**HON'BLE THE ACTING CHIEF JUSTICE DILIP B. BHOSALE**
**AND**
**HON'BLE SRI JUSTICE S.V. BHATT**

**W.P. No. 25102 OF 2001**

**ORDER:** *(Per the Hon'ble Sri Justice S.V.Bhatt)*

Heard Sri G.Ramachandra Rao for petitioner and Sri C.V.Bhaskar Reddy, Government Pleader for Revenue.

The petitioner prays for Writ of Certiorari to call for the records relating to and inclusive of proceedings No.A/2335/98 dated 23.02.2001 on the file of 1st respondent and quash the same, as illegal and consequently direct the 2nd and 3rd respondents to re-assess the tax to the extent of land which is actually put to use under the A.P. Non-Agricultural Lands Assessment Act,1963 (for short 'the Act') and to refund the excess amount collected from the petitioner.

The case of petitioner is that the petitioner is a Government of India undertaking established under Section 3 of the Warehousing Corporation Act, 1962. The petitioner is one of the branches of Warehousing Corporation, New Delhi. The subject matter of writ petition relates to the warehouse godowns and ancillary buildings, the petitioner has established at Bodan, Nizamabad District. The 3rd respondent on 15.12.1987 issued notice under Section 4 of the Act demanding Non-Agricultural Lands Assessment (NALA) tax of a sum of Rs.7,776.47ps. for the years 1966-1986. The petitioner protested the very levy and demand of NALA tax by respondents on the total land held by the petitioner. In other words, the petitioner among other objections contended that the 2nd and 3rd respondents can levy and demand NALA tax only on the extent of lands covered by warehouse godown, administrative building etc. but not on vacant land. The 2nd and 3rd respondents for the period 1965-66 to 1987-88 revised the demand to Rs.3,53,934/-. The petitioner filed appeal against the instant demand and through order dated 26.05.1990, the quantum of NALA tax was reduced from Rs.3,53,934/- to Rs.3,12,685/-. The petitioner filed W.P.No.16815 of 1990 questioning the validity of the order dated 26.05.1990. The petitioner admits that W.P.No.16815 of 1990 was disposed on 26.08.1996.

It is further averred that the 2nd and 3rd respondents issued order of attachment dated 02.12.1996 for non-payment of Rs.6,15,335/- towards NALA tax. On 07.12.1996, the petitioner paid under protest a sum of Rs.6,15,366/- towards NALA tax to respondents. Against the levy and demand, the petitioner filed revision and the same is pending. It is relevant to clarify that there are two periods for which grievance is made out before the 1st respondent by the petitioner. The two periods are from 1965-66 to1990-91 and 1991-92 till 2000-01. It is made clear that having regard to the disposal of W.P.No.16815 of 1990 and the dismissal of appeals filed by the petitioner up to 1990-91, this Court is not considering the case of petitioner for re-assessment of NALA tax or grant any relief to petitioner for the period 1965-66 to 1990-91. The writ prayer is considered for the period 1991-92 onwards.

The learned counsel appearing the petitioner as well as respondents admit that the levy and demand of NALA tax in view of the principle laid down by the Apex Court in **The Federation of A.P. Chambers of Commerce and Industry and others v. State of A.P. and others**[1], the NALA tax is payable only on the land used by the assessee under the Act, but not on the entire land possessed by the assessee. The relevant portion of judgment reads as follows:

> “Section 3 of the said Act speaks of "land is used for any industrial purpose", "land is used for any commercial purpose" and "land is used for any other non-agricultural purpose". The emphasis is on the words 'is used'. For the purposes of levy of assessment on non-agricultural lands at the rate specified in the Schedule for land used for industrial purposes, therefore, there has to be a finding as a fact that the land is in fact in praesenti in use for an industrial purpose. The same would apply to a commercial purpose or any other non-agricultural purpose.
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> It is trite law that a taxing statute has to be strictly construed and nothing can be read into it. In the classic passage from Cape Brandy Syndicate(1921 (1) KB 64) which was noticed in the judgment under appeal, it was said:
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> “In a taxing Act one has to look merely at what is clearly said. There is no room for any intendment. There is no equity about a tax. There is no presumption as to a tax. Nothing is to be read in, nothing is to be implied. One can look fairly at the language used.”
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> This view has been reiterated by this Court time and again. Thus, in The State of Bombay v. Automobile and Agricultural Industries Corporation, Bombay, (1961) 12 S.T.C. 122, this Court said:
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> “But the courts in interpreting a taxing statute will not be justified in adding words thereto so as to make out some presumed object of the Legislature... If the Legislature has failed to clarify its meaning by the use of appropriate language, the benefit thereof must go to the taxpayer. It is settled law that in case of doubt, that interpretation of a taxing statute which is beneficial to the taxpayer must be adopted.
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> On behalf of the respondent-State, learned Counsel drew our attention to the judgment of this Court in The Controller of Estate Duty, Gujarat v. Shri Kantilal Trikamlal (1976)4 SCC 643: (AIR 1976 SC 1935). That judgment also is to the same effect and does not avail the respondents. It said:
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> “The sweep of the Sections which will be presently set out must, therefore be informed by the language actually used by the Legislature. Of course, if the words cannot apply to any recondite species of property, Courts cannot supply new logos or invent unnatural sense to words to fulfil the unexpressed and unsatiated wishes of the legislature.”
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> We are in no doubt whatever, therefore, that it is only land which is actually in use for an industrial purpose as defined in the said Act that can be assessed to non-agricultural assessment at the rate specified for land used for industrial purposes. The wider

> meaning given to the word 'used' in the judgment under challenge is untenable. Having regard to the fact that the said Act is a taxing statute, no court is justified in imputing to the Legislature an intention that it has not clearly expressed in the language it has employed.”

The 1st respondent through the order impugned in the writ petition held that the petitioner is under obligation to pay NALA tax for the entire land held by it from 1965-66 till 1999-2000 and adjustment as per the judgement of the Apex Court is considered for the period 2000-01.

The learned Government Pleader fairly states that the 1st respondent has not applied the principles of law laid down by the Apex Court. Therefore, this Court is relieved of giving its reasons for setting aside the order impugned. In the considered view of this Court the respondents have to decide the extent of land used for non-agricultural purpose etc. and levy/demand NALA tax. This is a matter for consideration and decision by the 2nd and 3rd respondents. Therefore, the impugned proceeding is set aside and the 2nd and 3rd respondents are directed to decide the NALA tax payable by the petitioner for the period 1991-92 till the Act was repealed by applying the principle laid down in the decision referred to above and pass appropriate orders.

The writ petition is ordered by setting aside the proceedings dated 23.02.2001. The matter is remanded to 2nd and 3rd respondents for re-assessment of NALA tax for the period 1991-92 till 2001. No costs.

Consequently, miscellaneous petitions, if any pending, also stand disposed of.

**DILIP B. BHOSALE, ACJ**

**S.V.BHATT, J**

Date:17.06.2015
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[1] AIR 2000 SC 2905