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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 12695 OF 2024

Atharvan Minerals Pvt Ltd ...Petitioner

Versus

Union of India thr. its Secretary
Ministry of Finance & Ors ...Respondents

Mr Prathamesh Kamat, *with Kayush Zaiwalla, i/b, Prasad Nagargoje, for the Petitioner.*

Mr Karan P Adik, *with Niyati Mankad, (through VC) & Akash Singh, for the Respondents.*

CORAM M.S. Sonak &
Jitendra Jain, JJ.
DATED: 13 November 2024

PC:-

1. Heard learned Counsel for the parties.
2. This Petition challenges the order dated 30 May 2024 passed by the Joint Commissioner of CGST and Central Excise.
3. Admittedly, the impugned order dated 30 May 2024 is appealable under the provisions of the CGST Act. Accordingly, we are quite surprised with the first sentence in paragraph 13 of this Petition wherein it is pleaded that the Petitioner has no alternative, much less an efficacious remedy against the impugned actions of the Respondents 2 and 4.

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4. However, if paragraph 13 is read in its entirety, the Petitioner has admitted having an alternate remedy under Section 107 of the CGST Act. The Petitioner has, however, pleaded that *“the Petitioner is preferring this Writ, since there is a pre-deposit requirement for appeal, and in this situation since Respondent No. 7 has been admitted into insolvency, it is an issue that does not require any further adjudication.”*

5. The circumstance that the statute requires a pre-deposit for instituting an appeal can hardly be a ground to bypass the statutory remedy. Mr Kamat’s contention that this Petition involves only a pure question of law cannot be accepted because the issue raised in this Petition would involve an investigation into factual aspects as well.

6. The impugned order relies on the provisions of Section 16(2)(c) of the CGST Act. This petition does not question the constitutional validity of this provision; however, several High Courts have upheld it. The impugned order holds that the facts attract the provisions of Section 16(2)(c) of the CGST Act. The petitioner disputes this position and, in any event, relies on a circular. The only reason for the non-exhaustion of the alternate remedy is the statutory requirement of pre-deposit.

7. At this stage, we do not propose to comment on the merits of the impugned order since that might prejudice the Petitioner, should the Petitioner be advised to appeal the impugned order. However, we are satisfied the Petitioner was only taking chances by instituting this Petition, and the conduct of the Petitioner is not different from the conduct of some of the Petitioners in the batch of Petitions we disposed of

on 11 November 2024, i.e., **Oberoï Constructions Ltd. V. The Union of India and others (Writ Petition (L) No. 33260 of 2023** and connected matters).

8. In the said order, we have surveyed the decisions on exhaustion of alternate remedy and pointed out how several Petitions are instituted in this Court bypassing the alternate statutory remedies to stall the adjudication process or avoid the pre-deposit requirements under the statute. In paragraph 13, this Petitioner has virtually admitted that it is not resorting to the appellate remedy because there is a pre-deposit requirement for the appeal. The circumstance about the 7th Respondent admitted in the insolvency is entirely irrelevant for deciding the issue of an alternate remedy.

9. To test the petitioner's bona fide, we adjourned this Petition for some time to enable the learned Counsel for the Petitioner to obtain instructions on whether the Petitioner was willing to deposit the demanded amounts. Mr Kamat, on instructions submitted, said that apart from the Rs two crores that the Petitioner deposited on 3 December 2021, the Petitioner cannot make any further deposits. This is a matter where the demand, after excluding the interest and penalty, is Rs 38.97/—Crores.

10. Thus, it is evident that the Petitioner, by instituting this Petition, only intended to take a chance and see whether any relief can be obtained by bypassing the statutory remedy and bypassing the requirement of pre-deposit. The extraordinary and discretionary jurisdiction under Article 226 of the Constitution cannot be exercised for such purposes.

11. Mr Kamat relied on **Godrej Sara Lee Ltd Vs. Excise & Taxation Officer-cum-Assessing Authority & Ors**¹ to submit that where only a pure question of law is involved, the party need not be relegated to the alternate remedy under the statute. As noted earlier, this Petition does not involve only a pure question of law. In any event, parties who seek to bypass statutory remedies to evade pre-deposit requirements cannot be indulged by exercising our discretionary jurisdiction under Article 226 of the Constitution.

12. In **Kotak Mahindra Bank Pvt Ltd Vs. Ambuj A Kasliwal and Others**², the Hon'ble Supreme Court held that the High Court gravely erred in giving the pre-deposit entirely in its writ jurisdiction, merely because the significant portion of the debt due stood paid to the bank. The Court held that the same, at best, could be a reason to reduce a pre-deposit to the lowest figure permitted by the statute, i.e., 25% of the late fee. The pre-deposit amount could not have been reduced below the statutory remedy, and discretion under Article 226 of the Constitution cannot be exercised against the mandatory requirement of statutory provision.

13. In **Assistant Commissioner (CT) LTU. Kakinada & Ors vs. M/s. Glaxo Smith Kline Consumer Health Care Limited**³, the Hon'ble Supreme Court took a strict view of parties' tendency to bypass the statutory remedies without sufficient cause or provide the pre-deposit requirement. The Court held that the circumstance that a party may have an arguable case is quite irrelevant in such matters, and based on such a circumstance,

¹ 2023 SCC OnLine SC 95

² 2021 3 SCC 549

³ 2020 19 SCC 681

the party should not be allowed to bypass the alternate statutory remedy.

14. For all the above reasons, we dismiss this Petition, leaving it open to the Petitioner to avail of all alternate remedies under the CGST Act. We clarify that we have not considered the merits of the matter, and all parties' contentions on the merits are left open.

(Jitendra Jain, J)

(M.S. Sonak, J)