

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4112 OF 2022

Mahalaxmi Distributors & Anr. .. Petitioners.

Versus

State of Maharashtra & Others. ..Respondents.

Mr. Rahul Thakar i/b C. B. Thakar for the Petitioners.

Ms. Shruti Vyas, B-Panel Counsel for the Respondents.

CORAM : NITIN JAMDAR &
ABHAY AHUJA, JJ.

DATE : 24 FEBRUARY 2023.

P. C.:

Heard learned counsel for the parties.

2. This petition is filed on 3 March 2022. The petition is pending for admission. Perusal of pleadings and prayers would show that the Petitioner has questioned the validity of Section 26(2B) of the Maharashtra Value Added Tax Act, 2002 and sought a declaration that it is unconstitutional and has also challenged the assessment orders and the order passed in appeal.

3. The petitions have been pending since reference was made to the Full Bench. The Full Bench in the case of *United Projects vs. State of Maharashtra & Anr* [W.P. No. 2883 of 2018 & Connected writ petitions] decided on 12 July 2022 has now held that section 26(2B) of

the Maharashtra Value Added Tax, 2002 does not suffer from the *vires* of unconstitutionality and the pre-deposit is mandatory, and therefore the remedy of appeal available to the Petitioner cannot be considered in-efficient. It is now that the argument is advanced on why the petition should be entertained, that there has been breach of the principles of natural justice.

4. The breach of principles of natural justice is an assertion based on facts and those facts must be stated so by the Petitioner on oath. In the petition, it is sought to be pleaded that copies of the record could not be produced because they were seized under the panchnama and the Petitioner had stated so in the letter before the order. The order in appeal has stated that repeatedly the Petitioner was called upon to produce certain documents, more particularly the bills of lading in question and the authorities have proceeded against the Petitioner because of not producing the original documents and endorsement. That being the foundation, the petition should have contained categorical assertion that these are the very documents that were seized. The petition contains only a general averment regarding the documents. Therefore, it cannot be said that the argument of breach of principles of natural justice emerges from the face of record. This ground is intermixed with the merits of the case and even this ground can be urged before the appellate authority.

5. Since the remedy of appeal is available to the Petitioner, we dispose of the writ petition. If the appeal is duly filed within the period of four weeks from today and question of delay arises, then, the appellate authority will consider the pendency of writ petition in this Court.

(ABHAY AHUJA, J.)

(NITIN JAMDAR, J.)