IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.13752 OF 2024

Poonaram Khimaram Chaudhary .. Petitioner
Versus
State of Maharashtra & Ors. .. Respondents

Mr. Mahesh S. Mandhana for the petitioner.

Ms.S. D. Vyas, Addl. G.P. a/w Mr. A. A. Alaspurkar, AGP for the State.

Mr. Ashutosh Mishra for the respondent no.2.

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

DATE : 16 October 2024

P. C. :-

1. Heard learned counsel for the parties.

2. This petition challenges the order dated 25 August 2023 made by the State Tax Officer demanding tax, interest, and penalty from the petitioner.

3. The petitioner instituted an appeal against this order on 25 May 2024, claiming that he learned of this order only on 21 March 2024 when his bank received a notice from the State Tax Officer under Section 79(1) for remittance of the amount demanded under the impugned order dated 25 August 2023. Surprisingly, this appeal was withdrawn on 25 August 2024 to

institute this petition “as per the legal advice of the advocate.”

4. If the petitioner claims he did not know of the order dated 25 August 2023 until 21 March 2024, then we are quite surprised as to why the appeal was withdrawn since the limitation would prima facie start from the date of knowledge. Be that as it may, the withdrawal of the appeal does not satisfy the rule of exhaustion of alternate remedies available under the Statute.

5. The learned counsel for the petitioner submitted that the show cause notice was issued to the petitioner. He submitted that the impugned order was emailed to the petitioner’s tax consultant. He submitted that the tax consultant upon whom the petitioner relied did not open this email, possibly because he was a busy tax consultant. The learned counsel for the petitioner submits that the petitioner came to know about the proceedings after he received a phone call from the State Tax Officer about the pendency of such proceedings. He submitted that the Petitioner cannot be made to suffer for all these reasons.

6. All these defences cannot be readily accepted. If the petitioner was confident of such defences, we fail to understand why the appeal was withdrawn. Suppose the petitioner, for the reasons attributable to himself, fails to avail of alternate remedies provided by the Statute. In that case, such a petitioner cannot insist on invoking this Court's writ jurisdiction. Accordingly, we are not inclined to entertain this petition.

7. If the petitioner so chooses and, if so advised, applies for revocation of his withdrawal application and seeks restoration of the appeal, the Appellate Authority must dispose of such application in accordance with the law, considering that he is an individual and after considering the reasons for revocation. The

learned counsel for the Petitioner submitted before us that the Petitioner was hardly educated and had relied entirely on his tax consultant. We are sure the Appellate Authority would consider all these aspects should the petitioner make any application for reinstatement of the appeal.

8. This petition is disposed of with the above observations. There shall be no order as to costs. All the concerned to act on an authenticated copy of this order.

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