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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 18008 OF 2024

Trade Concepts Corporation .. Petitioner
Versus
State of Maharashtra and Anr. .. Respondents

AND
WRIT PETITION NO. 18011 OF 2024

Trade Concepts Corporation .. Petitioner
Versus
State of Maharashtra and Anr. .. Respondents

Mr. Prasanna Namboodiri with Ms. Pratibha Namboodiri, Ms. Tejal Darekar, Ms. Pallavi Dabakm, Mr. Rishabh Sinha for the petitioner.
Ms. Shruti Vyas, Addl. GP a/w Ms. Pushpalata Diwan, AGP for respondent.

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

P.C.:-

1. Heard learned counsel for the parties.

2. Learned counsel for the petitioner submits that both these petitions can be disposed of by common order since the issue of law and fact are substantially similar. He points out that two petitions were filed because they pertain to two different financial years.

3. The challenge in both these petitions is to the Orders-in-Original

made by Deputy Commissioner of State GST.

4. The petitioners have made a bald statement that they have no equally efficacious alternate remedy. This averment is incorrect. The petitioners clearly have a remedy of an appeal against the impugned Orders-in-Original.

5. Learned counsel for the petitioner, however, points out that the documents submitted by the petitioner listed in Exhibit-J (201) of the Writ Petition (ST) No.6156 of 2024 were not even considered by the Adjudicating Authority and such non-consideration constitutes a breach of natural justice.

6. Further, he points out that the demands in the two matters are Rupees Three Crore Sixty-Eight Lakhs and Rupees Sixteen Lakhs, respectively. Therefore, he submits that a pre-deposit of 10% on the tax amount is required to maintain an appeal, which comes to Rupees Thirty-Eight Lakhs or thereabouts. He submits that this condition is harsh, rendering the appeal remedy less efficacious. He submits that the alternate remedy cannot be regarded as efficacious for these reasons.

7. We have considered the contentions raised and cannot see any good ground to deviate from the practice of exhausting the alternate statutory remedies.

8. The circumstance that a pre-deposit must be made cannot, at least

in the facts of this case, be regarded as a factor that dilutes the efficaciousness of the alternate remedy provided by the statute. Secondly, the alleged non-consideration of some of the documents cannot, at least to depart from the practice of exhaustion of alternate remedies, be considered a complete breach of the principles of natural justice. This is not a case of no notice or no opportunity, but, at the highest, the allegation is about "no adequate opportunity". These are matters which the Appellate Authority best examines.

9. For the above reasons and by keeping all parties' contentions open, including the petitioner's contention about failure to consider the documents or failure of natural justice open, we decline to entertain these petitions but relegate the petitioners to avail of the alternate remedy of appeal.

10. In the case of ***'Oberoi Constructions vs. Union of India', Writ Petition (L) No.33260 OF 2023,*** delivered on 11 November 2024, we recently surveyed the decisions on the bar of alternative remedies. Following our reasoning in the decision, we decline to entertain this petition but grant the petitioner liberty to file an appeal to challenge the impugned orders before the Appellate Authority.

11. On instructions, learned counsel for the petitioners stated that the appeals would be instituted within four weeks. Suppose the appeals are

instituted within four weeks after complying with all the legal requirements. In that case, the Appellate Authority should dispose of such appeals on their own merits and in accordance with law without adverting the limitation issue. This is because these petitions were instituted well within the limitation period for instituting appeals and the petitioner was bonafide pursuing these petitions.

12. These petitions are disposed of in the above terms and with the above liberty. There shall be no order as to costs.

13. All concerned must act on the authenticated copy of this order.

14. The interim orders, if any, stand vacated. The interim applications, if any, are disposed of.

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