



**IN THE JUDICATURE OF HIGH COURT AT BOMBAY
BENCH AT AURANGABAD**

902 WRIT PETITION NO. 7260 OF 2025

Ms K.b. Patrikar Through Its Prop Kakaji Banduji Patrikar

VERSUS

The Union Of India Through Its Secretary And Others

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Advocate for the Petitioner : Mr. Alok Sharma And R. S. Indani

Advocate for Respondent No.1 - UOI : Mr. N. T. Bhagat

Advocate for Respondents No.2 & 3 : Mr. Parikshit Dawalkar a/w Mr.
Pratik P. Kothari

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**CORAM : R. G. AVACHAT &
ABASAHEB D. SHINDE, JJ.**

Dated : OCTOBER 14, 2025

ORAL ORDER : -

1. Heard.
2. The challenge in this writ petition is to the *Order-in-Original (OIO)* dated 12/09/2024 and the order rejecting the application for rectification, dated 09/04/2025.
3. The petitioner is engaged in the business of road construction and allied works. He was initially served with a show-cause notice, and after the petitioner availed the opportunity to show cause, the impugned order dated 12/09/2024 came to be passed. The show-cause notice was issued for a period beyond five years.
4. The learned Counsel for the petitioner would first submit that the authority concerned did not afford the petitioner a pre-consultation

hearing. He would then submit that the impugned order has been passed without assigning any reasons whatsoever. According to him, the orders as such have been passed in breach of the principles of natural justice. The order impugned herein was passed with complete non-application of mind.

5. According to him, all the works relating to the R. A. bills along with the work orders, were placed before the authority concerned, and an exemption under Item No.13 was sought. Instead thereof, the authority concerned observed the petitioner to have not placed on record all the documents, including sub-contracts. According to him, the authority concerned held the petitioner to be not entitled to exemption by virtue of Clause No.12.

6. The learned Counsel meant to say that when the petitioner had sought exemption under Item No.13, the authority itself, instead of giving reasons as to why the petitioner was not entitled to the exemption claimed, on its own took recourse to Item No.12.

7. The learned Counsel for the petitioner would rely on the judgment of the Division Bench of this Court dated 30/06/2025 in

Writ Petition (L) No. 12528 of 2025 (GlobeOp Financial Services (India) Private Limited versus Deputy Commissioner of State Tax).

Paragraphs 15, 16, and 19 of the said judgment read as under : -

“15. Section 73(9) of the Central Goods and Services Tax Act, 2017 (CGST Act) which is similar to the corresponding provisions in the Maharashtra Goods and Services Tax Act, 2017 (MGST) provides that the proper officer shall, after considering the representation, if any, made by person chargeable with tax, determine the amount of tax, interest and a penalty equivalent to ten percent of tax or ten thousand rupees, whichever is higher, due from such person and issue an order. The italicized portion implies and requires that the proper officer must apply his or her mind to the representation made and only after that, issue an order. The phrase ‘consider’ does not mean that the contents of the representation are transcribed in the impugned order and without any discussion on the contentions raised, a conclusion is reached. In this case, the so-called reasoning is merely a cut-and-paste of most of the contents of the show cause notice, as noticed above.”

“16. The term ‘consider’ has been a subject of several judicial pronouncements. It means examining or weighing the merits of matters. The “Chambers Dictionary” defines this as ‘looking at attentively or carefully’. The “Standard Dictionary” describes this term

as thinking with deliberate care or giving heed. In the case of Union of India & Anr. vs. Tulsiram Patel, the Court clarified that 'consider' means to contemplate mentally, fix the mind upon, think over, mediate, reflect, give heed, or take note, implying a deliberate, attentive mental process. In S. Kiranmayi vs. Sri N. Sambasiva Rao, the Court held that 'consider' involves careful thought, review and weighing of factors."

"19. The objection regarding the alternative remedy does not hold in this case. Firstly, it is not the case that an appeal has been filed against the impugned order. Secondly, an appeal was made against the order dated 1 April 2022, which included reasons; however, those reasons did not appeal to the petitioner. Thirdly, since this is a case of complete non-application of mind and violation of principles of natural justice, there is no point in directing the petitioner to pursue the alternative remedy of appeal. A clear breach of natural justice is an exception to the general rule that statutory remedies should usually be exhausted before seeking this Court's extraordinary intervention. In any event, we do not intend to annul the impugned order on its substance. Nonetheless, we are intervening because the decision-making process involved a breach of the principles of natural justice and fair play."

8. He also relied on the judgment in the case of *Jay Mahakali Industrial Service versus Union of India*, reported in 2025 (393) E.L.T. 28 (Guj.), on the point of the principle of consultation. He particularly relied on paragraph No.15 of the said judgment, which reads as under:

“15. Taking into consideration the above facts and in view of the decision of this Court in case of L AND T Hydrocarbon Engineering Ltd. (Supra), we are of the opinion that none of the show cause notice except Special Civil Application No. 5685 of 2022 can be sustained in absence of pre-consultation notice. Even in Special Civil Application No. 5685 of 2022, the show cause notice contained the ingredients of the issue of liability of the petitioner but it only refers to the difference in value of income as per Form 26AS and as per Form ST-3 returns filed by the petitioner. In such circumstances, the show cause notices issued in the respective petitions are hereby quashed and set aside and therefore as a consequence the Order-in-Original if any shall also be quashed and set aside, with a liberty to the respondent-Department to initiate the proceedings or to revive the original show cause notice subject to outcome of the pending proceedings before the Hon'ble Apex Court in accordance with law. All the petitions are accordingly disposed of. Notice is discharged.”

9. The learned Counsel for the petitioner further relied on the judgment of this Court dated 23/09/2025 in *Writ Petition No. 822 of 2021 (Rochem Separation Systems (India) Pvt. Ltd. versus Union of India)*.

10. He also relied on the judgment in the case of *Bhumika Highstreet Pvt. Ltd. versus Assistant Commissioner of GST*, reported in (2023) 13 Centax 240 (Bom.), to submit that an order passed without considering the documents relied upon *tantamounts* to a breach of the principles of natural justice. On all the aforesaid grounds, the learned Counsel urged for setting aside the orders impugned herein and remitting the matter back to the authority concerned. He submits, that he would place on record all the material he had already relied upon and even co-operate with the authority to decide the matter afresh within a couple of weeks.

11. The learned Counsel for the respondent-Department would, on the other hand, submit that the petitioner has an equally efficacious alternate remedy in the nature of an appeal before the Tribunal. According to him, only with a view to avoid payment of 7.5% of the assessed liability, the forum of this Court has been chosen. He would

say that this Court cannot enter into the factual matrix.

12. According to him, the point of pre-consultation has not at all been raised in the petition or even in response to the show-cause notice. The same, therefore, could be said to have been waived. He then took us to paragraph 4.7 of the order impugned herein to submit that the authority did apply its mind. It was the petitioner who did not place on record all the necessary documents. Whatever material was before it has been duly considered.

13. According to him, giving wrong reasons may be a different matter from assigning no reasons at all. If the petitioner is not content with the reasoning given by the authority concerned, he has a remedy of appeal. It, therefore, could not be said to be a case of violation of the principles of natural justice. He has relied on the judgment in the case of *Oberoai Constructions Ltd. and Ors. versus Union of India and Ors.*, reported in 2024 : BHC – OS : 18318-DB.

14. The learned Counsel for the petitioner relied on Section 73 of the Service Tax Act, which reads as follows : -

“SECTION 73. Recovery of service tax not levied or

paid or short-levied or short-paid or erroneously refunded. — (1) *Where any service tax has not been levied or paid or has been short-levied or short-paid or erroneously refunded, Central Excise Officer may, within thirty months from the relevant date, serve notice on the person chargeable with the service tax which has not been levied or paid or which has been short-levied or short-paid or the person to whom such tax refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice:*

Provided that where any service tax has not been levied or paid or has been short-levied or short-paid or erroneously refunded by reason of —

- (a) fraud; or*
- (b) collusion; or*
- (c) wilful mis-statement; or*
- (d) suppression of facts; or*
- (e) contravention of any of the provisions of this Chapter or of the rules made thereunder with intent to evade payment of service tax,*

by the person chargeable with the service tax or his agent, the provisions of this sub-section shall have effect, as if, for the words “thirty months”, the words “five years” had been substituted.”

15. According to him, even assuming it is a case of fraud, the

notice period should not have exceeded five years, and therefore the notice issued on 23/12/2020 was illegal. To counter this submission, the learned Counsel for the respondents would submit that, during the period of CORONA, the period of limitation gets extended. Suffice it to say that this very submission can be raised before the appellate forum, which will render its decision thereon.

16. We have considered the submissions advanced. Admittedly, in response to the show-cause notice, the petitioner did not raise the ground of pre-consultation. In the present writ petition as well, there is no reference whatsoever to the non-observance of the circular requiring pre-consultation before the issuance of the show-cause notice. In our considered view, therefore, the said ground could be said to have been consciously waived and raised at the last minute as an afterthought.

17. What this Court can decide on hearing the submissions made by the learned Counsel for the petitioner could very well be decided by the appellate forum. It is true that the petitioner had claimed exemption under Item No.13. The authority concerned, in response to the petitioner's claim for exemption in terms of the Mega Circular

dated 20/06/2022, observed the petitioner to have not placed on record all the documents, including sub-contracts.

18. It is a matter of record that, in response to the show-cause notice, the petitioner appeared and was represented by a Chartered Accountant. A host of documents were placed on record before the authority concerned. After considering the petitioner's submissions, the first order impugned herein came to be passed. The petitioner thereafter admittedly moved an application for rectification.

19. It has been observed by the Apex Court that an application for rectification is not greater than an application for review of the order. The scope of deciding the rectification application would, therefore, necessarily be limited. The authority concerned cannot travel beyond what was before it while passing the order for which rectification was sought.

20. After having perused paragraph No.4.7 of the order impugned herein, we find that, though the authority concerned might have given wrong reasons, the remedy therefor would be to assail the said order in appeal before the Tribunal. At the cost of repetition, it is observed that giving wrong reasons is a different aspect, and the

same cannot be termed a breach of the principles of natural justice.

21. In the case of *GlobeOp Financial Services (India) Private Limited* (supra), the Division Bench, based on the factual matrix, found that the authority concerned had not at all addressed the issue raised by the petitioner therein and therefore held it to be a case of breach of the principles of natural justice; consequently, a writ petition was held maintainable. Since the factual matrix here is altogether different, moreover, this Court in *Writ Petition No.7242 of 2025* and *Writ Petition No.7258 of 2025 (Pragati Constructions versus The Union of India and Ors.)*, decided on 25/07/2025, relied on the Apex Court judgment in the case of *State of Maharashtra and Ors. versus Greatship (India) Limited* (2022 AIR (SC) 4408), wherein it has been observed thus : -

“At the outset, it is required to be noted that against the assessment order passed by the Assessing Officer under the provisions of the MVAT Act and CST Act, the assessee straightway preferred writ petition under Article 226 of the Constitution of India. It is not in dispute that the statutes provide for the right of appeal against the assessment order passed by the Assessing Officer and against the order passed by the first appellate authority, an appeal/revision before the Tribunal. In that view of the matter, the High Court ought not to have entertained the

writ petition under Article 226 of the Constitution of India challenging the assessment order in view of the availability of statutory remedy under the Act. At this stage, the decision of this Court in the case of Satyawati Tondon (supra) in which this Court had an occasion to consider the entertain ability of a writ petition under Article 226 of the Constitution of India by by-passing the statutory remedies, is required to be referred to. After considering the earlier decisions of this Court, in paragraphs 49 to 52, it was observed and held as under :

*49. The views expressed in Titaghur Paper Mills Co. Ltd. vs. State of Orissa (1983) 2 SCC 433 were echoed in CCE v. Dunlop India Ltd. (1985) 1 SCC 260 in the following words: (SCC p. 264, para 3)

"3.... Article 226 is not meant to short-circuit or circumvent statutory procedures. It is only where statutory remedies are entirely ill-suited to meet the demands of extraordinary situations, as for instance where the very vires of the statute is in question or where private or public wrongs are so inextricably mixed up and the prevention of public injury and the vindication of public justice require it that recourse may be had to Article 226 of the Constitution. But then the Court must have good and sufficient reason to bypass the alternative remedy provided by statute. Surely matters

involving the revenue where statutory remedies are available are not such matters. We can also take judicial notice of the fact that the vast majority of the petitions under Article 226 of the Constitution are filed solely for the purpose of obtaining interim orders and thereafter prolong the proceedings by one device or the other. The practice certainly needs to be strongly discouraged."

50. In *Punjab National Bank v. O.C. Krishnan* (2001) 6 SCC 569 this Court considered the question whether a petition under Article 227 of the Constitution was maintainable against an order passed by the Tribunal under Section 19 of the DRT Act and observed: (SCC p. 570, paras 5-6)

5. In our opinion, the order which was passed by the Tribunal directing sale of mortgaged property was appealable under Section 20 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (for short 'the Act'). The High Court ought not to have exercised its jurisdiction under Article 227 in view of the provision for alternative remedy contained in the Act. We do not propose to go into the correctness of the decision of the High Court and whether the order passed by the Tribunal was correct or not has to be decided before an appropriate forum.

6. The Act has been enacted with a view to provide a special procedure for recovery of debts due to the banks and the financial institutions. There is a hierarchy of appeal provided in the Act, namely, filing of an appeal under Section 20 and this fast-track procedure cannot be allowed to be derailed either by taking recourse to proceedings under Articles 226 and 227 of the Constitution or by filing a civil suit, which is expressly barred. Even though a provision under an Act cannot expressly oust the jurisdiction of the Court under Articles 226 and 227 of the Constitution, nevertheless, when there is an alternative remedy available, judicial prudence demands that the Court refrains from exercising its jurisdiction under the said constitutional provisions. This was a case where the High Court should not have entertained the petition under Article 227 of the Constitution and should have directed the respondent to take recourse to the appeal mechanism provided by the Act.”

It is held that the petitioner must avail the alternate remedy available to him under the statute.

22. For all the aforesaid reasons, we find that the challenge to the

impugned orders on the ground of breach of the principles of natural justice is unsustainable. So far as the factual matrix is concerned, any observations made by this Court may have the potential to influence the authority concerned either way. We, therefore, leave it to the appellate forum to decide the factual matrix on its own merits.

23. The petitioner may avail the remedy available to him under the law. We make it clear that the Tribunal shall not reject the appeal, if filed, on the ground of limitation.

24. With this, the writ petition stands disposed of.

(ABASAHEB D. SHINDE, J.)

(R. G. AVACHAT, J.)

vj gawade/-.