



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.13902 OF 2024

M/s. S. J. S. International & Anr.

...Petitioners

Versus

Union of India & Anr.

...Respondents

Mr. Harshadray Dave (through VC), Mr. Anuj Jhaveri and Ms. Ritisha Choudhary for Petitioners.

Ms. Sangeeta Yadav i/b Ms. Neeta Masurkar for Respondent.

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

DATED : 12 November 2024

PC.:-

1. Heard learned counsel for the parties.
2. This petition challenges the show cause cum demand notice dated 5 June 2021 and the Order-in-Original dated 23 January 2024 made after adjudication of the show cause notice cum demand dated 5 June 2021.
3. Admittedly, the Petitioners have an alternative efficacious remedy of an appeal to challenge the Order-in-Original dated 23 January 2024, in which the show cause notice cum demand notice dated 5 June 2021 stands merged.
4. In paragraph 9 of the petition, the Petitioners have made the following averment to bypass the rule of exhaustion of alternative remedies. Paragraph 9 of the petition reads as follows:-

“9. The Petitioner has an alternative remedy available under law, however the same won't be equally efficacious remedy available at law but to approach this court by way of this petition as the Petitioner is challenging the show cause notice as well as the order

in original mainly on the ground of jurisdiction, propriety and other aspects.”

5. The averments are blissfully vague, and based on such averments, we do not deem it appropriate to entertain the present petition where, admittedly, the Petitioners have alternative and efficacious remedies available to them.

6. However, the learned counsel for the Petitioners relied upon a decision of the Division Bench of the Gujarat High Court in Special Civil Application No.20484 of 2019 instituted by the Petitioners. He submitted that in circumstances like those involved in the present petition, the Division Bench of the Gujarat High Court interfered with the show cause notice. He admitted that an SLP has been instituted against the said decision but submitted the said decision has not been stayed. Mr. Dave also submitted that the Division Bench of Gujarat High Court disposed of four other petitions, relying on the decision dated 9 December 2021. To his knowledge, even Special Leave Petitions against the same were not entertained by the Hon'ble Supreme Court.

7. The issue of whether the facts and circumstances in the present petition and the petition/petitions before the Gujarat High Court are the same would require examination. There are no such pleadings in the Petition. This was also not the reason stated in paragraph 9 of the Petition quoted above. In any event, all these matters can be conveniently raised before the Appellate Authority. No case is made to bypass the normal rule of exhaustion of alternative remedies.

8. Recently, this Court, in the case of ***Oberoï Constructions Ltd. vs. The Union of India & Ors.*** in Writ Petition (L) No.33260 of 2023 and a batch of petitions disposed of by order dated 11 November 2024, has considered several precedents on the subject and held that unless good

grounds are made out, there is no question bypassing alternative remedies available under Act. As noted above, based on vague allegations that the show cause notice / impugned orders are without jurisdiction or that some impropriety is involved, the rule of exhaustion of alternative remedies cannot be bypassed.

9. Therefore, we decline to entertain this petition by adopting the reasoning in our order dated 11 November 2024 in the case of *Oberoi Constructions Ltd. (supra)*. However, we leave it open to the Petitioners to avail themselves of the alternative remedies available under the Act. Further, suppose the Petitioners file an appeal against the impugned order dated 23 January 2024 within four weeks from today by complying with the necessary legal formalities. In that case, we direct the Appellate Authority to consider such appeal on its merits, given that this petition was instituted on 21 May 2024 and was pending to date.

10. All contentions of all parties, including those raised in this petition, are left open to be decided by the Appellate Authority.

11. The Petition is dismissed but with liberty in the above terms. There shall be no cost order.

12. All concerned to act on an authenticated copy of this order.

(Jitendra S. Jain, J.)

(M. S. Sonak, J.)