IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE CIVIL JURISDICTION

WRIT PETITION NO. 11778 OF 2016

M/s. Hindustan Platinum Pvt. Ltd., .. Petitioner.
v/s.
The State of Maharashtra
& Another .. Respondents.

Mr. V.Sridharan, Sr. Advocate with Mr. Prakash Shah, Mr. Rahul Thakar and Mr. Girish Kalla i/b. PDS Legal, for the Petitioner.
Mr. N. V. Tapare with Mr. Sandeep Ghaterao and Mr. Sachin M. Patil, for Respondent No.2- NMC.
Mr. Sandip Baber, AGP for Respondent No.1-State.

CORAM: M.S.SANKLECHA, &
A.K.MENON, JJ.
DATE : 1st DECEMBER, 2016.

P.C:-

At the request of the parties, Petition is being disposed of at the stage of admission.

2 This Petition under Article 226 of the Constitution of India, challenges the order dated 22nd July, 2016 passed by the Municipal Commissioner Navi Mumbai Municipal Corporation- Respondent No.2. The impugned order rejects the Petitioner's application dated 21st May, 2013 for exemption under Rule 28 (4) of the Maharashtra Municipal Corporation (Local Body Tax Rules) [LBT Rules].

3 The impugned order while considering the Petitioner's application dated 21st May, 2013 has relied upon a report prepared by the

Officer of the Corporation, indicating the nature of the goods received which are processed and returned to the supplier. This report formed on the basis of the impugned order to conclude that the goods received for processing is scrap i.e. not the same which is sent out for the purposes of claiming exemption under Section 28(4) of the LBT Rules. Therefore, the impugned order holds that the activity carried out by the Petitioner is not a process to which the exemption can be extended.

4 We specifically asked, Mr. Tapare, learned Counsel appearing for the Corporation, whether the report which has been relied upon by the Commissioner was furnished to the Petitioner at any time before the impugned order was passed or even till date. Mr.Tapare, learned Counsel very fairly states in the negative. In the absence of the report being furnished, Petitioner had no opportunity to point out the inaccuracies in the report, if any. Therefore, the factual finding in the impugned order as to the exact nature of the goods which were received for processing and sent back after processing to the supplier of the goods is only on the basis of one side. Thus, the factual finding is one sided in the absence of the report being furnished to the Petitioner. Thus, on the face of it, there is a flaw in the decision taking process, which makes the impugned order bad in law.

5 In the above view, the impugned order dated 22nd July, 2016 is hereby set aside. Petitioner's application dated 21st May, 2013 is restored to the Municipal Commissioner for a fresh consideration after following the principle of natural justice which would necessarily include, giving Petitioner all material which he seeks to rely upon for the purpose of passing the order.

6 It is clarified that the Petitioner had raised various other contention on merits, challenging the impugned order. However, we have not examined the same for the reason that in view of the application itself being restored to the Municipal Commissioner for fresh consideration, it will be open to the Petitioner to urge all points in support of its application for exemption under Rule 28 of the LBT Rules. All contention left open. Needless to state the Municipal Commissioner will pass a speaking order after hearing the Petitioner.

7 **Writ Petition disposed of** in the above terms. No order as to costs.

(A.K.MENON,J.) **(M.S.SANKLECHA,J.)**