

Amol

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 17340 OF 2024

Qualichem Industries Pvt Ltd

...Petitioner

Versus

The Union of India & Ors

...Respondents

Mr Brijesh Pathak, *with Pratik Karande, i/b, Aditya Talpade,*
for the Petitioner.

Mr Siddharth Chandrashekar, *with Sangeeta Yadav, for the*
Respondents.

CORAM M.S. Sonak &
 Jitendra Jain, JJ.
DATED: 02 December 2024

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PC:-

1. Heard Mr Pathak for the Petitioner and Mr Chandrashekar for the Respondents.
2. This is yet another case where the Petitioner has tried to take a chance with the proceedings in this Court after making false and incorrect statements in the Petition.
3. The Petitioner challenges the impugned order dated 1 August 2024 issued pursuant to the show cause notice dated 2 August 2022. Though the Petitioner has an alternate and efficacious remedy, in paragraphs 40 and 41, the Petitioner has made the following averments:

“40. The Petitioner has no other alternative or efficacious remedy available under the Act except the present Writ Petition. The reliefs claimed herein, if granted, would afford complete relief to the Petitioner.

41. The Petitioner has not filed any other Petition earlier in this Hon’ble Court or in any other Hon’ble High Court pertaining to the subject matter of this petition. The Petitioner had filed a Writ Petition (Diary No. 48496 of 2024) before the Hon’ble Supreme Court, however, the same has been withdrawn.”

4. The Order-In-Original, in paragraph 2 very clearly prescribes that appeal lies to the Customs Excise & Service Tax Appellate Tribunal (“CESTAT”). The particulars of the appellate authority have also been provided. Despite all this, the Petitioner, in paragraphs 40 and 41, states that there is no alternative or efficacious remedy available to them except the present Writ Petition. This averment, to say the least, is misleading. Mr Pathak was unable to show us any other averments in the Petition that would justify departing from the practice of exhausting alternate remedies.

5. Mr Pathak, however, tried to contend that the show cause notice refers to certain documents, but no Document Identification Number (DIN No.) was provided. Based on this, he argued that the show cause notice was without jurisdiction. At least prima facie, this contention is entirely misconceived in the context of exhaustion of alternate remedies. Based on such a submission, no Petition can be instituted directly in this Court to challenge a show cause notice issued on 2 August 2022. The show cause notice is already adjudicated, and the Petitioner has the alternate remedy of instituting an appeal against the same.

6. Recently, by our judgment and order dated 11 November 2024 in Writ Petition (L) No. 33260 of 2023 (**Oberoï Constructions Ltd Vs. The Union of India and Others**), we have surveyed the decisions on the practice of exhaustion of alternate remedies. We have also pointed out the increasing trend of taking chances by instituting Petitions under Articles 226 and 227 of the Constitution of India by making incorrect and frivolous averments in the Petition. By adopting the reasoning therein and noting that this is one such case of taking chances without any reasonable cause, we decline to entertain this Petition.

7. This is a case where the Petitioner has tried to take chances by making incorrect and misleading averments in the Petition. For this, the Petitioner is required to pay costs of Rs 50,000/- to Tata Memorial Hospital within four weeks from today. The details of which are as follows:

Bank Name	:	Central Bank of India
Branch	:	Tata Memorial Hospital
Address, Telephone & No. Fax No.	:	Dr. Ernest Borges Road, Parel Mumbai, 400 012. Tel. No. 022-24126487, Fax No. 022-24126487
Bank Account No.	:	1002449683
Account Type	:	Current
IFSC Code	:	CBIN0284241
MICR Code	:	400016112

8. Despite all this, we enquired with Mr Pathak whether we should make an order to protect the Petitioner in the context of the limitation period in instituting the appeal and the timeline within which such appeal would be instituted. At

this stage, Mr Pathak, the learned Counsel for the Petitioner, states that the Petitioner has already filed an appeal since recovery proceedings were initiated.

9. No amendment was sought to this Petition, and Mr Pathak did not disclose this fact before he commenced the arguments. He only reluctantly disclosed it after the dictation of this order reached this point. Court time was wasted based on misleading statements followed by suppression. We were inclined to enhance the costs, but we leave it at that, hoping this would not be repeated.

10. The Petitioner should file a compliance report about the cost payment within four weeks from today.

11. This Petition is dismissed with costs and liberty to peruse the already instituted appeal.

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

(Jitendra Jain, J)

(M.S. Sonak, J)