IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.82 OF 2021

Proviso Builders and Developers … Petitioner
V/s.
Union of India and ors. … Respondents

WITH
WRIT PETITION NO.83 OF 2021

AK Hi-tech Groups … Petitioner
V/s.
Union of India and ors. … Respondents

WITH
WRIT PETITION (ST.) NO.92474 OF 2020

Akshar Realtors … Petitioner
V/s.
Union of India and ors. … Respondents

WITH
WRIT PETITION NO.15413 OF 2022

Neel Sidhi Realities … Petitioner
V/s.
Union of India and ors. … Respondents

WITH
WRIT PETITION NO.1309 OF 2021
AND
WRIT PETITION NO.5976 OF 2021

Thalia & Gami Enterprises … Petitioner
V/s.
Union of India and ors. … Respondents

Ms.Ritika Agarwal with Ms.Rachana Bhanushali i/by M/s ACE Legal, Advocate for the Petitioners.
Mr.Pradeep S. Jetly, Senior Advocate alongwith Mr.J.B.Mishra, Ms. Maya Majumdar and Mr.Ashutosh Mishra, Advocates for the Respondents.

**CORAM : NITIN JAMDAR AND
ABHAY AHUJA, JJ.
DATE : 22 FEBRUARY 2023.**

P.C.:-

The Petitioners have sought a writ of mandamus to direct the authorities to grant to the Petitioner benefit of input tax credit.

2. After hearing the matter for some time it transpires that there is no application of the Petitioners made to the Respondents on record seeking the relief of grant of benefit of Input Tax Credit ("ITC") and neither there is any rejection or response of the Respondents on record. Therefore, the Petitioner is claiming these amounts for the first time by filing the Writ Petition in this Court without making any claim/application. It is basic that if a writ of mandamus is sought first demand for the right needs to be made. Without making any formal demand and without is being adjudicated, the Petitioners have directly filed these petitions.

3. Also as per the case of the Petitioners themselves there is no clarity emerging from the stand of the Respondents in the reply

affidavit. According to the Petitioners, the Respondents have taken contrary stands. As to which the circulars have to be made applicable to the Petitioners would entail examination of factual positions. Therefore, if an application is made by the Petitioners setting out the facts and if the Respondents reject the same relief relying on a particular provision of law or any Circular, then the occasion would arise for challenging that particular Circular or the position of law.

4. It is during the course of the hearing, when a query was asked as to why the Petitioners have not made a demand or grievance, a letter dated 22 September 2022 is sought to be tendered. The Petitioners are pending since the year 2020 onwards and the letter is of 22 September 2022. This is also not a letter as indicated by us as above but a response to a summons issued. Even this letter is also not part of the record.

5. In this position, the appropriate course of action would be to permit that the Petitioners make a formal application/request to the Respondents in respect of the claim in this Petition and thereafter, the Respondents to consider and decide the same and if the decision is adverse to the Petitioners leaving it open to the Petitioners to adopt such remedies.

6. Accordingly, we dispose of the Petitions granting liberty to the Petitioners to make an application in respect of the claim. If such an application is made within a period of three weeks from today, the

Respondents will decide the said application by a reasoned order within a period of six weeks thereafter. It is open to the Respondents, if found necessary, to give audience to the Petitioners' representatives.

7. Needless to state that if the decision is adverse to the Petitioners, it is open to the Petitioners to adopt such remedies as may be available in law.

8. The Writ Petitions are disposed of in the above terms.

(ABHAY AHUJA, J.) **(NITIN JAMDAR, J.)**

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