IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 10062 OF 2023

Finite 4 Engineering Consultancy
Services Pvt. Ltd. ..Petitioner
Vs.
Union of India & Ors. ..Respondents

Mr. Prathamesh Gargate i/b. UBR Legal for Petitioner.
Mr. Karan Adik with Mr. Ram Ochani for Respondents

CORAM : G. S. KULKARNI &
JITENDRA JAIN, JJ.

DATE : AUGUST 17, 2023

P.C.:

1. We have heard Mr. Gargate, learned counsel for the petitioner and Mr. Adik, learned counsel for the respondent.

2. By this petition, the petitioner has prayed for the following reliefs:-

> "(a) that this Hon'ble Court be pleased to issue a Writ of Certiorari/Mandamus or a writ in the nature of Certiorari/ Mandamus or any other writ, order or direction under Article 226 of the Constitution of India calling for the records pertaining to the Petitioner's case and after going into the validity and legality of the provisions, direct the Respondents to issue discharge Certificate (Form SVLDRS 4) and set aside the order dated 08.06.2022;
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> (b) that this Hon'ble Court be pleased to issue a Writ of Certiorari or a writ in the nature of Certiorari or any other writ, order or direction under Article 226 of the Constitution of India calling for

the records pertaining to the Petitioner's case and after going into the validity and legality of the provisions direct the respondents to not initiate any coercive action seeking recovery of alleged interest dues against the petitioner during the pendency of the present petition and also direct to Respondent No.7 to process the challan for the month of Oct 2022.

(c) without prejudice to the above, this Hon'ble Court be pleased to issue a writ of mandamus or any other appropriate writ, order or direction ordering and directing the Respondent to adhere to the provisions of SVS, 2019 and afford an opportunity to the petitioner to put forth their case/submissions and thereafter, pass a reasoned order;

(d) that this Hon'ble Court be pleased to issue a Writ of Certiorari/Mandamus or a writ in the nature of Certiorari/ Mandamus or any other writ, order or direction under Article 226 of the Constitution of India calling for the records pertaining to the Petitioner's case and after going into the validity and legality of the provisions and quash the notice of recovery."

3. We may observe that on the earlier occasion, we had adjourned the proceedings to enable Mr. Karan Adik, learned counsel for the respondents/Revenue to take instructions on the subsequent developments as urged on behalf of the petitioner. Mr. Adik, having taken instructions, has placed on record a compilation of documents, copy of which is also served on the petitioner to submit that in filing the present petition, there has been gross suppression of documents by the petitioner. In such context, he has drawn our attention to the correspondence as ensued between the Revenue and the petitioner/assessee from October 2018 upto December 2022 i.e. prior to the filing of the present petition which came to be filed on 19 July, 2023. The correspondence would reveal that the petitioner was time and again informed by the respondents in regard to the non-payment of the service tax, as also clearly notifying the quantum for the period 2014 to 2017.

4. Our attention is drawn to letters dated 08 October, 2018, 10 January, 2022, 30 March, 2022, 08 June, 2022, 23 June, 2022 and 19 July, 2022. Mr. Adik would submit that the petitioner by its letter dated 02 August, 2022, had acknowledged the non-payment of service tax liability which was time and again informed to the petitioner and in reply thereto the petitioner in regard to the payment of the interest amount as under:-

> "It is also to be brought to your notice that since we have paid the liabilities amounting to Rs. 1273352/- kindly request you to unfreeze our bank account as our entire operation is at halt. We have paid the complete liability amount and we will pay the interest amount in three months."

5. Accepting the statement as made in the letter dated 05 August, 2022 addressed by the Assistant Commissioner to the Branch Manager, Corporation Bank, the respondents de-freezed the petitioner's bank account. Despite this, the petitioner continued to default in making the payment, hence, again a notice dated 22 August, 2022 was issued to the petitioner by the respondents pointing out the non-payment of the service tax liability as also making a clear reference to the petitioner's own letter dated 02 August, 2022. Despite the receipt of the said letter, the same was not responded by the petitioner. In this situation, again reminders dated 08 September, 2022 and 10 November, 2022 were addressed to the petitioner which were also not responded. Consequently a notice dated 10 November, 2022 under Section 87 of the Finance Act, 1994 came to be issued to the petitioner setting out in detail the amounts which were payable by the petitioner including the penalty and interest amounts. Such notice was replied by the petitioner by its letter dated 03 December, 2022, whereby the petitioner requested that the bank account of the petitioner be de-freezed, so as to maintain normal business operations. It was categorically stated that the petitioner would pay the interest amount within four months time. The respondent accepting such statement as made by the petitioner by its letter dated 03 December, 2022, de-freezed the bank account by issuing an intimation to the bank dated 14 December, 2022. However, the petitioner's conduct was gross in as much as, despite assurances being made to the department and the department accepting such assurances and de-freezing the bank account of the petitioner, the petitioner continued to default in making the payment of the service tax.

6. Referring to all these documents, the contention of Mr. Adik is that when the petitioner has invoked the jurisdiction of this Court under

Article 226 of the Constitution, it was a mandatory obligation on the petitioner to not suppress and/or disclose all such documents which according to him were material in the adjudication of this petition. Mr. Adik submits that the petitioner in invoking the writ jurisdiction, for reason best known to it, has suppressed these documents and has not approached the Court with clean hands. The petitioner is thus disentitled to the discretionary and equitable reliefs as prayed for in the petition.

7. In responding to such contention, learned counsel for the petitioner would not be in a position to show either from the averments as made in the petition or from the documents as to why the petitioner desires to keep away the said documents from the Court and not made averments to that effect in the petition. He however submits that he would take further instructions. In our opinion, taking instructions would not resolve the position that the petitioner has invoked the jurisdiction of the Court in the present proceedings by suppressing true and correct facts as also the relevant documents.

8. We find much substance in the contention of Mr. Adik that the petitioner is required to be non-suited on the ground of suppression of facts and documents, irrespective of whatever reliefs the petitioner has prayed in the present petition. The law in this regard is well settled. A litigant cannot be expected to approach the Court by suppressing materials and more particularly such material which is prejudicial to the petitioner.

9. In the above circumstances, we have no manner of doubt that the petition cannot be entertained and it would be required to be dismissed. The writ petition is accordingly dismissed. We however, refrain from imposing costs.

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