

rsk



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.6247 OF 2024
WITH
WRIT PETITION NO.6447 OF 2024
WITH
WRIT PETITION NO.6448 OF 2024

M/S. MRJS Lead Private Limited ... Petitioner

Versus

The Assistant Commissioner ... Respondents
of State Tax And Ors.

Mr. Nitesh V. Bhutekar a/w. Mr. Prathamesh Mandlik, for
Petitioner in all petitions.

Mrs. Shruti D. Vyas, Addl. G. P. a/w. Mr. Aditya R. Deolekar,
AGP, for Respondent Nos.1, 2 and 5/State.

Mr. Jitendra B. Mishra a/w. Ms. Mamta Omle and Mr. Rupesh
Dubey, for Respondent Nos.3, 4 and 6.

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

DATED : 26 August 2025

PC:-

1. Heard learned counsel for the parties.
2. Learned counsel for the parties agree that these petitions can be disposed of by a common order since the issues raised are substantially similar.
3. In all these petitions, the challenge is to the impugned adjudication orders made pursuant to notices under Section

74 of the Central Goods and Service Tax Act, 2017 (CGST Act). The challenge is also thrown to the notices under Section 74 of the CGST Act.

4. Ms. Vyas pointed out that the petitioners have already filed appeals against the adjudication orders with the appellate authorities. She submitted that such appeals represent alternative and effective remedies provided by the statute. Therefore, she argued that we should not entertain these petitions.

5. Mr. Butekar, learned counsel for the petitioner, submitted that appeals were instituted to avoid the bar of limitation. He submitted that the impugned show cause notice and the impugned adjudication orders refer to no allegations of fraud, willful misstatement or suppression of facts to evade tax. He submitted that in the absence of these jurisdictional allegations, the notice under Section 74 was incompetent and consequently, even the impugned adjudication orders are liable to be declared as without jurisdiction. He submitted that since the issue of jurisdiction is involved, the alternate remedy, though invoked by the petitioner, should not be construed as a bar.

6. Mr. Mishra and Ms. Vyas learned that counsel appearing on behalf of the Central and the State Authorities submitted that the show cause notice was issued within three years from the due date of furnishing annual returns for the financial year for which the tax was not paid, or short paid, or input

tax credit wrongly availed. Ms Vyas submitted that the contention of absence of allegations of fraud, etc, is not correct. In any event, since the show cause notice was issued within 3 years as provided under Section 73 (10), there was no question of jurisdictional error, since the notices, without prejudice, can always be sustained under Section 73 of the CGST Act.

7. Mr. Bhutekar contended that the State Authorities, who issued the impugned show cause notices, lacked the authority to do so. He argued that this constitutes a jurisdictional error, and therefore, this Court should hear these petitions rather than dismissing them in favour of an alternative statutory remedy. He pointed out that the Central Authorities submitted an affidavit acknowledging that the State Authorities do not have the power or authority to issue notices. He cited M/s. Magadh Sugar & Energy Ltd. Vs. The State of Bihar and Ors., as well as Armour Security (India) Ltd. vs. Commissioner, CGST, Delhi East Commissionerate, to support his arguments.

8. The rival contentions now fall for our determination.

9. In these petitions, admittedly, the petitioners have alternate, efficacious and statutory remedies to question the impugned adjudication orders. In fact, the petitioners have already invoked the alternate remedy, and the appeals instituted by them against the impugned adjudication order are pending before the Appellate Authority.

10. At this stage, it would not be appropriate for this Court to go into the question as to whether the allegations in the impugned show cause notice make out a case of fraud, willful misstatement or suppression of fact to evade tax. On a demurer or even assuming that there are no such allegations, admittedly, the notices in this case have been issued within the 3-year period prescribed under Section 73 (10) of the CGST Act. This is not a case where the notices have been issued within the extended period of 5 years as contemplated by Section 74 (10) of the CGST Act.

11. The mere quotation of an incorrect section is not sufficient to hold that the notice is without jurisdiction. If the notice can be sustained by reference to the correct provision, then the Writ Court is not obliged to interfere with the notice only because some incorrect provision may have been invoked or quoted. In any event, notice could always be competent under Section 73 of the CGST Act as long as it is issued within the three-year period prescribed under Section 73(10) of the CGST. For a notice under Section 73 of the CGST Act there is no requirement of alleging fraud, willful misstatement or suppression of fact.

12. Therefore, *prima facie*, we cannot hold that the impugned notices are expressly without jurisdiction, and allow the petitioner to bypass the alternate, efficacious and statutory remedy which the petitioners have already invoked by instituting the appeal against the impugned adjudication orders.

13. Mr. Bhutekar's contention that the State Authority has no jurisdiction to issue a notice under Section 73 of the CGST Act can also be examined by the Appellate Authority if such a plea is indeed raised in the appeals which have been filed or if the petitioner wishes to raise such a plea by amending the appeal memos.

14. Mr. Mishra learned that counsel appearing for the Central Authority submitted that the Central Authorities have nowhere made any such admission. He pointed out that in the affidavit, it is clearly stated that the Central as well as State Authorities have the power and jurisdiction to issue such notices. Therefore, Mr Bhutekar's contention based upon the so-called acknowledgment by the Central authorities that the state authorities have no jurisdiction to issue notices under section 73 of the said Act cannot be presently accepted without a detailed examination.

15. *M/s. Magadh Sugar & Energy Ltd. (supra)* involved a matter where an alternate remedy had not already been invoked; the Hon'ble Supreme Court held that there were no disputed questions of fact, and the issues raised by the appellant would be decided without any factual dispute. *Armour Security (India) Ltd (supra)* is an authority interpreting the provisions of Section 6 of the CGST Act. Ms. Vyas argues that this decision benefits the respondent because it clarifies the circumstances under which the State Authority and Central Authority can exercise their powers. She refers to the observations in paragraphs 50 and 51 and the conclusions

recorded. Mr. Bhutekar contends that this ruling supports the Petitioner's case.

16. At this stage, we do not wish to go deeper into the rival contentions as regards the authority of the State Authority to issue the impugned notices or the application of *Armour Security (India) Ltd (supra)* to the facts of these cases. At the highest, these are arguable issues, and if the same are raised before the appellate authority, we are sure that the appellate authority will examine and decide upon the same. However, it does not appear to be a case where the impugned notice can be held to be *ex facie* without jurisdiction or that this is some exceptional case based upon which the petitioners need not be relegated to the alternate remedy which they have already invoked.

17. In the case of *Oberoï Constructions Ltd. vs. The Union of India*¹, we have discussed in substantial detail the scope of objections based on exhaustion of alternate remedies. We have also discussed several decisions of the Hon'ble Supreme Court in that regard. By adopting the reasoning in the said decision and the decision relied upon therein, we are not inclined to entertain these petitions, leaving it open to the petitioners to pursue the appeals which they have already instituted against the impugned adjudication orders.

18. In addition, we refer to the decision of the Hon'ble Supreme Court in the case of *Bank of Baroda vs. Farooq Ali*

¹ Writ Petition (L) No.33260 of 2023

Khan,² and the State of Maharashtra & Ors. vs. Greatship (India) Limited,³ in which the Hon'ble Supreme Court has emphasized upon the need to exhaust alternate remedies particularly in fiscal matters and where appellate authorities have a domain expertise instead of entertaining petitions under Article 226 of the Constitution of India. These decisions persuade us not to entertain these petitions; moreover, since the petitioners have alternate and efficacious remedies which they have already invoked.

19. For all the above reasons, we dismiss these petitions, leaving it open to the petitioners to pursue the appeals which they have instituted against the impugned adjudication orders. All contentions of all parties are, however, left open to be decided by the appellate authority.

20. No observations in this order need to influence the appellate authority because the observations are only *prima facie* and made in the context of deciding whether any case is made out by the petitioner to bypass the alternate remedy, which they have already invoked.

21. These Petitions are dismissed with liberty in the above terms.

22. No costs.

(Jitendra Jain, J)

(M. S. Sonak, J)

² [2025] 171 taxmann. com 643 (SC)

³ Civil Appeal No.4956 of 2022