rrpillai

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.5300 OF 2016

M/s.Instakart Services Pvt. Ltd. ... Petitioner

vs.

State of Maharashtra ... Respondents
Through Secretary and Ors.

…....

Mr. Rohan Shah a/w. Mr.Rohit Jain a/w. Mr. Jitendra Motwani a/w. Ms. Divya Jeswant a/w. Ms.Dhara Trivedi i/b. Economic Law Practice for the Petitioner.
Mr. Abhijit Kulkarni for the Respondent no. 2 and 3.
Mr. Vishal Thadani, AGP for Respondent no. 1.

…....

CORAM : M.S.SANKLECHA &
A.K. MENON, JJ.
DATE : 15th DECEMBER, 2016

P.C. :

1. This petition under Article 226 challenges the order dated 18th April, 2016 passed by the Joint Municipal Commissioner (Local Body Tax) Pune Municipal Corporation (Respondent no.3). The impugned order dated 18th April, 2016 rejected the petitioner's claim that it is not liable to pay any local body tax under the Maharashtra Municipal Corporations Act, 1949 (Act) read with the Local Body Tax Rules (2010 and Revised Rules 2013) (Rules), made to the Municipal Commissioner (Respondent no.2) in terms of Rule 31 of the Rules for determination of disputed Question (DDQ).

2. The basis of the petitioner's contention is that in terms of the Act read with the Rules it is not a Dealer as defined in the Act. Therefore it cannot be assessed to Local Body Tax as it is only the dealer who is assessed under section 152S of the Act. It is the petitioner's case that it acts as transporter bringing goods ordered by an individual in Pune on an e-commerce portal. The property in goods so purchased stands transferred to the individual in Pune by the seller on e-commerce portal. Thereafter at the instance of the individual purchaser in Pune, the petitioner transports the goods from outside Maharashtra into the Pune Municipal limits for delivery to the individual. Therefore it is contended that the entire activity of import of goods is done at the instance of the individual in Pune who has placed the order in e-commerce portal. Therefore a plain reading of the definition of dealer in Section 2(16A) of the Act and in particular the exception therein which excludes an individual who imports goods or causes it to be brought into Pune for his own use from the definition of the word 'dealer'. It is also contended that the importer in its business model, is the individual, who places the order on the e-commerce portal.

3. The impugned order passed by respondent no. 3 has not considered the various submissions made on behalf of the petitioners in support of its contentions. Prima facie it appears that the impugned order has proceeded

on erroneous basis that the petitioner purchases various types of goods from Companies located outside Maharashtra and bring it within Municipal limits of Pune Municipal Corporation. It is the petitioners contention that it is not so and they act merely as transporter at the instance of the individual in Pune who placed the order for the goods on the e-commerce portal.

4. In view of the fact that the impugned order does not deal with the petitioners submission which goes to the very root of the dispute, it is an agreed position between the parties that the impugned order dated 18th April, 2016 be set aside and the petitioner's application under Rule 31 of the LBT Rules be placed before the Municipal Commissioner for disposal.

6. Mr. Kulkarni, learned Counsel appearing for the Corporation on instruction of the Municipal Commissioner states that a fresh hearing on the petitioners application under Rule 31 of the Rules would be granted by him and a reasoned order would be passed thereafter.

7. We pointed out that as the aforesaid procedure would take some time, the interest of the Revenue needs to be protected. Mr. Shah learned Counsel appearing for the petitioner on instructions states that the petitioner would furnish an unconditional Bank Guarantee of Rs.7 crores of a Nationalised Bank within one week from today to safe guard the interests of the Revenue.

This amount of Rs. 7 crores has been worked out by the petitioner on the basis of the LB Tax payable by it in case it is held to be liable for its payment from the date of the impugned order dated 18th April, 2016 till today which is approximately Rs. 6 crore. On the aforesaid basis the petitioner is furnishing a further guarantee of Rs. 1 crore thus aggregating to Rs.7 crores. This is to protect the interest of the Revenue, till such time as the Municipal Commissioner of Pune disposes of the petitioners application under Rule 31 of the Rules.

8. In the above view, we set aside the impugned order dated 18th April, 2016 and restore the petitioner's application under Rule 31 of the Rules to the Muncipal Commissioner for fresh disposal. Mr. Shah , learned Counsel for the petitioner states that they will file a consolidated application reiterating its claim for benefit under Rule 31 of the Rules on or before 19th December, 2016. It is agreed between the parties that the petitioner would appear before the Municipal Commissioner Pune on 22nd December, 2016 at 11.00 am. Mr. Kulkarni on instruction further states that the application would be disposed of by a speaking order on or before 20th January, 2016. The unconditional Bank Guarantee of Nationalised Bank would be furnished by the petitioner to the Municipal Commissioner within one week from today i.e .on or before 22nd December,

2016. It is made clear that in case the petitioner does not furnish the Bank guarantee for Rs. 7 crores of a Nationalised Bank in favour of the Municipal Corporation on the scheduled date of hearing before the Municipal Commissioner, this order would stand vacated.

10. It is clarified that in case the order of Municipal Commissioner, Pune is adverse to the petitioner, the same will not be acted upon by the Corporation for a period of two weeks from the date of its communication to the petitioner.

11. It is clarified that we have not examined the contentions of the respective parties on merits. All contentions are left open to be heard and decided upon by the Municipal Commissioner in accordance with the principles of Natural Justice.

12. Petition disposed of in the above terms. No order as to costs.

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