

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 1286 OF 2022

Krishna Impex

... Petitioner

vs.

The State of Maharashtra & Ors.

... Respondents

.....

Mr. Rahul Thakar i/b. C.B.Thakar & Co. for the Petitioner.

Mr. Himanshu Takke, AGP for the State.

.....

CORAM : NITIN JAMDAR &
ABHAY AHUJA, JJ.

DATE : 9 FEBRUARY 2023

P.C. :-

This petition is filed on 9 February 2021 and is pending. In the petition, a declaration is sought that the provision of section 26 (6A) of the Maharashtra Value Added Tax Act, 2002 be declared illegal and unconstitutional. This legal issue was referred to the Full Bench and therefore, the matter was being kept pending. The Full Bench has rendered the decision in *United Projects Versus The State of Maharashtra & Anr. and others*¹ and it is held that the provision is constitutional. The Full Bench has also upheld the stipulation of pre-deposit.

¹ Original Side Writ Petition No. 2883 of 2018 dated 12 July 2022

2. The petition is now being argued on the ground that a writ jurisdiction be exercised on the ground of breach of principles of natural justice while passing the order.

3. We have heard the learned Counsel and gone through the pleadings. First ground states that the assessment order is bad in law. The second ground is that rectification is bad in law as it was passed without hearing and unjustified on merits. Then it states that the assessment order is bad on merits. Thereafter, the pleadings are replete with legal submissions.

4. As regards the ground that rectification is bad in law is concerned, it states that though the presence of Advocate is mentioned in the order, the same is incorrect. The Petitioner has not taken any steps to get the record corrected. Then, it is sought to be contended that the document which the Petitioner has sought for has not been given by the adjudicating authority. It is stated in the order that the Petitioner has not submitted any new documents and this is the very ground which the Petitioner seeks to question. This cannot be considered purely as breach of natural justice as it is on merits of the impugned order for which the appeal is maintainable. What is the implication of this document will be on the assessment of facts.

5. For the petition to be entertained in spite of legislative mandate of pre-deposit and availability of remedy to appeal, the breach of natural justice must emerge from the record and without there being any detailed scrutiny. We are increasingly coming across cases where the grounds of breach of principles of natural justice are artificially created and advanced just to avoid pre-deposit in appeal.

6. In the case at hand the Petitioner was given full opportunity by the adjudicating authority and a finding on merits is rendered. The statute provides for an appeal. Thus, we are not inclined to exercise writ jurisdiction.

7. The writ petition is accordingly disposed of.

8. If the appeal is duly filed within four weeks from today, the Appellate Authority will consider the fact that delay has occurred due to pendency of this writ petition in this Court.

ABHAY AHUJA, J.

NITIN JAMDAR, J.