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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.15407 OF 2023

Bhattad Industries Pvt. Ltd. ...Petitioner

Versus

State of Maharashtra & Ors. ...Respondents

Mr.Pradeep Jaitley, Senior Advocate a/w Mr.Siddharth Samantray and Mr.Deepak Singh for the Petitioner.
Ms.Shruti Vyas, Addl. G.P. a/w Ms. Bhende, AGP for respondents-State.

CORAM : G. S. KULKARNI &
JITENDRA S. JAIN, JJ.
DATE : DECEMBER 12, 2023

P.C.:

. This petition under Article 226 of the Constitution of India is filed challenging an order dated 26th June 2023 passed by the Divisional Authority. The remedy for the petitioner is to assail such order by filing an appeal before the GST Tribunal, as per the provisions of Section 112 of the Central Goods and Service Tax Act, 2017 (for short "CGST Act"). The GST Tribunal is yet to be constituted. The petitioner is ready and willing to take recourse to such alternate remedy as and when such Tribunal is constituted. However, the question would be of limitation in the petitioner filing such appeal.

2. In such context, Mr.Jaitley, learned senior counsel for the petitioner has brought to our notice the circular dated 26th May 2020 issued by the Commissioner of State Tax by which a clarification is issued

to address a situation which has emerged due to the Tribunal so far being not constituted.

3. We observe that paragraph 4.3 of the said Circular records that when the assessee intends to take recourse to an alternate remedy of an appeal, after the Tribunal is constituted, the prescribed time limit to make an application to the Appellate Tribunal would be counted from the date on which President or the State President enters office. Paragraph 4.3 reads thus : -

> *"4.3 Hence, as of now, the prescribed time limit to make application to the Appellate Tribunal would be counted from the date on which President or the State President enters office. The appellate authority while passing order may mention in the preamble that appeal may be made to the appellate tribunal whenever it is constituted within three months from the President or the State President enters office. Accordingly, it is advised that the appellate authorities may dispose all pending appeals expeditiously without waiting for the constitution of the appellate tribunal."*

4. Further paragraph 5 of the said circular provides that a declaration is required to be made by such party and submitted to the jurisdictional Tax Officer, stating that an appeal is proposed to be filed under Section 112 of the CGST Act within a period of 15 days from the communication of the said order. Said paragraph 5 reads thus : -

> ***"5. Recovery of dues after disposal of appeal.***
>
> *After disposal of pending appeal u/s. 107, if any demand is confirmed or appellate authority has created the additional demand then in such cases tax payer shall submit a declaration in Annexure-I before the jurisdictional tax officer stating that he is proposing to file an appeal under Section 112(1) against the appeal order. If such declaration is not submitted within fifteen days from the communication of the said order, then it will be presumed that*

tax payer is not willing to file appeal against the order and recovery proceedings may be initiated as per provisions of law."

5. Mr.Jaitley has also brought to our notice an order passed by a Co-ordinate Bench of this Court in case of ***Gulf Oil Lubricants India Ltd. Vs. Joint Commissioner of State Tax (Appeal -V) , Mumbai, 2023 (71) G.S.T.L. 366 (Bom.)*** considering the Circular as issued by the State Government noted by us above, permitting the petitioner to take recourse to the Appellate Tribunal obviating the issue of limitation.

6. In the above circumstances, we dispose of this petition by permitting the petitioner to take recourse to an alternate remedy of an appeal as provided in the Circular dated 26th May 2020, and more particularly in terms of paragraph 4.3 read with paragraph 5, thereof, subject to the declaration to be made by the petitioner to the jurisdictional Tax Officer, in terms of Annexure-I to the said Circular, which be submitted within a period of 15 days from today.

7. All contentions of the parties on merits on the proposed proceedings before the Tribunal are expressly kept open.

8. Disposed of. No costs.

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