

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION NO. 4548 OF 2024

Prestige Mulund Realty Private Limited
Unit no.1002, Plot no. C-68,
10th Floor, Bandra Kurla Complex,
Jet Airways Godrej BKC,
Mumbai, Maharashtra, 400051.

...Petitioner

Versus

1. Union of India
through the Secretary,
Department of Revenue,
Ministry of Finance,
Government of India,
North Block, New Delhi- 110 001.
2. Central Board of Indirect Taxes
and Customs
Department of Revenue,
Ministry of Finance,
Government of India,
North Block, New Delhi- 110 001.
3. State of Maharashtra
through the Secretary,
Ministry of Finance,
Department of Revenue,
Mantralay, Mumbai – 400 001.
4. Deputy Commissioner of State Tax
(Bandra East 501),
Cabin No. 505, MTNL Office GST,
8th Floor, MTNL Office,
GST Office, Love Lane,
Mazagaon, Mumbai,- 400 010.

...Respondents

Mr. Bharat Raichandani a/w Aman Mishra i/by UBR Legal, for the Petitioner.

Ms. Jyoti Chavan, Addl. Govt. Pleader for the Respondent – State.

**CORAM: M.S. SONAK &
JITENDRA JAIN, JJ.**

DATED: 25th NOVEMBER, 2024

Oral Order:-

1. Heard learned counsel for the parties.
2. Rule. The rule is made returnable immediately at the request of and with the consent of learned counsel for the parties.
3. This Petition challenges the show-cause notice dated 21st September 2023 issued by the 4th Respondent. During the pendency of this Petition, the show-cause notice was disposed of by the 4th Respondent by making an order dated 28th December 2023.
4. The Petitioner has now filed an Interim Application to amend this Petition to challenge the order dated 28th December, 2023, disposing of the impugned show-cause notice dated 21st September, 2023. In the peculiar facts of the present case, we allow this amendment. Amendment to be carried out immediately because we are satisfied that the impugned order will have to be set aside for non-consideration of the Petitioner's plea based on the decision of the Hon'ble Supreme Court in the case of **Ghanashyam Mishra and Sons Private Limited Vs. Edelweiss Asset Reconstruction Company Limited & Ors.** reported in 2021(9) SCC 657 and **Murli Industries Limited Vs. Assistant Commissioner of**

Income Tax in Writ Petition No.2948 of 2021 decided on 23rd December 2021 by this Court. Ms Chavan learned Addl. Govt. Pleader states that these decisions might be distinguishable and would not apply to the facts of the present case.

5. It appears that the petitioner did not file a clear reply to the show-cause notice dated 21 September 2023. However, the Petitioner did point out to the fourth Respondent that a Petition was filed to challenge the show-cause notice. Mr. Raichandani now contends that this intimation should have been treated as an interim reply.

6. We do not wish to go into the merits of the rival contentions but hold that the contentions based upon the above two judgments should have been considered one way or the other by the 4th Respondent before making the impugned order. The impugned order is not entirely clear whether the Petitioner filed no reply or whether the reply filed was not found to be satisfactory. In any event, stating that the reply was unsatisfactory does not make a reasoned order. To that extent, there is a violation of natural justice because the duty to give reasons is also one of the facets of natural justice.

7. Accordingly, we set aside the impugned order dated 28th December 2023 without relegating the Petitioner to avail of the alternate remedy given in the peculiar facts and the breach of natural justice.

8. The matter is now remanded to the 4th Respondent. The Petitioner, if so wishes, should file a detailed response within two weeks from today, raising all permissible contentions and furnishing copies of all relevant documents and decisions. The

4th Respondent must consider this detailed response and grant an opportunity of hearing to the Petitioner and only, after that, dispose of the show-cause notice dated 21st September 2023 by passing a reasoned order. This exercise must be completed within three months from today. As indicated above, all contentions of all the parties on the merits of the matter are left open to be decided by the 4th Respondent in the first instance.

9. Rule is made absolute in the above terms without any order of costs.

10. All concerned should act on an authenticated copy of this order.

(JITENDRA JAIN, J)

(M. S. SONAK, J)