

Amol

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

WRIT PETITION NO. 12381 OF 2025

Bhagwati Steel Cast Pvt Ltd ...Petitioner

Versus

Deputy Commissioner of State
Tax MIDC Nashik & Ors ...Respondents

Mr Shailesh Sheth, *with Mr Prathamesh Chavan, i/b, India Law Alliance, for the Petitioner.*

Mr Jitendra B Mishra, *with Ms Sangeeta Yadav, Mr Ashutosh Mishra & Mr Rupesh Dubey, for the Respondents 2 & 4.*

Ms V R Raje, AGP, *for the Respondent-State.*

CORAM **M.S. Sonak &
Advait M. Sethna, JJ.**
DATED: **23 September 2025**

PC:-

1. Heard learned Counsel for the parties.
2. The challenge in this Petition is to the order dated 29 May 2025 which is appealable.
3. The learned Counsel for the Petitioner states that since there was a violation of natural justice, both because the Petitioner was not given a fair opportunity to present the case and because the impugned order only replicates what was set out in the show cause notice, we should not relegate the Petitioner to resorting to the alternate remedy.

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4. Although we do not wish to dismiss the Petitioner's argument regarding a violation of natural justice, we observe that the Petitioner was provided with opportunities. However, for certain reasons, the Petitioner claims these opportunities could not be utilised. This does not seem to be a case of "no opportunity", but rather a claim of "inadequate opportunity". Therefore, at most, even the issue of failure of natural justice remains debatable, necessitating an investigation into the reasons cited by or on behalf of the Petitioner for adjournments and the justification for rejecting the adjournment on the day prior to the issuance of the impugned order. The aspect of prejudice may also have to be considered.

5. Even the argument about non-application of the mind would require investigation, which the Appellate Authority can best undertake.

6. In the case of **Oberoi Constructions Ltd. vs. Union of India & Ors¹**, we have considered the issue of exhaustion of alternative remedies in such matters. Therein, we have referred to several decisions of the Hon'ble Supreme Court on this very issue. Therefore, by adopting the reasoning in the said decision and the various precedents referred to therein, we decline to entertain this Petition. However, we leave it open to the Petitioner to resort to the alternate remedy of appeal if the Petitioner so chooses.

7. Since we are dismissing this Petition only on the ground of non-exhaustion of alternate remedies, we direct that if the Petitioner institutes an appeal after complying with all legal formalities within four weeks from today, then the Appellate

¹ 2024 SCC OnLine Bom 3508

Authority must consider the appeal on merits without advertent to the issue of limitation. This is because the impugned order in this case was made on 29 May 2025, and this Petition was instituted on 2 September 2025, i.e., within the prescribed period of limitation. The Petitioner was bona fide pursuing this Petition before this Court.

8. If any appeal is instituted, we clarify that all contentions of all parties on the merits are left explicitly open, which will include the contention regarding the failure of natural justice. The observations, if any, in this order are only prima facie and made on the context of the issue of exhaustion of an alternate remedy. The observations were necessary because we did not believe that the Petitioner had established an exceptional case for deviation from the ordinary rule of exhausting alternative remedies. The observations are not intended to foreclose any argument based on failure of natural justice or non-application of mind if, upon detailed examination, such aspects are found to arise in this matter.

9. The Petition is disposed of in the above terms. No costs.

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

(Advait M. Sethna, J)

(M.S. Sonak, J)