Priya Soparkar

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

WRIT PETITION NO. 3225 OF 2024
AND
WRIT PETITION NO. 3287 OF 2024

Alkem Laboratories Limited …Petitioner
Versus
Joint Commissioner of CGST and Central Excise …Respondent

Mr. Rafique Dada with Mr. Gopal Mundhra and Mr. Parth Parikh i/by M/s Economic Laws Practice, Advocates for the Petitioner.
Mr. Karan Adik with Mr. Harshad Shignapurkar, Advocates for the Respondents No.1 to 3.
Ms. Jyoti Chavan, Addl. GP with Mr. Amar Mishra, AGP for the State.

CORAM **M.S. Sonak &**
Jitendra Shantilal Jain, JJ.
DATED: **10th December, 2024.**

PC:-

1. Heard learned counsel for the parties.

2. The challenge in both these petitions is to the orders-in-original dated 18th December 2023 and 26th December 2023 made by the first Respondent and notification No.09 of 2023-Central Tax dated 31st March 2023 issued by the third Respondent purporting to extend the limitation for passing the final order in respect of the concerned assessment year, i.e. A.Y. 2017-18.

3. The petitioner had the remedy of appeal provided by the statute against the impugned orders in original. However, Mr. Dada, learned senior counsel for the Petitioner, submitted that no appeal can be filed against the impugned notification dated 31 March 2023.

4. In the facts of the present case, the argument based on the impugned notification dated 31st March 2023 is only one of the grounds. Besides this, the Petitioner has raised several grounds to challenge the impugned orders-in-original. Such grounds are investigated by the Appellate Authority. If the Appellants succeed on such other grounds, perhaps there may be no occasion to challenge the impugned notification dated 31st March 2023. However, if the statutory remedies under the Act fail, we can always grant liberty to the Petitioner to challenge the impugned notification dated 31st March 2023.

5. In ***Oberoi Constructions Limited vs. Union of India and Ors.,Writ Petition (L) No.33260 of 2023, decided on 11 November 2024***, we considered several precedents on the exhaustion of alternate remedies. By adopting the reasoning in the said decision, We propose not to entertain this petition but to relegate the Petitioner to the alternate remedy of appeal.

6. Accordingly, we decline to entertain this Petition. However, the Petitioner shall be at liberty to institute appeals against the impugned orders-in-original.

7. Mr. Dada states that appeals will be instituted within four weeks from today. Suppose the appeals are indeed instituted within four weeks from today after complying with the necessary legal requirements. In that case, the Appellate Authority must consider and dispose of such appeals on merits without adverting to the limitation issue. This is because these petitions were instituted within the limitation period prescribed for instituting appeals. The Petitioner was pursuing these petitions.

8. All parties' contentions are left open because we have not adverted to the rival contentions on merits. The Appellate Authority is requested to dispose of these appeals as expeditiously as possible and in accordance with law and on their own merits.

9. Should the Appellants not get the relief they seek under the statutory remedies, they shall have the liberty to *inter-alia* challenge the impugned notification dated 31st March 2023 because we have not examined the legality or validity of such notification.

10. Mr. Adik, learned counsel for Respondents No.1 to 3, pointed out that the Allahabad High Court already upheld the legality of such notification. Mr. Dada had submitted that there was a contrary decision of Guwahati High Court, though the Guwahati

High Court's decision pertains to different financial years. Since we are not going into this issue, we would like to clarify that this issue is kept open. The Petitioner is granted an opportunity to challenge the notification if and when any occasion arises.

11. These petitions are disposed of with liberty with above terms. There shall be no order as to costs.

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

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