeal under Section 26 of the MVAT Act is available to address the grievance of the petitioner. Thus, the petition should not be entertained.

4. We note that there is an efficacious alternative remedy of filing appeal under Section 26 of the MVAT Act available to the petitioner to challenge the impugned order dated 19.3.2018. The Appellate Authority would necessarily examine all the grievances of the petitioner and pass appropriate order in accordance with law. Thus, we see no reason to entertain this petition.

5. However, as this petitioner had bonafide challenged the impugned order in this Court, it is made clear, that in case the petitioner files an appeal before the appellate authority namely Joint Commissioner of State Tax (Appeals) within a period of two weeks from today, the same would be entertained by it on merits as the petitioner was bonafide prosecuting the challenge to the impugned order before this Court by filing petition.

6. Petition disposed of in above terms.

[M.S. SANKLECHA, J.] **[AKIL KURESHI, J]**