Pradnya

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION (L) NO. 15648 OF 2024

M/s. Venus Worldwide Entertainment
Pvt. Ltd. …Petitioner

Versus

The State of Maharashtra and ors. …Respondents

Mr Rahul Thakar, i/b. Mr C. B. Thakar, for the Petitioner.

Mr Amar Mishra, AGP, for the Respondent-State.

CORAM **M.S. Sonak &**
Jitendra Jain, JJ.
DATED: **2 December 2024**

PC:-

1. Heard learned counsel for the parties.

2. This is yet another case in which the Petitioner has tried to take chances by making misleading statements and omitting to make statements that are required in such matters in the context of the availability of alternate remedies.

3. As against the impugned order dated 28 March 2024, contrary to the misleading averments made in paragraphs 15 and 16, the Petitioner has a remedy of an appeal under Section 26 of the Maharashtra Value Added Tax Act, 2002 ("the said Act").

4. Still, the Petitioner, has made the following averments in paragraph 15 and 16 :-

> "15. The Petitioner submits that there exists no efficacious alternate legal remedy in relation to illegal review order passed under MVAT Act, 2002. Though, there is appeal against review order before MST Tribunal, the scope of such appeal will be limited to provisions of MVAT Act and Tribunal cannot enter into provisions of Settlement Act, 2019. In other words, the Tribunal is not capable to deal with objections and jurisdiction issue raised with relation to Settlement Act, 2019. Therefore, there is no efficacious remedy against the issue of jurisdiction of Ld. Respondent no.3 and this writ petition is only remedy.
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> 16. The Petitioner has not filed any other Petition in this Hon'ble Court or in the Hon'ble Supreme Court of India or any other Hon'ble High Court in respect of the subject matter of this Petition."

5. The Petitioner argues that no proceedings could have been initiated under the said Act because the dispute was already settled under the provisions of the Maharashtra Settlement of Arrears of Tax, Interest, Penalty or Late Fee Act, 2019 ("Settlement Act, 2019"). This contention was considered but rejected in the original order and the order made in the review instituted by the Petitioner. Whether such rejection is correct or not can always be examined by the Tribunal. Therefore, by misleadingly urging that "the Tribunal is not capable to deal with objections and jurisdiction issue raised with relation to Settlement Act, 2019", the Petitioner cannot avoid the alternate and efficacious remedy provided under the said Act.

6. Learned counsel for the Petitioner then contended that the entire action of the third Respondent is without jurisdiction. In support of this contention, there is a bald assertion in ground A.7 without anything more. Based upon such bald assertions, the practice of exhaustion of alternate remedies cannot be deviated.

7. The Petitioner was required to explain why the practice of exhausting alternate remedies should be abandoned in this case. No such reasons are either pleaded or urged. The attempt was to simply take a chance by avoiding the alternate remedies provided by the statute. There are provisions for part payment, though the Tribunal has been given the authority to waive part payment. Possibly, to avoid part payment or otherwise take a chance, this Petition was instituted based on vague and misleading averments.

8. In our judgment and order dated 11 November 2024 in Writ Petition (L) No.33260 of 2023 (**Oberoi Constitutions Ltd. vs. The Union of India and others),** we have considered several decisions on the issue of exhaustion of the alternate remedies and how, there is a trend to bypass this practice and take chances with instituting Petitions under Articles 226 and 227 of the Constitution of India. By adopting the reasoning therein and noting that this is one such case of taking chances without any reasonable cause, we decline to entertain this Petition.

9. Since the trend is on the rise and this is a case where misleading averments were made, we impose costs of Rs.1,00,000/- on the Petitioner, payable within four weeks from today. Out of this cost amount, Rs.50,000/- should be paid to Tata Memorial Hospital. The details of which are as follows:-

Bank Name	: Central Bank of India
Branch	: Tata Memorial Hospital

Address, Telephone Number, Fax Number	:	Dr. Ernest Borges Road, Parel Mumbai 400 012. Tel. No.022-24126487, Fax No.022-24126487
Bank Account Number	:	1002449683
Account Type	:	Current
IFSC Code	:	CBIN0284241
MICR Code	:	400016112

10. The balance of Rs.50,000/- should be paid to High Court Class IV Employees' Association. The particulars whereof are as follows:-

Bank Name	:	UCO Bank
Branch	:	Fort
Bank Account Number	:	00030110032961
IFSC Code	:	UCBA0000003

11. The compliance report with proof of payment should be filed in the Registry within four weeks.

12. Since the Petitioner is being relegated to avail of the alternate remedy, we clarify that all contentions of the Petitioner and the Respondents on merits are kept open.

13. At this stage, learned counsel for the Petitioner states that the appeal will be filed within four weeks after paying the costs. Suppose such an appeal is indeed filed within four weeks after complying with all the preconditions required under the law and paying the costs. In that case, the Appellate Authority should entertain the appeal on merits without adverting to the limitation issue. This is because the Petitioner instituted this Petition within the limitation period prescribed for instituting appeal.

14. The Petition is disposed of in the above terms. All concerned to act on authenticated copy of this order.

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