IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 1083 OF 2016

PERCEPT LIVE PVT. LTD., a Company incorporated under the Companies Act, 1956 having office at Mumbai 400 013 through its authorised representative Shri Pratik Masurkar, Indian National, aged 28 years, residing at Naikwado, Agarwada, Pernem, Goa. …... Petitioner.

V E R S U S

1. The State of Goa through its Chief Secretary and six others. …... Respondents.

Mr. Chirag Mody, Mr. Pankaj P. Pai Vernekar, and Ms. Ankita Agrawal, Advocates for the petitioner.

Mr. D. Lawande, Additional Advocate General with Ms. P. Bhandari, Additional Govt. Advocate for the respondents.

CORAM :- SMT. R.P. SONDURBALDOTA &
C.V. BHADANG, JJ.

Date : - 7th December, 2016.

ORAL ORDER : (PER SMT. R.P. SONDURBALDOTA , J.)

The petitioner has been organizing music festivals under the name "Sunburn" and "Supersonic" in the State of Goa. The present petition concerns the charges payable by the petitioner for securing police assistance for the festivals conducted during the period 2011 to 2014. The charges payable are under two heads "Police Bandobast Charges" and "Traffic Arrangement Charges".

2. The petitioner contends that prior to the year 2013, the respondents were levying police bandobast and traffic arrangement charges at a particular rate and in a particular manner, which amounts were duly paid by it. However, since the year 2013, the respondents, relying upon the Circular dated 28th June, 2012, issued by the Home Department of respondent No.1, have sought to revise the police bandobast and traffic arrangement charges retrospectively, including for the events held in the year 2011. The respondents also sought to retrospectively levy service tax for the police bandobast and traffic arrangement for the events held in the years 2010 and 2011. The petitioner had raised objections to the revision in the levy, as well as the retrospective effect given to the revision in the circular.

3. In response to the objections of the petitioner the State Level Permission Committee (SLPC) constituted a Five Member

Committee for considering the revision in the levy. The petitioner claims that at the meeting of SLPC held in December, 2014, it was advised by the Chairman of SLPC to pay the amounts due for the year 2013 as per the revised rate, under protest. Based on the advice, the petitioner made the payments under protest. The Five Member Committee appointed by the SLPC submitted its report dated 20th June, 2016 to the Finance (Expenditure) Department which, in turn, placed the same before respondent No.1 for its order. The recommendations in the report have since been accepted and in consequence thereof, the notice dated 26th September, 2016, is issued to the petitioner calling upon it to remit amount of Rs.84,41,232/- towards the Police Bandobast Charges and Rs.21,37,597/- towards the Traffic Arrangement Charges and also service tax for the period 2011 to 2014. The notice further informs the petitioner that on failure to comply with the notice, no permissions would be granted to the petitioner in future to hold any event in the State of Goa and that the dues would be recovered as arrears of Land Revenue.

4. By the present petition, the petitioner challenges both, the decision of respondent No.1 to accept the recommendations of the Five

Member Committee in its report dated 20th June, 2016 and the notice dated 26th September, 2016 issued to it by the Director of Tourism, respondent No.6. The challenge by the petitioner is, essentially, on two counts. Firstly that there was no hearing granted by the Five Member Committee to the petitioner and secondly, that the report could not have been made applicable retrospectively.

5. Mr. Lawande, learned Additional Advocate General has raised a preliminary objection to the petition pointing out that the petitioner is not entitled to be heard since the petitioner is a defaulter in respect of the payments of the two charges. Para 34 of the petition contains tabular statement of charges levied by the respondents and status as regards the payment of charges by the petitioner. The statement shows that the petitioner has paid charges as per the original demand for the years 2011 to 2013, but has not paid anything towards the revised demand. As regards the year 2014, it has paid a sum of Rs.15,74,568/-, under protest against the demand of Rs.42,62,129/- towards the Traffic Arrangement Charges and a sum of Rs.17,50,000/- under protest against the demand of Rs.34,46,665/- towards Police Bandobast Charges. The petitioner has not paid any amount

whatsoever towards both the charges for the year 2015. The demand made for the two charges for the year 2015 are Rs.33,11,706/- and Rs. 53,92,675/- respectively. This admitted position shows that the petitioner is clearly a defaulter for two years i.e. 2014 and 2015 and the total amount due to the government as on today is Rs.1,92,83,210/-.

6. In the above facts of the case, we find substance in the objection raised by Mr. Lawande and are of the opinion that the petitioner being a defaulter in terms of the payment of charges, is not entitled to be heard in the matter even after ignoring the amount due for the year 2015 which is beyond the impugned notice. We had, in fact, by way of an opportunity to the petitioner to clear the default, enquired whether it is willing to deposit the amounts of demand under the impugned notice, in this Court as a pre-condition to hearing. The petitioner has, thereafter, filed an additional affidavit to support the petition. Mr. Mody, learned Advocate for the petitioner by referring to the contents of the additional affidavit states that in fact a substantial amount is lying with respondent No.1 by way of security deposit. According to him on adjustment of the amount under the security deposit, the liability of the petitioner under the impugned notice

would, in fact, stand discharged. The various amounts lying with the respondents to the credit of the petitioner set out at para 4 of the Additional Affidavit, are as under :

I) An amount of Rs.1,25,00,000/- lying with Tourism Department which was paid as security deposit by the petitioner for organizing the Sunburn 2015 event;

II) An amount of Rs.3,07,32,942/- to be paid by the Department of Tourism to the petitioner towards execution and event coordination for the opening ceremony of Lusofonia Games 2014 organised by the petitioner in the State of Goa.

III) An amount of Rs.53,29,479/- to be refunded by the Commercial Tax Department to the petitioner being excess amounts paid by the petitioner towards Entertainment Tax for the years 2014-15 and 2015-16; and

IV) An amount of Rs.50,00,000/- paid to the Tourism Department towards fees for Windsong Festival Goa 2012 organized by the petitioner.

Bare look at the amounts is sufficient to know that the amounts at items II, III and IV do not even concern the event of music festivals organized by the petitioner. Therefore, the amounts mentioned therein need to be excluded from consideration. As regards the amount of Rs.1,25,00,000/- lying with the Tourism Department, the same is Security Deposit by the petitioner for organizing the Sunburn 2015 event. Since, the petitioner has admittedly not paid any amount whatsoever towards the two charges for the year 2015, the Security Deposit cannot be permitted to be used by the petitioner for the earlier period. Therefore, in our opinion, none of the amounts paid by the petitioner and lying with the respondents can be permitted to be adjusted against the outstanding dues for the years 2011 to 2014. Today the petitioner is not willing to show its bonafides by depositing any amount towards the extensive dues to the respondents. Therefore in our opinion it is not entitled to be heard in this petition. We, therefore, decline to entertain the petition which is, accordingly, dismissed.

C.V. BHADANG, J. **SMT. R.P. SONDURBALDOTA, J.**

ssm.