

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 10865 OF 2022

Konkan Railway Corporation Ltd.	...	Petitioner
vs.		
The Union of India and Anr.	...	Respondents

Mr. Jitendra Motwani with Mr. Chirag Shetty i/b Economic Laws
Practice for Petitioner.

Mr. J. B. Mishra with Mrs. Maya Majumdar for Respondents.

**CORAM : NITIN JAMDAR AND
ABHAY AHUJA, JJ.**

DATE : 12 APRIL 2023

P.C. :

. Heard learned Counsel for the parties.

2 The Petitioner had filed a Writ Petition No. 812 of 2017 in respect of an order dated 21 December 2016 for recovery of service tax under Finance Act, 1994. This order came to be passed pursuant to a show cause notice issued to the Petitioner. The Division Bench of this Court in this Writ Petition had passed an order on 27 June 2019 referring to the factum of availability of alternate remedy. Thereafter, the matter was heard and by a detailed order dated 1 August 2019, the Division Bench opined that the arguments sought to be put forth by the Petitioner will be decided by the Appellate Authority being issues on merits and declined to exercise

extraordinary jurisdiction to entertain the Petition and the petition was dismissed on the ground of availability of alternate remedy. The Division Bench also observed that the delay in filing the appeal would stand condoned, if it is filed within a period of four weeks. Thereafter, we are informed that the Petitioner has filed an appeal, which is pending and we are also informed that the appeal is listed before the Tribunal on 8 May 2023.

3 Learned Counsel for the Petitioner states that the Petitioner is ready to go on with the appeal. The learned Counsel for the Petitioner states that the hearing of this petition be deferred post the decision of the Tribunal and ad-interim order granted on 21 January 2021 be continued.

4 We have perused the ad-interim order dated 21 January 2021. By this order, notice was issued to the Respondents and subsequent show cause notices dated 11 April 2018 and 4 September 2018 were kept in abeyance. Now the Respondents have entered their appearances and are opposing the continuation of the ad-interim order. The Petitioner seeks continuation of ad-interim order till the pendency of the appeal. We are not inclined to accede to the continuation of the ad-interim order, as effect would be that what was not granted by Writ Petition No. 812 of 2017 in respect of identical show cause notice, would be granted to the Petitioner by entertaining this Writ Petition and prohibiting Respondents from

proceeding further inspite of alternate remedy. Once this Court, in identical show cause notices, has taken a view that writ jurisdiction should not be entertained, then we do not find it appropriate that it be exercised in respect of the other two identical show cause notices.

5 Writ Petition is accordingly dismissed.

6 Only because the ad-interim order is operating we continue the same. The Respondent No.2 though will proceed with the adjudication of the show cause cum demand notices dated 11 April 2018 and 4 September 2018 and will not pass any final order till 12 June 2023. However, we specifically decline to continue the ad-interim relief granted in this petition or the above restraint, till the disposal of the Petitioner's appeal, if it is subsequent to 12 June 2023.

(ABHAY AHUJA, J.)

(NITIN JAMDAR, J.)

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