

Sayali

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

AMOL
PREMNATH
JADHAV

WRIT PETITION NO. 341 OF 2025

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Date: 2025.07.16
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Sainath Clearing and Shipping Company ...Petitioner

Versus

Union of India and Others ...Respondent

**Mr R. K. Tomar, with Mr. Gaurav S. Sarfare, for Petitioner.
Mr S. Chandrashekhar and Mr. Abhishek Mishra, for
Respondents.**

**CORAM: M.S. Sonak &
Jitendra Jain, JJ.**

DATED: 15 July 2025

PC:-

1. Heard learned Counsel for the parties.
2. The order impugned in this Petition is clearly appealable. The Petitioner has cleverly avoided the mandatory pleadings regarding an alternative remedy. Instead, in paragraph 28, there is a vague statement that the Petitioners have *“tried every other possible way to resolve the issue, but none of the efforts of the Petitioner were fruitful. Hence, approaching the Hon’ble High Court is the only remedy available”*.
3. Upon the question as to why the necessary averments regarding alternate remedy are missing in this Petition, the

learned Counsel argues that the impugned order is *ex facie* without jurisdiction, and even the show cause notice which was issued was barred by limitation.

4. Although we do not intend to dismiss these contentions at this stage, we observe that both would require investigations into factual matters. These issues were raised by the Petitioner and have been addressed in the order-in-original. If the Petitioner feels aggrieved by such consideration, they can always pursue the comprehensive remedy of appeal.

5. Learned Counsel for the Petitioner then submits that an appeal would require a pre-deposit of 7½%. This seems to be the real reason for directly approaching the High Court. The learned Counsel, without prejudice to his arguments, also urged that we should consider waiving this pre-deposit amount if the Petition is to be relegated to the remedy of an appeal. Why such special treatment in variance of the statutorily prescribed procedure must be followed in the case of this petitioner was never explained.

6. Apart from the fact that we do not exercise our extraordinary jurisdiction under Article 226 for undermining the statutory regime, which, *inter alia*, includes a pre-deposit, we note that in this case, there are no pleadings whatsoever as to why such a requirement should be waived in the petitioner's case. This Petition has been filed only to take a

chance and, if possible, to avoid a pre-deposit. Such petitions are on the rise, and they clog the cause lists.

7. We have, in the case of *Oberoai Constructions Limited vs The Union of India*¹ considered several precedents of the Hon'ble Supreme Court and this Court in the context of exhaustion of alternate remedies. By relying upon the reasoning in *Oberoai Constructions Limited (supra)* and the precedents referred to therein, we are satisfied that no case is made out to entertain this Petition. Instead, the Petitioner is required to be relegated to the alternate remedy, which is quite efficacious if the Petitioner chooses to avail of the same.

8. For the above reasons, we decline to entertain this Petition and dismiss the same without any order as to costs.

9. This shall not preclude the Petitioner from availing of the alternate remedy, and in case such alternate remedy is invoked, we clarify that all contentions of all parties on the merits of the matter are left expressly open, because we have not examined the same.

10. At this stage, the learned Counsel for the Petitioner submits that the Petitioner will file an Appeal within eight weeks from the date of the uploading of this order. He requests that the time spent before this Court may be directed to be excluded.

¹ (2025) 137 GSTR 601

11. The Petitioner may have instituted this Petition based on legal advice. The impugned orders were issued on **June 14, 2024**, and **June 20, 2024**. This means that this Petition was filed within the prescribed period of limitation.

12. Therefore, if the Petitioner indeed institutes an Appeal within eight weeks from the uploading of this order, then the Tribunal is to accord due consideration to the fact that this Petition was instituted on 20th September 2024 and has remained pending to date.

13. The petition is dismissed with liberty to avail the alternate remedy of appeal.

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

(Jitendra Jain, J)

(M.S. Sonak, J)