IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 6146 OF 2024

Maharashtra Knowledge Corporation Ltd. …Petitioner

Versus

The State of Maharashtra and Ors. …Respondents

Ms Manasi Patil, a/w Mr Kiran Chavan i/b Cenex Legal LLP, for the Petitioner.
Ms S D Vyas, Addl. GP a/w Mr P P More, AGP, for the Respondent-State.

CORAM: M.S. Sonak & Jitendra Jain, JJ.

DATED: 25 November 2024

PC:-

1. Not on board. Upon mentioning taken on board.

2. Heard learned counsel for the parties.

3. The challenge in this petition is to the order dated 11 December 2023 made by the 3rd respondent.

4. In paragraph No.31, the following statement has been made by the petitioner: -

> "31. The Petitioner has no other alternative efficacious remedy, save and except the present Petition, the relief wherein, if granted, shall be complete."

5. The above statement is entirely misleading. This is because, against the impugned order, the petitioner has a remedy of appeal. In fact, the very first bullet point in the impugned order states that any person aggrieved by this order may appeal against the same to the Joint Commissioner of State Tax within 3 months of the communication of the order.

6. The learned counsel for the petitioner states that Service Tax authorities have granted the petitioner the benefit of notification exemption. She, therefore, submits that State GST authorities were also duty-bound to grant such exemption.

7. We believe the above ground can always be urged before the appellate authority. Based on such grounds, no case is made to depart from the usual practice of exhaustion of alternate remedies. Recently, this Court, in its judgment and order dated 11 November 2024 in Writ Petition (L) No. 33260/2023 (*Oberoi Constructions Ltd. Vs. The Union of India and Others*), has surveyed the decisions on entertainability of such petitions bypassing the alternate remedies. By adopting the reasoning therein, we decline to entertain this petition.

8. However, suppose the petitioner institutes an appeal within two weeks of today after complying with all legal requirements, including a pre-deposit of 10 per cent of the demanded tax. In that case, the appellate authority should decide the appeal on merits without addressing the limitation issue. This is because the petition was instituted within the limitation period for instituting appeals and has been pending before this Court until today.

9. Upon the institution of appeal, along with the 10 per cent pre-deposit, respondents should issue necessary directions to the petitioner's HDFC Bank Limited for de-freezing the petitioner's account No.00070350013169. Besides, if the petitioner wishes to withdraw the amount proportionate to 10 per cent of the tax demanded in the impugned order, de-freezing to that extent is granted immediately only to enable the petitioner to institute the appeal. Alternatively, the petitioner can issue directions to HDFC Bank to transfer the pre-deposit amount into the respondent's account, which must be honoured by the HDFC Bank provided that much amount is available in the petitioner's bank account.

10. The respondents must write to HDFC Bank to clarify the above position.

11. If the appeal is instituted within two weeks of today, the appellate authority will consider all parties' contentions on merits (except the limitation issue).

12. The petition is disposed of in the above terms without any cost orders. All concerned to act on an authenticated copy of this order.

(Jitendra Jain, J) **(M.S. Sonak, J)**