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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 8649 OF 2025

Nirmite Buildtech
302, Ronak Heights, Raka Colony,
Sharanpur Road, Nashik - 422002 …Petitioner

Versus

1. **Union of India**
Through the Secretary,
Ministry of Finance,
Department of Revenue,
North Block, New Delhi – 110001

2. **State of Maharashtra**
Through Commissioner of State Tax,
8th Floor, GST Bhavan,
Mazgaon, Mumbai – 400010

3. **Assistant Commissioner**,
CGST & Central Excise,
Nashik-I Division,
GST Bhavan, Sector-P-34,
CIDCO, Nashik – 422008

4. **Goods & Services Tax Council**
(Through its Special Secretar)
5th Floor, Tower 2, Jeevan Bharati Bldg.,
Cannaught Place, New Delhi 110001 …Respondents

WITH

WRIT PETITION NO. 8650 OF 2025

Arham Infira Developers AOP
302, Ronak Heights, Raka Colony,
Sharanpur Road, Nashik - 422002 …Petitioner

Versus

1. **Union of India**
Through the Secretary,
Ministry of Finance,
Department of Revenue,
North Block, New Delhi – 110001

2. **State of Maharashtra**
Through Commissioner of State Tax,
8th Floor, GST Bhavan,
Mazgaon, Mumbai – 400010

3. **Assistant Commissioner**,
CGST & Central Excise,
Nashik-I Division,
GST Bhavan, Sector-P-34,
CIDCO, Nashik – 422008

4. **Goods & Services Tax Council**
(Through its Special Secretar)
5th Floor, Tower 2, Jeevan Bharati Bldg.,
Cannaught Place, New Delhi 110001 …Respondents

Mr Deepak Bapat, *with Ms Sonali Bapat, for the Petitioner in both matters.*

Mr Jay Sanklecha, *'B' Panel Counsel, for the Respondent-State in WP/8649/2025.*

Mr Vijay Kantharia, *with Adv S D Deshpande for the Respondent No. 1*

Ms Shruti D Vyas, **Addl GP**, *with Mr Aditya Deolekar, AGP, for the Respondent No. 2-State in WP/8650/2025.*

CORAM	**M.S. Sonak &**
	Jitendra Jain, JJ.
DATED:	**29 July 2025**

ORAL JUDGMENT:- *(per M S Sonak, J)*

1. Heard learned Counsel for the parties.

2. Learned Counsel for the parties state that the issues involved in both these Petitions are similar.

3. In both these Petitions, the challenge is to the assessment orders dated 31 January 2025 (incorrectly typed as 1 January 2025 in the prayer clause) and 27 January 2025.

4. As against the impugned assessment orders, the Petitioners have the remedy of an Appeal to the Appellate Authority under Section 107 of the Central Goods and Services Tax.

5. In paragraph 42 of both the Petitions, the Petitioners have made a bald statement that they have no efficacious or alternative remedy available to them save and except by way of filing the present Petitions. This statement is obviously false and erroneous; the Petitioners clearly have an alternate and efficacious remedy by way of a statutory appeal. At least in these Petitions, there are no pleadings as to why the Petitioners must be allowed to bypass the normal rule of exhaustion of alternate remedies.

6. However, Mr Bapat submitted that the issue raised in these Petitions is settled by the decision of the Hon'ble Supreme Court in Civil Appeal (D) No. 33259 of 2018, by which an Appeal against the CESTAT's order was dismissed. He submitted that even this Court allowed Writ Petition No. 7135 of 2024 in similar circumstances without relegating the parties to avail of any alternate remedy. He also relied on the order in **Nirmal Lifestyle Developers Pvt Ltd Vs Union of India**

& Ors[1], where a Rule was issued and some interim reliefs were also granted by this Court.

7. Mr Kantharia and Ms Vyas, the learned Counsel for the Respondents, submit that the decisions relied upon by Mr Bapat were in the context of the agreements entered into between the parties inter se, i.e., the developers and the owners. They submitted an investigation into the facts that would be necessary for effectively deciding the challenges to the impugned assessment orders. Accordingly, they submitted that these Petitions may not be entertained bypassing the normal rule of exhaustion of alternate remedies.

8. The rival contentions now fall for our determination.

9. Whilst there may be no serious dispute regarding the proposition that in Joint Development Agreements, there is no question of any supply that would be exigible to GST, the matter will have to be investigated in the context of the actual agreements between the parties. Such an examination would involve an investigation into factual aspects and the terms of the agreements between the developer and the owner. The mere nomenclature or title of the agreement is never conclusive. This exercise can be best undertaken by the Appellate Authorities under the Act.

10. In this case, no violation of natural justice is alleged. These Petitions do not contain any averments explaining why the Petitioners should be permitted to bypass the usual requirement of exhausting alternative remedies. Instead, the Petitioners have made a false statement claiming they have no effective or alternative remedy available to them.

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[1] Writ Petition (L) No. 11011 of 2025 decided on 9 April 2025

11. In all such matters, it is the duty of the Petitioners to state in clear terms that a statutory remedy is available and then proceed to explain why, in the peculiar facts and circumstances, the Petitioner must be excused from not exhausting such statutory remedies. Petitions cannot be filed by making bald statements that the Petitioners have no alternate or efficacious remedy available to them. This is yet another reason why both these Petitions do not deserve to be entertained.

12. In the case of **State of Maharashtra Vs Greatship (India) Ltd**[2], the Hon'ble Supreme Court has seriously faulted the High Court for entertaining Writ Petitions when the Petitioners have alternate and statutory remedies against assessment orders. The Hon'ble Supreme Court, after referring to its earlier decisions, held that the High Court had seriously erred in entertaining the Writ Petitions under Article 226 of the Constitution of India against the assessment order, bypassing statutory remedies.

13. Recently, in the case of **Bank of Baroda Vs Farooq Ali Khan**[3], the Hon'ble Supreme Court, in the context of the Insolvency and Bankruptcy Code held that the High Court incorrectly exercised its writ jurisdiction instead of relegating the parties to the remedies provided under the Code. The Court explained that while there is no exclusion of the power of judicial review of the High Courts, the limits and restraints that the Constitutional Court exercises must be exercised are well articulated in **Whirlpool Corporation Vs Registrar of**

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[2] Civil Appeal No. 4956 of 2022

[3] (2025) 171 taxmann.com 643

Trade Marks[4] and **Harbanslal Sahniya Vs Indian Oil Corporation Ltd**[5].

14. The Hon'ble Supreme Court held that the factual determination of whether the debt exists is part of the statutory and regulatory regime of the IBC Code. The Court explained that the entire purpose behind appointing a Resolution Professional under Section 97 is to assist in this determination by the Adjudicating Authority. Therefore, the High Court should not have interfered with the proceedings under the statute and assumed what it did while exercising jurisdiction under Article 226 of the Constitution of India.

15. This Court, in the case of **Oberoi Constructions Vs Union Of India & Ors**[6], has considered several precedents of the Hon'ble Supreme Court and this Court on the issue of exhaustion of alternate remedies. By adopting the reasoning, this decision and the reasoning in precedents referred to therein, we are satisfied that no case is made out to entertain the present Petitions.

16. As noted earlier, the decisions cited by Mr Bapat turned on the peculiar facts where, possibly, there was no dispute. In any event, in the decisions cited, any objection to the availability of an alternate and efficacious remedy does not appear to have been raised. In this case, objection has been squarely raised and the same deserves to be upheld because entertaining this Petition would involve an investigation into questions of fact, the agreements between the parties and the interpretation of their clauses. In such matters, mere

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4 1998 8 SCC 1

5 2003 2 SCC 107

6 (2025) 137 GSTR 601

nomenclature of the agreement is never sufficient, and it is the actual terms of the agreement and other factual aspects that would be relevant. These petitions appear to have been instituted to take a chance or to avoid a pre-deposit. Neither of such motives is legitimate and can form the basis for bypassing the statutory remedies.

17. For all the above reasons, we dismiss these Petitions but by reserving the Petitioners' liberty to institute Appeals against the impugned assessment orders.

18. Further, we clarify that if such Appeals are instituted within four weeks from the date of uploading of this order after due compliance with all statutory requirements like pre-deposit, etc, the Appellate Authorities shall hear and dispose of such Appeals on their own merits and in accordance with law without adverting to the issue of limitation. This is because these Petitions may have been filed on legal advice. All contentions of all parties on the merits of the matter are expressly left open.

19. Both these Petitions are dismissed with liberty in the above terms and without any order for costs.

20. All concerned can act on an authenticated copy of this order.

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