

Santosh

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 17 OF 2024

WITH

MISC. CIVIL APPLICATION NO.419/2024(F)

KUDROLI BUILDERS AND
INFRASTRUCTURE PVT. LTD.
THR. MANAGING DIRECTOR,
AHMED SHAFI

..... PETITIONER.

Versus

STATE OF GOA THR. SECRETARY
AND OTHERS

..... RESPONDENTS.

Mr A.D. Bhobe with Ms A. Bandekar, Advocates for the Petitioner.

Mr Deep Shirodkar, Additional Govt. Advocate for Respondents
No. 1 to 4.

Mr P. Faldessai, Deputy Solicitor General of India for
Respondents No.5, 6 7 and 8.

CORAM : M.S. SONAK &

VALMIKI SA MENEZES, JJ.

DATE : 13th February 2024.

ORAL ORDER

1. Heard Mr A.D. Bhobe, who appears along with Ms Bandekar for the Petitioner, Mr Deep Shirodkar, Addl. Govt.

Advocate for Respondents No.1 to 4 and Mr P. Faldessai, learned Deputy Solicitor General of India for Respondents 5 to 8.

2. Leave is granted to amend the Petition. The amendment to be carried out forthwith.
3. Misc. Civil Application No. 419/2024(F) is disposed of.
4. After the amendment, the challenge in this Petition is to the demand notice dated 13/9/2023 and the order dated 23/12/2023 (made during the pendency of this Petition), demanding and confirming the demand of GST from the Petitioner.
5. The learned Counsel for the Respondents point out that as against the impugned order dated 23/12/2023, the Petitioner has a remedy of an appeal under Section 107(6) of the Central Goods and Services Act, 2017 (CGST Act). They point out that the impugned demand notice dated 13/9/2023 now stands merged with the impugned order dated 23/12/2023, confirming such a demand.
6. Mr Bhobe submits that no appeal was instituted because it is the Petitioner's case that the GST, if at all be payable, would be by the end user *i.e.* the State Government in the present case. He submitted that this issue needs to be decided by this Court instead of relegating the Petitioner to avail of the alternate remedy under Section 107 of the CGST Act.
7. The learned Counsel for the Respondents submit that all this can be decided by the appellate authority under the Act and, therefore, this Petition may not be entertained, leaving it open to

the Petitioner, if the Petitioner so chooses, to avail of the alternate remedy available under the CGST Act.

8. We have considered the rival contentions and, in our judgment, this Petition need not be entertained, leaving it open to the Petitioner to avail of the alternate remedies under the CGST Act. Even the issue now urged by Mr Bhobe, namely that the GST was not payable at all or, in any case, the GST was payable by the end user, can always be gone into by the appellate authority.

9. There is a slight ambiguity on whether the Goods and Services Tax Appellate Tribunal has been made operational. Mr Shirodkar places on record an order dated 22/1/2024, made by this Court in Writ Petition No.594/2023, which reads follows :

“ **CORAM:- M. S. SONAK &
VALMIKI SA MENEZES, JJ.
DATED :- 22nd January, 2024**

P.C.:

Mr Faldessai, learned Deputy Solicitor General of India states that all efforts are being made to constitute and make functional the Goods and Services Tax Appellate Tribunal. He submits that in all probabilities the Tribunal would be functional within three months.

2. *Accordingly, we post this matter for further consideration on 11.03.2024. If by that date, the Tribunal is constituted and is functional, then we will consider relegating the Petitioner to the Tribunal.*

3. *Mr Srivastava pointed out that in terms of the decision of the Principal Bench of this Court in Essar*

Steel Suppliers Vs Union of India (2023 (75) G.S.T. L. 573 (Bom.) even the period of limitation to institute an appeal would commence from the date the Tribunal is constituted and made fully operational.

4. *However, we clarify that in case the Tribunal is constituted and made functional before the next date, the Petitioner should consider instituting the appeal before such Tribunal. The Petitioner can then always circulate this matter so that we can dispose of the same with liberty to the Petitioner to pursue the appeal.*

5. *Stand over to 11.03.2024.”*

10. The above order also sufficiently protects the Petitioner on the issue of limitation. Mr Bhobe submits that even as of today the limitation for instituting the appeal under Section 107 of the CGST Act has not expired.

11. Accordingly, we decline to entertain this Petition, but we grant the Petitioner liberty to avail of the alternate and efficacious remedy available under the CGST Act. We clarify that all contentions of all parties are left open, to be raised before the appellate authority. If the appeal is indeed instituted, the same should be disposed of in accordance with law and on its own merits.

12. This Petition is disposed of in the above terms. There shall be no order for costs.

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

VALMIKI SA MENEZES, J.

M.S. SONAK, J.

