

Amol

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 12650 OF 2024

Regent Corporation thr. its Proprietor
Navin Raghunath Bansal ...Petitioner

Versus

Union of India thr.
The Ld. Secretary & Ors ...Respondents

**WITH
WRIT PETITION NO. 12710 OF 2024**

**WITH
WRIT PETITION NO. 12680 OF 2024**

**WITH
WRIT PETITION NO. 12711 OF 2024**

Regent Corporation thr. its Proprietor
Navin Raghunath Bansal ...Petitioner

Versus

Union of India thr. The Ld. Secretary
Ministry of Finance & Ors ...Respondents

**WITH
WRIT PETITION NO. 12334 OF 2024**

**WITH
WRIT PETITION NO. 12331 OF 2024**

Shyam Tiles ...Petitioner

Versus

Assistant Commissioner of State Tax,
(KOL-INV-D-OO 1), Kolhapur ...Respondents

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Dr Avinash Poddar, *with Ms Deepali Kamble, for the Petitioners in all the matters.*

M S D Vyas, Addl GP, *with Mr Aditya R Deolekar, AGP, for the Respondent-State in all the matters.*

**CORAM M.S. Sonak &
 Jitendra Jain, JJ.**
DATED: 05 August 2025

ORAL ORDER:- *(Per M S Sonak, J)*

1. Heard learned counsel for the parties.
2. Considering the issues raised, all these Petitions can be disposed of by a common order.
3. In all these Petitions, the challenge is to the Order in Original made by the Adjudicating Officer. As against such order, the Petitioners have an alternate and efficacious remedy of instituting an Appeal before the Appellate Authority.
4. Mr Poddar, the learned counsel for the Petitioners, fairly admits that in Writ Petition Nos. 12650 of 2024 and 12710 of 2024, the Petitioners have already instituted Appeals before the Appellate Authority.
5. Mr Poddar, however, submits that in this case, the officer who conducted the audit has now conducted the adjudication proceedings and made the impugned Order in Original. This, he submits, amounts to a clear violation of principles of natural justice. He relies on the Latin Maxim '*Nemo judex in*

causa sua' to support his contention.

6. Mr Poddar submits that during the adjudication proceedings, the Petitioners had applied for the opportunity to lead expert evidence, which was also summarily denied. He submits that no proper adjournments were also granted to the Petitioners. He submits that all this amounts to a denial of a fair opportunity and, consequently, a breach of the principles of natural justice and fair play.

7. Mr Poddar submitted that since this is a case of patent breach of natural justice, the issue of exhaustion of alternate remedies would not be relevant. He urged that the impugned orders be set aside, and the matters remanded to the appropriate adjudicating authority for a fresh decision consistent with the principles of natural justice and fair play.

8. Mr Poddar referred to the order of the Co-ordinate Bench dated 11 July 2025 in Writ Petition No. 1603 of 2025 to submit that notice was issued by the Co-ordinate Bench at Nagpur in the case of M/s. Tulsi Pulses through its authorised Partner Nitinkumar S/o. Mohanlal Taori V/s. Union of India through Secretary, Ministry of Finance & Ors.

9. Ms Vyas, the learned Additional Government Pleader, submitted that the Petitioners have pleaded that they have no alternate and efficacious remedy in these Petitions, when in fact, even the impugned orders referred to the remedy of Appeal, which was available to the Petitioners. She pointed out that in none of these cases the objection based on alleged

bias was ever raised before the Adjudicating Authority, and the Petitioners took their chances. She submitted that full opportunity was granted to the Petitioners and there was no violation of natural justice or fair play involved.

10. Ms Vyas points out that no application was filed for leading any expert evidence. Only adjournments were being applied for, and considering the facts that the adjudication proceedings have to be disposed of expeditiously and the opportunities available to the Petitioners, the adjournment may have been declined. She submitted that there was no failure of natural justice or fair play involved.

11. The rival contentions now fall for our determination.

12. As noted earlier, in all these Petitions, the challenge is to the impugned Orders in Original made by the Adjudicating Authority. As against these orders, the Petitioners have an alternate and efficacious remedy of instituting an Appeal. The statement in some of the Petitions about the Petitioners not having any alternate or efficacious remedy is incorrect to say the least. The Petitioners should have admitted that they have an alternate remedy, but they could have demonstrated why, in the peculiar facts, such a remedy may not be efficacious.

13. Mr Poddar admitted that two of the Petitioners have already instituted Appeals against the impugned Order in Original but have still instituted Petitions in this Court along with other Petitioners.

14. Any patent breach of natural justice principles constitutes a well-known exception to the rule or practice of exhausting alternative remedies. However, for reasons briefly discussed below, we do not believe that the practice of exhausting alternative remedies should be departed from in these matters.

15. Regarding the arguments based on bias, we note that this issue was never raised during the adjudication process or in response to the reply to the show cause notice. The Petitioners took their chances, participated in the proceedings, and only after an adverse order was made against them, have they now chosen to raise this issue. This does not appear to have been the position in a case of *M/s. Tulsi Pulses through its authorised Partner Nitinkumar S/o. Mohanlal Taori v. Union of India through Secretary, Ministry of Finance & Ors.* At least, the order dated 11 July 2025 produced before us does not reflect this view.

16. The issue of whether the Officer who was involved in the audit can adjudicate the show cause notice may or may not be arguable. However, assuming that such circumstance would suggest bias, there is equally another principle about waiver, particularly in the context of allegations of personal bias. Here, since the Petitioners participated in the proceedings without any demur, it is arguable, as urged by Ms Vyas, that there is no serious violation of the principles of natural justice.

17. Regarding the denial of opportunity, once again, this is not a case where no show-cause notice was issued to the Petitioners or that the Petitioners were not heard in the matter. The refusal of adjournment may or may not be correct. Besides, Ms Vyas pointed out that no application was made to examine any expert witnesses, but only an adjournment was applied on that ground. No prejudice is pleaded or demonstrated. All this does not spell out any patent breach, sufficient to deviate from the practice of exhaustion of alternate remedies.

18. While, for the present, we do not wish to dismiss the Petitioners' arguments based on bias or failure of natural justice, we note that the allegations made are not sufficient to depart from the practice of exhausting alternative remedies which are clearly available to the Petitioners. Both parties could elaborate on their respective versions before the appellate authority. Assessment of such issues would undoubtedly involve factual elements which the appellate authority would be best equipped to adjudicate.

19. In the case of **Oberoai Constructions Ltd Vs Union of India & Ors¹**, we have discussed in detail several precedents of the Hon'ble Supreme Court and this Court, in the matter of exhaustion of alternate remedies. By adopting the reasoning in the said decision, as also the decisions referred to therein, we decline to entertain these Petitions. To a similar effect are

¹ 2024 SCC OnLine Bom 3508

the decisions of the Supreme Court in the case of **State of Maharashtra & Ors Vs Greatship (India) Ltd²** and **Bank of Badoda Vs Farooq Ali Khan³**. All these decisions persuade us not to entertain these Petitions but to relegate the Petitioners to the alternate remedy of Appeal. As noted earlier, two of the Petitioners have already instituted the Appeals challenging the impugned Orders in Original.

20. These Petitions are accordingly disposed of with liberty to the Petitioners to institute the Appeal against the impugned Orders in Original. If such Appeals are indeed instituted within six weeks from today, the Appellate Authority should consider and dispose of such Appeals on the merits without advertng to the issue of limitation. This is because the Petitioners had approached this Court within the limitation period and were bona fide prosecuting these Petitions.

21. Further, we clarify that all contentions of all parties on merits, which will include the challenges based on bias and failure of reasonable opportunity, are kept explicitly open. Similarly, even the defences of the Respondents are kept explicitly open. Our observations in this order are only in the context of deciding the issue of exhaustion of alternate remedies, and our observations are not intended to influence the Appeal proceedings, should such Appeals be instituted by the Petitioners within the timeline now indicated.

² 2022 LiveLaw SC 784

³ (2025) 171 taxmann.com 643

22. The Petitions are disposed of with liberty in the above terms. No costs.

23. All concerned are to act on an authenticated copy of this order.

(Jitendra Jain, J)

(M.S. Sonak, J)