

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

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WRIT PETITION NO.6226 OF 2024

Hitachi Astemo FIE Private Limited .. Petitioner

Versus

The Additional Commissioner
Central GST, Pune I Commissionerate and Ors. .. Respondents

Mr. Sujit Ghosh, Senior Advocate (through VC) a/w Mr. Vaibhav Patankar and Mr. Ashrya Behura for the petitioner.

Mr. Jitendra B. Mishra a/w Ms. Mamta Omle for respondent Nos.1 to 4.

Ms. S. D. Vyas, Addl. G.P. a/w Ms. M.S. Bane, AGP for respondent no.5-State.

**CORAM : M. S. Sonak &
Jitendra Jain, JJ.
DATE : 9 December 2024**

PC. (Per M.S. Sonak) :-

1. Heard learned counsel for the parties.
2. The challenge in this petition is to the Order-in-Original dated 29 December 2023 made by the Principal Commissioner of CGST and Central Excise, Pune.
3. The petitioner, in paragraph 29, has made the following averments:-

“No other alternate, adequate and equally efficacious remedy is available to the petitioner and the reliefs claimed herein if granted would be complete.”

4. The above averments are quite misleading because the petitioner has an alternate remedy, i.e. an appeal to the Commissioner (Appeals). In fact, the impugned order very distinctly states that the petitioner has

such a remedy and gives full details of the Appellate Authority. In such circumstances, the averments in paragraph 29 of the petition are misleading and cannot be appreciated.

5. Mr Ghosh, learned Senior Advocate, however, submitted that the impugned order is without jurisdiction and a product of non-application of mind. He submitted that the adjudicating authority has relied upon the decision of the Hon'ble Supreme Court in the case of *CC, CE & ST, Bangalore (Adj.) etc. Vs. Northern Operating Systems Private Limited*¹ without appreciating the distinguishing features. He relied on M/s. *Onkarlal Nandlal Vs. State of Rajasthan & Anr.*² to submit that once the Hon'ble Supreme Court has decided the matter, to expect the Appellate Authority constituted under the Statute to take a different view is to expect the impossible. He submitted that an appeal would also involve a pre-deposit of a percentage of tax. For these reasons, Mr. Ghosh submitted that the alternate remedy, even if available, would not be efficacious.

6. Mr. Ghosh contends that the impugned order confirming the demand is without jurisdiction. He submitted that even the extension of the period vide notification dated 31 March 2023 was illegal because by the time such notification was issued, the COVID-19 pandemic had already passed.

7. Mr. Mishra, learned counsel for the respondents, submitted that the notification issue dated 31 March 2023 was never raised. In any event, there are no circumstances to deviate from the usual practice of requiring the petitioner to exhaust the alternate remedies available. He submitted that the judgment of the Hon'ble Supreme Court in the case of *Northern Operating Systems Private Limited (supra)* was considered

1 2022 SCC OnLine SC 658

2 (1985) 4 SCC 404

correctly by the adjudicating authority, and he submitted that that decision is binding even on this Court.

8. We have considered the rival contentions and perused the material on record. Upon such consideration and perusal, we are satisfied that no case is made out to deviate from the usual practice of requiring the party to exhaust the alternate statutory appeals available to them.

9. Recently, in *Oberoï Constructions Ltd. vs. The Union of India & Ors.*³, we exhaustively surveyed the decisions on alternate remedies. We also referred to the trend of attempting to deviate from this practice and take chances by filing petitions in this Court. By adopting the reasoning in the said decision instead of repeating it, we decline to entertain this petition.

10. Apart from the misleading averments on the alternate remedy made in this petition, upon due consideration of Mr Ghosh's submission, we find that no case is made out to depart from the usual practice. The decisions of the Hon'ble Supreme Court were no doubt considered by the adjudicating authority. Whether such consideration was correct is a matter that can always be agitated before the Appellate Authority.

11. The decision in *Onkarlal Nandlal (supra)* turns on its facts, in which it is observed that no useful purpose would be served if the party were to be relegated to avail of the alternate remedy. Since the issue involved in this matter relates to the interpretation of the Hon'ble Supreme Court's decision in the case of *Northern Operating Systems Private Limited (supra)*, the decision can also be interpreted by the Appellate Authority by appreciating the distinguishing features, if any, or those that might be pointed out as regards the binding value of the precedent of the Hon'ble Supreme Court. It is trite that such a decision

binds the authorities under the Act and this Court.

12. On perusing the petition, we find that a grant of any relief would involve examination into various agreements referred to in the petition itself. This is an exercise best undertaken by the authorities under the Act.

13. Regarding the contention of pre-deposit, the same cannot be grounds for not availing of alternate statutory remedies provided by the Statute. There is not even an averment that the petitioner cannot arrange for a pre-deposit amount. The petitioner is a multi-national company, and in any event, based on such ground, there is no question of by-passing the alternate remedy provided by the Statute.

14. Regarding the limited challenge to the notification dated 31 March 2023, we keep open the contention in that regard. Should the petitioner not succeed by recourse to the remedy available under the Act, and if occasion arises to challenge the final determination, the petitioner is granted liberty to press the challenge to the notification dated 31 March 2023. All contentions of all parties in this regard are kept open.

15. We decline to entertain this petition for all the above reasons and our reasonings in *Oberoï Constructions Ltd. (supra)*. However, should the petitioner institute an appeal within four weeks of uploading of this order, the Appellate Authority must consider this appeal on merits without advertng to the limitation. This is because this petition was instituted within the limitation period prescribed for instituting an appeal. Besides, the petitioner was bona fide in pursuing this petition before this Court.

16. All contentions of all parties on merits are left open. The Appellate Authority must hear the petitioner and pass a reasoned order.

17. The petition is disposed of with liberty in the above terms. There

shall be no order for costs.

18. All concerned to act on the authenticated copy of this order.

(Jitendra Jain, J.)

(M. S. Sonak, J.)