IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.6431 OF 2025

Tushar Builders & BKP Infra LLP ...Petitioner
Versus
Deputy Commissioner of State Tax,
Shaniwarpeth-501, Pune & Ors. ...Respondents

Mr. Sanket S. Bora a/w Mr. Abhay Bora, Ms. Vidhi K. Punmiya, Ms. Amiya R. Das & Ms. Unnatii A. Thakkar i/by SPCM Legal for Petitioner.
Ms. Shruti D. Vyas, Addl. G. P. a/w Mr. Aditya R. Deolekar, AGP for Respondent Nos.1 & 2.

CORAM : M. S. Sonak &
Jitendra Jain, JJ.
DATED : 28 July 2025

PC.:-*(Per M. S. Sonak, J.)*

1. Heard Mr. Bora who appears with Ms. Punmiya for the Petitioner and Ms. Vyas, learned Additional Government Pleader with Mr. Deolekar, learned Assistant Government Pleader for Respondent Nos.1 and 2.

2. The challenge in this petition is to the Order-in-Original dated 28 February 2025 (Exhibit-M).

3. Though, the impugned order is appealable as accepted by the Petitioner in paragraph 11 of the petition, Mr. Bora, learned counsel for the Petitioner has contended that this is a matter where the adjudicating officer was involved with the audit and, therefore, this was a case of biased adjudication. Further he submitted that the impugned order has been made in breach of the limitation provisions. He submitted that a show cause notice was not issued three months prior to the last date of completing the adjudication process, and this renders the impugned adjudication order as one without jurisdiction. Finally, Mr. Bora submitted that on the same cause of action, investigations were undertaken pursuant to which the Petitioner has paid a substantial amount towards GST. He submitted that for the same reasons, the Petitioner cannot be made to pay the GST amounts twice over. He submitted that this would be violative of Article 265 of the Constitution of India, which provides that there can be no taxation without the proper authority of law.

4. Mr. Bora submitted that the above issues are jurisdictional issues and, therefore, the Petitioner ought not to be relegated to the alternate remedy. He also referred to the order made in the case of this very Petitioner for the previous year in the case of ***Tushar Builders and BKP Infra LLP vs. Deputy Commissioner of State Tax Pune***[1]. He pointed out that a Co-ordinate Bench admitted the petition and even stayed its implementation.

5. Ms. Vyas submitted that the Petitioner has an alternate and efficacious remedy, and the reasons cited, apart from being untenable, are not sufficient to bypass such alternate remedies. She pointed out that the Petitioner has already applied for rectification of the impugned order, and the same is pending. She further submitted that the objection regarding bias is untenable and, in any event, the same was never raised before the adjudicating authority.

6. Ms. Vyas pointed out that the impugned order was made well within the prescribed period of limitation and further the argument based on earlier investigation was incorrect and, in any event, the rule may have been issued in the said matter. She, however, pointed out that such issue was not available in the present matter.

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7. We have considered the rival contentions, and we are satisfied that no case is made out for bypassing the alternate statutory remedy available to the Petitioner.

8. The Petitioner has already applied for rectification, and the rectification application is pending. In any event, the impugned Order-in-Original is clearly appealable, and the reasons now cited are not sufficient to bypass this remedy.

9. In the reply filed to the show cause notice, at least we did not find any objection on the ground of bias raised. In any event, we do not propose to shut out the Petitioner from raising such an argument if the same is permissible. However, such an argument can be best examined in an appeal where even the Respondents will have an opportunity to raise the issue of waiver.

10. The argument based on limitation can also be raised in an appeal. At this stage, based on the argument raised, we are not satisfied that a case of the impugned order being *ex facie* without limitation is made out. Again, we do not wish to shut out this contention, but we believe that such a contention is best adjudicated by the Appellate Authority because a review of such a contention would also involve an investigation into factual aspects.

11. The argument about the previous investigation and payments is again a matter which will involve an investigation into facts. The Petitioner virtually wishes to raise a plea like that of *res judicata* or double taxation. This will involve an investigation and comparison of the two proceedings. Again, this is a matter which is best agitated before the Appellate Authority constituted under the Act.

12. The order cited for the previous year was made since there was an issue of extension of the period of limitation by exercising powers under Section 168A of the CGST Act, 2017. Several petitions have been filed on this issue and are admitted. Such an issue, admittedly, does not arise in the present matter. Therefore, based on the orders cited, there is no case made out to insist that this Court should entertain the present petition.

13. In the case of ***Oberoi Constructions vs. Union of India & Ors.***[2] this Court has considered several decisions of Co-ordinate Benches and of the Hon'ble Supreme Court on the issue of exhaustion of alternate remedies. By adopting the reasoning in the said decision and the precedents referred to therein, we decline to entertain this petition.

14. For all the above reasons, we dismiss this petition but with liberty to the Petitioner to avail the alternate remedy of appeal by fulfilling the necessary pre-conditions for institution of such appeal, if the Petitioner so chooses.

15. All contentions of all parties on merits are left open, should the Petitioner wish to avail of the alternate remedy of appeal. None of the observations in this order need influence the Appellate Authority if the Petitioner indeed institutes any appeal against the Order-in-Original. The observations are only in the context of deciding whether the Petitioner should be excused from the normal practice of exhaustion of alternate remedies.

16. The Petition is dismissed with liberties in the above terms. No costs. All concerned are to act on an authenticated copy of this order.

(Jitendra Jain, J.) **(M. S. Sonak, J.)**

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Signed by: Sayyed Saeed Ali
Designation: PA To Honourable Judge
Date: 31/07/2025 11:11:32