IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.15252 OF 2023
WITH
INTERIM APPLICATION NO.17740 OF 2023

M/s. Swaraj Infrastructure Pvt. Ltd. & Anr. ...Petitioners/Applicants

Versus

The State of Maharashtra
Through Ministry of Finance And Ors. ...Respondents

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Mr. Nikhil Wadikar a/w Mr. Niranjan Kandade i/by Vikas Daware Ideal Law Firm for the Petitioners/Applicants.
Ms. Shruti D. Vyas, Addl. GP a/w Ms. P. N. Diwan, AGP for the Respondent/State.

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CORAM : G. S. KULKARNI,
JITENDRA JAIN, J.J.

Date : 6th DECEMBER, 2023.

P.C.

1. We are *prima facie* satisfied that the petitioner has failed to make out any ground, much less any ground anywhere in the memo of petition, in regard to the contention as urged before us that the impugned assessment order passed under Section 23 of the Maharashtra Value Added Tax Act, 2002 is required to be held illegal in the proceedings of this Writ Petition.

2. Needless to observe that to consider any issue of limitation and more particularly when in the present case, there is an issue on remand, as specifically set out in the body of the assessment orders, it was incumbent for the petitioner to set out a clear case in the memo of the petition urging as to how the impugned order would be beyond the prescribed period of limitation as provided under Section 23 of the Maharashtra Value Added Tax Act, 2002.

3. Be that as it may, it is also clear to us that this is a petition filed under Article 226 of the Constitution of India challenging the assessment order, for which the appropriate remedy for the petitioner is to file a statutory appeal as provided under Section 26 of the MVAT Act.

4. We find that the impugned assessment order is dated 25th April 2019. The present petition was filed on 26th April 2022. On perusal of the averments as made in the petition, we see that there is no explanation whatsoever in regard to such a delay of 3 years in approaching this Court by the present proceedings.

5. Accordingly, we cannot entertain this petition as an alternate statutory remedy is available to the petitioner to assail the assessment order, on all grounds as may be available to the petitioner.

6. All contentions on any proposed proceedings are kept expressly open.

7. As the petitioner was pursuing the present proceedings bonafide, if an appeal is filed by the petitioner within a period of 4 weeks from today, the same be decided on its merits and without an objection as to the limitation.

8. Writ Petition is disposed of. No costs.

9. In view of disposal of the writ petition, Interim Application No.17740 of 2023 does not survive and the same is also disposed of.

[JITENDRA JAIN, J.] **[G. S. KULKARNI, J.]**