

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION NO. 1880 OF 2019

Champalal Motilal Steel Co. Pvt. Ltd. .. Petitioner

v/s.

The State of Maharashtra & Ors. .. Respondents

Ms. Priyanka Dubey a/w Mr. Sanjay C. Thakur for the petitioner
Ms. Jyoti Chavan for the respondent State

**CORAM : M.S. SANKLECHA &
NITIN JAMDAR, J.J.**

DATED : 6th SEPTEMBER, 2019

P.C.

1. On 30th August, 2019, we passed the following order :-

“ This petition under Article 226 of the Constitution seeks to challenge the order dated 31st March 2018 passed by the Deputy Commissioner of Sales Tax under section 23 of the Maharashtra Value Added Tax Act, 2002 (Act) relating to the financial year 2013-14. We find that there is alternate efficacious remedy available under section 26 of the Act.

2. However, the learned counsel for the petitioner seeks time.

3. At this stage, we list this petition on 5th September, 2019 for dismissal. However, in case the Petitioner does make out a case for the writ jurisdiction to be exercised, we would consider the same.”

2. This petition was kept under the caption “for dismissal”

yesterday. At that time, the learned Advocate appearing for the petitioner stated that the Counsel who is briefed in this matter was in some difficulty and sought time till tomorrow. At that time, we pointed out to him that the petition was heard on 30th August, 2019 and we were inclined to dismiss it on the ground of alternative remedy. However, thereafter at the request of the junior Counsel appearing in the matter by way of indulgence, we posted the matter under the caption “for dismissal” to 5th September, 2019. The petitioner had notice of this petition being fixed on 5th September, 2019 under the caption “for dismissal”. Therefore, he should have made appropriate arrangement to be represented. Thus, we were not agreeable to adjourning the petition to the next day. We, therefore, kept the petition back to 3.00 p.m.

3. At 3.00 pm yesterday when the petition was called out, a new advocate appeared for the petitioner and sought time on the ground that he was just briefed in the matter and the earlier advocate had returned the brief. Time was again sought to brief the Counsel on whose behalf time was sought earlier. We were shocked at this conduct on the part of the petitioners and its advocates. We refused

to give any time and kept the petition back at 4.30 p.m. yesterday to enable the new advocate to make submissions, if any, in support of the petition. However, the petition did not reach yesterday and at 5.30 p.m. just before we were rising, the Counsel for the petitioner on whose behalf time was sought in the morning, sought time, as he was busy tomorrow. We refused to grant time and the petition was posted today.

4. Today, Ms. Dubey, a new Counsel appears in support of the petition and states that she has just received the papers and undertakes to file her *Vakalatnama* during the course of the day. In support of the petition, she submitted that the order has been passed in breach of the principles of natural justice. The impugned order she states placed reliance on the report, of which no copy was given to the petitioner. We asked her whether such a stand has been taken in the petition as filed. At this, her response was that after she has come on the scene (personally this morning), the Chamber Summons is prepared by her to bring these facts on record. At no time, prior to today did the petitioners make this grievance of not being given a copy of report relied upon by the Assessing Officer and

because of it, prejudice is caused. There are facts which are within the knowledge of the petitioner and if in fact so, the petitioner would have brought it to the knowledge of his Advocate. This *prima facie* appears to be an after thought on the part of the Advocate as no averment to that effect is found in the petition nor any protest to the adjudicating Authority by the petitioner is shown to us.

5. Section 26 of the said Act provides for an alternative remedy of appeal. The petitioner can avail of the alternative remedy of appeal. Even the issue of breach of natural justice is an issue which could be considered by the Appellate Authority, if that be factually so.

6. In the above circumstances, we see no reason to exercise our extra-ordinary jurisdiction when there is an efficacious alternative remedy available to the petitioner under the Act.

7. Accordingly, the Petition is dismissed.

(NITIN JAMDAR, J.)

(M.S. SANKLECHA, J.)