2025:BHC-AUG:20584-DB

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.7242 OF 2025
AND
WRIT PETITION NO.7258 OF 2025

Pragati Construction,
Through its Partner -
Govind Gyanoba Makhane,
Age : 67 years, Occ. Business,
r/o. Plot No.23, Kapilananda Ring Road,
Central Bank Colony,
Latur ..Petitioner

Vs.

1. The Union of India,
Through its Secretary,
Ministry of Finance,
Department of Revenue,
New Delhi

2. The Commissioner,
Audit Commissioner (Nashik),
Kendriya Rajswa Bhavan,
Gadkari Chowk,
Nashik – 422 002

3. The Commissioner,
CGST & Central Excise,
GST Bhavan, Town Centre,
N-5, CIDCO, Aurangabad ..Respondents

Mr.Alok Sharma and Mr.R.S.Indani, Advocates for petitioners

Mr.D.S.Ladda along with Mr.Pratik Kothari, Advocates for respondent nos.1 to 3

CORAM : R.G.AVACHAT AND NEERAJ P. DHOTE, JJ.

DATE : JULY 25, 2025

ORDER :-

Both these Writ Petitions are taken up together for hearing, since the issue involved therein is one and the same, besides the parties too.

2. The challenge in both these Writ Petitions is to the orders, bearing Nos.31/Commissioner/KKS/Audit/2024-2025 and 32/Commissioner/KKS/Audit/2024-2025, dated 12.09.2024, passed by the the Commissioner (Service Tax). In short, the orders impugned herein are of calling upon the petitioner – firm to pay service tax and rejecting the petitioner’s applications for rectification of assessment.

3. The facts, in brief, giving rise to the present petitions are as follows:-

The petitioner, in both the petitions, is a partnership firm. It is in the business of “Works - Contract Service”. The petitioner – firm claims to be a government contractor, providing services to government and local authorities. It is further case of the petitioner that by virtue of the Mega Exemption Notification No.25/2012-ST dated 20.06.2012, the services in the nature of construction of dams, roads, etc., for government and local authorities, are exempted from payment of the service tax. On 12.09.2024, respondent no.2 issued the petitioner - firm two show cause notices for the accounting year 2015. The petitioner – firm appeared before respondent no.2 in response to the show-cause notices. The notices have been confirmed. The petitioner - firm, thereafter, moved applications for rectification of the assessment orders. Those applications have also been turned down. The petitions have, therefore, been filed.

4. Heard. Learned counsel for the petitioners would submit that the notices are barred by limitation. He adverted our attention to Sections 73 and 74 of the Service Tax Act of the Finance Act to submit that the notices in question, ought to have been issued within a period of 18 months. He would further submit that it is neither a case of fraud nor suppression of the relevant material. He would further submit that by virtue of mega-exemption referred to herein above, the services in the nature of construction of dams, roads, etc., are exempted from payment of service tax. He would further submit that had the petitioner – firm really liable to pay such tax, it would have charged the same to the Government or local bodies, for which it rendered the services. He would further submit that the

petitioner – firm had produced RA bills of the works done by it. Those bills have, however, not been given due relevance by respondent no.2. Learned counsel has relied on host of authorities to submit that in the similar facts and circumstance of the case, the show-cause notices and the consequential orders have been quashed and set aside:-

> (i) Gujarat High Court Judgment in the case of M/s. Jay Mahakali Industrial Service Vs. Union of India, decided on 09.01.2025 (Special Civiil Application No.18864 of 2021 and others);
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> (ii) M/s.Godrej Sara Lee Limited Vs. The Excise and Taxation Officer-Cum-Assessing Authority and others, (2023)AIR(SC)781;
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> (iii) Bombay High Court judgment (Principal Seat) in the case of Dish TV India Ltd. VS. Union of India and ors., (Writ Petition No.14877 of 2023 decided on 07.01.2025);
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> (iv) This Court judgment in the Case of Kashedi Parshuram Highways Private Limited Vs. Union of India and ors., (Writ Petition No.4555 of 2024 decided on 17.04.2025);
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> (v) Union of India Vs. Arviva Industries (I) Ltd., 2007(209) E.L.T. (S.C.);

(vi) CJ DARCL Logistics Ltd. Vs. Union of India, 2023(73) G.S.T.L. 643 (Jhar.);

(vii) Commissioner of Customs, Mumabi vs. Toyo Engineering India Limited, 2006(201) E.L.T. 513 (S.C.);

(viii) Commissioner of C. Ex. Bhubaneshwar-I Vs. Champdany Industries Ltd., (2009)(241) E.L.T. 481 (S.C.);

(ix) Commissioner of C. Ex., Chandigarh Vs. Shital International, 2010(259) E.L.T. 165(S.C.);

(X) Allahabad High Court judgment in the case of M/s. Samsung India Electronics Private Limited Vs. State of U.P. and ors., with connected matter (Writ Tax No.777 of 2022 decided on 12.03.2024);

(xi) Allahabad High Court judgment in the case of M/s. Associated Switch Gears and Projects Ltd., Through its Director, Jawahar Lal Jain Vs. State of U.P. Through Secretary, Institutional Finance, U.P. Govt. and ors., (Writ Tax No.276 of 2020);

(xi) Gujarat High Court judgment in the Case of Nimeshbhai Gunvantbhai Patel Vs. Union of India and ors., (Special Civil Application No.5044 of 2024);

(xii) M/s. Ravray Construction and anr. Vs. Addl. Commissioner, CGST and CE Vadodara 1 and anr., 2025-TIOL-889-HC-AHM-GST

Learned counsel for the petitioner would further submit that the jurisdiction of this Court under Article 226 of the Constitution of India is wide. The petitioner – firm was not required to approach the appellate authority, more so, when respondent no.2 issued two show-cause notices for one and the same year. He then took us to the factual matrix of the matter, to ultimately urge for allowing the Writ Petitions.

5. Learned counsel for the respondent – authorities would, on the other hand, submit that only with a view to avoid payment of 5% of the amount to be paid by the petitioner – firm for approaching the appellant authority, the petitions have been filed. He would further submit that all the grounds raised herein could very well be urged and solicited to be decided before the appellate forum. Learned counsel has relied on the judgment of the Apex Court in the case of **State of Maharashtra and ors. Vs. Greatship (India) Limited, (2022)AIR (SC) 4408**, to submit that in taxation matters, the jurisdiction under Article 226 of the Constitution of India ought not to have been exercised, allowing to bypass the remedy of appeal.

6. Considered the submissions advanced. Perused the documents relied on and the authorities pressed into service. Admittedly, the petitioner – firm was served with two show-cause notices for one and the same assessment year (2015-2016). In response to the show-cause notices, the petitioner – firm appeared before the authority concerned. It showed the cause. The petitioner – firm was represented by an expert namely, a Chartered Accountant. After the full-fledged hearing, the orders were passed. The petitioner, thereafter, moved applications for rectification of the orders. The authority concerned turned down those applications on the ground of there being no error apparent on the face of record. We do not propose to go into the merits of the matter. The petitioner – firm could not be heard to say that there was no pre-show-cause notice consultation, in view of the fact that pursuant to the show cause notice, the petitioner firm appeared and the matter was, thereafter, decided. Admittedly, the petitioner-firm has an alternate efficacious remedy in the nature of an appeal.

7. There is substance in the contention of learned counsel for the respondents that with a view to avoid payment of 5% of the amount directed to be paid pursuant to the final order, the

petitioners have approached this Court. The Apex Court, in the case of **Greatship (India)** (supra), 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:
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> > *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)
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> > "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.
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> 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."

8. Close reading of the authorities relied on by learned counsel for the petitioner, it would be crystal clear that in all the

authorities, except one, the matter had reached the Apex Court after the assessee had exhausted the remedy of appeal under the respective statute. In none of the authorities relied on by learned counsel for the petitioner, the issue of availing alternate efficacious remedy was raised. The judgments relied on, therefore, are of no assistance for the petitioner – firm. True, in the case of **Nimeshbhai Gunvantbhai Patel** (Supra), the matter was entertained by the Gujarat High Court, under Article 226 of the Constitution of India. The challenge therein was to the show-cause notice. So is not the case herein. At the cost of repetition, it has to be stated that in response to the show-cause notice, the petitioner – firm appeared and contested the matter on merits.

9. For all the aforesaid reasons, we are not inclined to entertain the petitions. The petitioner - firm may avail remedy of appeal or otherwise, before the appropriate authority. Only with a view to avoid multiplicity of litigation, we hope that the appellate authority concerned would entertain the appeal without raising any objection as to limitation. The Writ Petitions, thus, stand disposed of.

[NEERAJ P. DHOTE, J.] **[R.G. AVACHAT, J.]**

KBP