IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION No.2511 OF 2014
(M/s.Ramson Corporates, through its Proprietor Pankaj Ramchandrarao Nimbalkar vs. Nagpur Municipal Corporation, Nagpur, trhough its Municipal Commissioner, Nagpur and Ors.)

Office Notes, Office Memoranda of Coram, appearances, Court's orders of directions and Registrar's orders	Court's or Judge's orders

CORAM : B.P.DHARMADHIKARI &
A.P.BHANGALE, JJ.

DATE : 5.3.2015.

Heard Mr.S.S.Voditel, learned Counsel for the petitioner and Mr.J.B.Kasat, learned Counsel for respondent nos. 1 to 3.

This Court, on 27.5.2014, passed ad interim orders and restrained the respondents from taking coercive steps subject to deposit of an amount of Rs.10,00,000/- by the petitioner. Accordingly, that amount has been deposited.

By inviting our attention to demand dt.13.5.2014 served upon the petitioner, Mr.S.S.Voditel, learned Counsel for the petitioner submits that total value of goods for Local Body Tax has been worked out at Rs.41,32,137/- and L.B.T. payable is shown as Rs.82,644/-. Two times penalty under Rule 48(ii)(c)(iii) of the Maharashtra Municipal Corporations (Local Body Tax) Rules, 2010 (hereinafter referred to as *"the L.B.T. Rules"*) has been calculated at Rs.1,65,288/- and then interest at 2% has been demanded at Rs.8,294/-. The learned Counsel submits that all these amounts together are much less than the amount of Rs.10,00,000/- which the petitioner has already deposited. He objects to penalty under Rule 48 (7). Penalty demanded is Rs.1,00,53,792/-. He submits that it is unsustainable in law and arbitrary.

Mr.S.S.Voditel, learned Counsel for the petitioner invites our attention to the Newspaper reports to show that, being the new provision, there was some confusion and the Corporation Authorities themselves were giving time to the traders to get themselves registered and the minimum fine of Rs.5,000/- was then declared. He contends that idea was to cover as many traders as possible under the new taxing provision without causing them any harassment. The learned Counsel submits that, because of this demand, if the petitioner files an appeal under Section 406 of the City of Nagpur Municipal Corporation Act, the appeal would not be entertained unless and until the entire amount of Rs.1,03,10,018/- is paid by the petitioner.

Mr.J.B.Kasat, learned Counsel for respondent nos. 1 to 3 submits that the provisions of Rule 48(7) of the L.B.T. Rules are very clear. Order has been passed after giving the petitioner necessary opportunity. He invites our attention to the fact that the petitioner's statement was recorded on 11.2.2014. He further submits that, in the backdrop of this statement, the Authority namely the Assistant Commissioner extended opportunity of hearing to the petitioner and then has passed the order on 29.4.2014. The petitioner, therefore, has to first file appeal under Section 406 of the Act.

Availability of remedy of appeal is not in dispute in the present matter. Statement of petitioner recorded on

11.2.2014 shows that he was possessing bills for purchases effected but he did not maintain Purchase Register in Form 'D'. Even in the bills issued for sales done, L.B.T. number is not mentioned and L.B.T. was not paid. He has mentioned that as the legislation was new and he was not aware of the provisions, he could not abide by the Rules.

The order of Assistant Commissioner dt.29.4.2014 shows the finding of contravention of provisions of 152(g) of the Maharashtra Municipal Corporation Act 1949 and Rule 22 of the L.B.T. Rules by issuing sales bills to various parties without mentioning L.B.T. Number till 11.2.2014. Those sales bills are looked into and excluding 93 bills, all the remaining bills were for the sum of Rs.500/- or more and hence, liable to penalty for breach of Section 152(g). Total value of such invoices was worked out at Rs.1,00,81,803/-. The value of 93 bills was deducted from it and penalty under Rule 47 has been levied on the sum of Rs.1,00,53,792/-. This working and calculation is not in dispute before this Court.

Thus, the petitioner accepts the sales invoices and the competent Authority has, after due application of law, calculated the penalty.

In this situation, we find that such levy of penalty and assessment needs to be questioned before the appellate Authority in accordance with the provisions of the Statute. As alternate remedy is available, we are not inclined to entertain the Writ Petition. Hence, the Writ Petition is dismissed.

Mr.S.S.Voditel, learned Counsel, at this stage, seeks continuation of interim orders for a period of six weeks. The request is being opposed by Mr.J.B.Kasat, learned Counsel for respondent nos. 1 to 3. However, in the interest of justice, we continue the interim order accordingly and permit the respondent/Corporation to withdraw the amount of Rs.10,00,000/- deposited with the Registry of this Court and appropriate it towards its demand. Said appropriation shall be without prejudice to the rights and contentions of the petitioner in the matter.

This interim order shall cease to operate automatically after the period of six weeks is over.

JUDGE **JUDGE**

jaiswal