Vidya Amin

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

WRIT PETITION NO. 1889 OF 2023

M/s. Samarth Erectors and Developers … Petitioner

Versus

State Tax Officer & Ors. …Respondents

Mr. Naresh Jain a/w. Ms. Ujjwala Chaturvedi, Mr. Rajneesh Jaiswal i/b. Ms. Neha Anchlia for the petitioner.
Mr. Jitendra B. Mishra a/w. Mr. Ram Ochani for respondent no. 2.
Mr. Himanshu Takke, AGP for respondent nos. 1 and 3.

CORAM: G. S. KULKARNI &
JITENDRA JAIN, JJ.
DATED: 30 October, 2023

P.C.

1. We have heard Mr. Jain, learned counsel for the petitioner, Mr. Mishra, learned counsel for respondent no. 2 and Mr. Takke, learned AGP for respondent nos. 1 and 3. We have also perused the memo of the petition.

2. The primary grievance as urged by the petitioner is to the impugned order dated 13 May, 2022 passed by respondent no. 1-State Tax Officer under section 73 of the MGST Act whereby the tax is demanded from the petitioner in respect of a construction project undertaken by the petitioner as a developer in the redevelopment concerning slums. The primary grievance of the petitioner against the impugned order is that neither the show cause notice nor the impugned order demonstrates calculation on the basis of which the

levy is made and in considering such uncertainty, the remedy of an appeal may not be an effective relief.

3. We have perused the impugned order and also the Notification No.4/2018-Central Tax (Rate) issued by the Government of India, Ministry of Finance dated 25 January, 2018 which is placed on record by the learned counsel for the petitioner. We are of the considered opinion that the contentions as urged by the petitioner need to be asserted and urged by taking recourse of the appellate remedy as available under section 107 of the MGST Act. It may not be possible for this Court to consider the contentions of the petitioner on examining the issues including the agreement, rates as also other relevant consideration for determination of the value of the development as undertaken by the petitioner and/or the tenements sold/allotted. Thus, all these are issues which would require examining such material and for which, in our opinion, appropriate remedy for the petitioner would be to take recourse of the appellate remedy as available.

4. Writ Petition is disposed of with liberty to take recourse of the appellate remedy .

5. We observe that if an appeal is filed by the petitioner within four weeks from today, let the appeal be considered on its own merits without an

objection as to limitation, as the petitioner had bonafidely pursuing the present petition.

6. All contentions of the parties on the appeal as proposed to be filed by the petitioner are expressly kept open including the grounds as urged in the present petition.

7. Disposed of in the above terms. No costs.

8. The petitioner would also be at liberty to file the appeal offline, if due to any reason of limitation, the portal is not available to the petitioner.

9. We may observe that as the petitioner has intended to file appeal within four weeks, to enable the petitioner to do so, till the appeal is filed, no coercive action be taken against the petitioner.

(JITENDRA JAIN, J.) **(G. S. KULKARNI , J.)**