

Priya Soparkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 3672 of 2024

Finorion Pharma India Private Limited ...Petitioner
Versus
State of Maharashtra ...Respondent

Mr. Prakash Shah with Mr. Mihir Deshmukh i/by M/s PDS Legal,
Advocates for the Petitioner.
Ms. Jyoti Chavan, Addl. GP for the State.

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

PC:-

1. Heard learned counsel for the parties.
2. This is yet another case where the Petitioner is attempting to bypass the practice of exhausting alternate remedies and taking chances with the Court processes.
3. The challenge in this Petition is the Refund Rejection Order dated 22nd April 2024, against which an appeal lies under section 107 of the Maharashtra Goods and Services Tax Act, 2017 ("MGST Act").
4. Regards the availability of such alternate remedy, the Petitioner had made the following averments in paragraph No.25 of the Petition:

“25. It is submitted that the impugned ex-parte order is ex-facie illegal and in gross violation of the principles of natural justice. The impugned order is also in direct contravention of the binding judgments of this Hon’ble Court. In view of particular facts of the present case, the Petitioner is entitled to invoke the jurisdiction of this Hon’ble Court under Article 226 of the Constitution of India. It is submitted that the Appellate remedy available under the CGST Act is neither efficacious nor adequate nor in the alternative. It is submitted that the reliefs prayed for herein if granted, would afford to them complete relief and justice to the Petitioner.”

5. The record *prima facie* shows that the Petitioner was issued a show-cause notice and called upon to attend the personal hearing on 15 April 2024. The petitioner sought an adjournment of 10 days to reply to the notice, which was apparently granted. The Petitioner then sought some documents, which were also *prima facie* granted. The Petitioner then requested a further seven days’ time through e-mail.

6. Based on all these, and without concluding the issue of fair hearing, this is not a case for any gross violation of principles of natural justice as was sought to be made up during arguments. At the highest, the allegations may relate to no adequate hearing, but indeed, this is not a case of no hearing. If, despite sufficient accommodation, the Petitioner chooses not to avail of personal hearing opportunities, the Petitioner cannot complain about the failure of natural justice.

7. Mr Shah, learned counsel for the Petitioner by reference to page 62 of the paper book, submitted that the impugned order contains no reason, and the refund has been rejected only on the ground that the Petitioner failed to explain “as per the provisions of the Act and Rule”. However, Ms Chavan learned Addl. G.P for the State pointed out the

reasons from pages 63 to 67. At this stage, we are not concerned with the reasonability or legality of such reasons. Since the Petitioner has the alternate remedy of statutory appeal, the Petitioner must, if he so chooses resort to such remedy. Such statutory remedy cannot be bypassed on the grounds alleged or sought to be elaborated upon in this petition. The petitioner was taking a chance and clogging the judicial process.

8. Recently in the case of *Oberoil Constructions Limited Vs. Union of India and ors., Writ Petition (L) No.33260 of 2023 and connected matters decided on 11th November, 2024*, we have considered several precedents on the practice of exhaustion of alternate remedies. By adopting the reasoning in the said decision, we decline to entertain this petition.

9. The contentions on merits must be examined by the Appellate Authorities under the Act. No case is made out to deviate from the usual practice of exhaustion of alternate remedies. By adopting the reasoning in **Oberoil Constructions Limited (supra)** instead of repeating the reasons and precedents, we dismiss this petition but with liberty to the Petitioner to avail of the alternate remedy of appeal.

10. Mr. Shah states that an appeal will be instituted within four weeks from today. If the appeal is instituted within four weeks from today, the Appellate Authority should consider the appeal on merits without advertng to the limitation issue. The Petitioner had instituted this Petition within the limitation period prescribed for instituting appeals.

11. All contentions of all parties, including Petitioner's contentions regarding principles of natural justice, must be considered by the Appellate Authority. The observations mainly decide whether this Petitioner should be permitted to bypass the statutory alternate remedies available.

12. The petition is disposed of with liberty in the above terms. There shall be no order as to costs. All concerned to act on the authenticated copy of this order.

(Jitendra Shantilal Jain, J.)

(M.S. Sonak, J.)