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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 8506 OF 2016

M/s. Super Label Manufacturing Co. ... Petitioner
Vs.
The State of Maharashtra and ors. ... Respondents

WITH
WRIT PETITION NO. 8799 OF 2016

M/s. Crown Corrugators Pvt. Ltd. ... Petitioner
Vs.
The State of Maharashtra and ors. ... Respondents

WITH
WRIT PETITION NO. 8800 OF 2016

M/s. Shiv Shankar Textile Processors Pvt. Ltd.
(Formerly known in the name and style of
M/s. Oceana Textiles Mills P.Ltd.) ... Petitioner
Vs.
The State of Maharashtra and ors. ... Respondents

WITH
WRIT PETITION NO. 8801 OF 2016

M/s. Schlim Engineers ... Petitioner
Vs.
The State of Maharashtra and ors. ... Respondents

WITH
WRIT PETITION NO. 8802 OF 2016

M/s. Swaraj Erectors Pvt. Ltd. ... Petitioner
Vs.
The State of Maharashtra and ors. ... Respondents

WITH
WRIT PETITION NO. 8803 OF 2016

M/s. Sachins Impex ... Petitioner
Vs.
The State of Maharashtra and ors. ... Respondents

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Mr. E.A. Sasi for the Petitioners in all petitions..
Mr. V.B. Thadani, AGP for State in all petitions.
Mr. S.V. Marne for Respondent Nos.7 to 9 in all petitions..

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CORAM : V. M. KANADE, AND
M. S. SONAK, JJ.

DATE : JULY 29, 2016.

P. C.

1] The petitioners, in the present petitions, challenge the following:

a] The demands for cess under Rule 35(1) of the Maharashtra Municipal Corporation (Cess on Entry of Goods) Rules 1996 ;

b] The Notification dated 17 December 1991 including “*notified areas*” of MIDC's, TTC-Thane Belapur

Industrial Area within limits of *"City"* as defined in Section 2(8) of the Maharashtra Municipal Corporation Act, 1949 (MMC Act) or in the alternate, declaration that the MIDC is the special planning authority, in respect of such area, in view of the provisions contained in Section 40(1A) of the Maharashtra Regional Town Planning Act, 1966 (MRTP);

c] The constitutional validity of Rule 41 of the Taxation Rule Vide Chapter-VIII appended to the Scheduled-D to the MMC Act imposing penalty, where cess amount is not paid within stipulated period;

d] The constitutional validity of Rule 41 of the Maharashtra Municipal Corporation (Cess on Entry of Goods) Rules 1996 imposing penalty and interest on cess, where such cess is not paid within stipulated period; and

e] Demands towards interest and penalty in respect of cess, which had remained unpaid or which is paid after the period stipulated.

2] On basis of the aforesaid challenges, the petitioners have applied for refund, where some amount have already been paid towards cess or for restraint in the matter of recovery of cess, interest and penalty under the provisions of the MMC Act or the Rules made thereunder.

3] Initially, Rule was granted in Writ Petition No. 8506 of 2016 on 22 July 2016 and the respondents were restrained from taking any coercive steps for recovery of penalty and interest, by way of ad-interim relief. Although, no Rule was formally granted in the remaining writ petitions, these petitions were taken up alongwith Writ Petition No. 8506 of 2016, as, it was submitted that the issues raised in these petitions were identical to these raised in Writ Petition No. 8506 of 2016. Further, all these petitions were taken up for consideration as the petitioner in Writ Petition No. 8506 of 2016 desired to press for certain additional ad-interim reliefs and the petitioners in remaining petitions desired to press for interim reliefs. Mr. E.A. Sasi, learned counsel for the petitioners was therefore heard on merits and upon due consideration of his submissions, we are satisfied that the Rule granted in Writ Petition No. 8506 of 2016 is liable to be discharged and further remaining petitions are liable to be dismissed.

4] The demand for cess under Rule 35(1) of the Maharashtra Municipal Corporation (Cess on Entry of Goods) Rules 1996 is firstly challenged on the basis that the Notification dated 17 December 1991, including *“notified areas”* of MIDC's TTC-Thane Belapur Industrial

Area within limits of "*City*" as defined under Section 2(8) of the MMC Act is itself *ultra vires* and un-constitutional. Further, it is contended that in any case, by virtue of provisions contained in Section 40(1A) of the MRTP, the MIDC is the Special Planning Authority in respect of such area and therefore, Navi Mumbai Municipal Corporation (NMMC) is incompetent to levy any cess upon the petitioners. In support of this contention, reliance is placed upon the decision of the Hon'ble Supreme Court in case of ***Saij Gram Panchayat Vs. State of Gujarat***[1]**.**

5] In the alternate, the petitioners question the constitutional validity of Rule 41 of the Taxation Rule vide Chapter – VIII appended to Schedule-D to the MMC Act, to the extent, it imposes penalty upon the petitioners for failure to pay cess within the stipulated period. Further, the petitioners also question the constitutional validity of Rule 41 of the Maharashtra Municipal Corporation (Cess on Entry of Goods) Rules 1996, to the extent, such rule authorises the imposition of penalty and interest on cess, where such cess is not paid within stipulated period. This challenge is primarily on the ground that the rules are *ultra vires* the MMC Act, inasmuch as in the MMC Act, there is no substantive provision for imposition of penalty or levy of interest upon the unpaid cess amount or where the cess amount is paid beyond stipulated period. In support of this submission, reliance is placed

1 1999 DgLaw (SC) 2447

upon the decisions in case of ***State of Kerala Vs. Madras Rubber Factory***[2] and ***VVS Sugar Vs. Government of A.P.***[3]

6] Mr. S.V. Marne, learned counsel for respondent Nos.7 to 9 and Mr. V.B. Thadani, learned AGP for the State have submitted that the issues raised in the present petitions stand substantially decided by the judgment of this Court in case of ***Small Scale Entrepreneurs Association and ors. Vs. State of Maharashtra and ors.***[4]**.** The learned counsel submitted that it is impermissible for the petitioners to raise substantially the very same challenges under the guise of challenging consequential actions. Learned counsel for the respondents submitted that the challenge to Notification dated 17 December 1991, to the extent, the same includes notified area of MIDC has already been negatived by the Division Bench of this Court. Now that the NMMC, which came to be constituted by Notification dated 17 December 1991 has chosen to levy cess, it is impermissible for the petitioners to challenge the cess on the ground of inclusion of the notified area in the Notification dated 17 December 1991, was itself improper or unconstitutional. Learned counsel for the respondents submitted that there is no novelty in the challenges raised and in any case, such new grounds are barred by principles of *res judicata* or constructive judicata.

2 (1998) 1 SCC 616
3 1999 (4) SCC 192
4 (2010) 6 Bom CR 442

7] Further, Mr. S.V. Marne, learned counsel for respondent Nos.7 to 9 and Mr. V.B. Thadani, learned AGP for the State, submitted that the rules which have been impugned in the present petitions are not *ultra vires* the MMC Act and therefore, there is no case made out for grant of any reliefs in the present petitions.

8] We have examined the various contentions raised by the petitioners in these petitions. The main challenge in these petitions is to the inclusion of MIDC's notified area, i.e., TTC-Thane-Belapur Industrial Area in Notification dated 17 December 1991, by which, NMMC came to be constituted. The petitioners contend that the MIDC is the Special Planning Authority insofar as such notified area is concerned and therefore, it is only the MIDC, which is competent to levy any tax, cess or other charges upon the petitioner's industries/properties, which are located within such notified area. The petitioners contend that the NMMC, which according to them, renders no services whatsoever towards the industries or properties within the notified area is incompetent to levy any cess upon the petitioners and that the levy of such cess is *ultra vires* and unconstitutional, null and void.

9] Substantially similar contentions came to be raised in case of ***Small Scale Entrepreneurs Association (supra)*** and the same were negatived by the Division Bench of this Court in its judgment and order dated 8 July 2010. We are informed that the special leave has been granted by the Hon'ble Supreme Court in the challenge to the said decision. However, there is no interim relief granted in the matter. Thus one of the major issues raised by the petitioners in the present petitions, stand answered against them by a coordinate bench of this Court in case of ***Small Scale Entrepreneurs Association (supra).***

10] There is no merit in the contention of Mr. E.A. Sasi that the property taxes or cess levied by the NMMC had not been challenged in case of ***Small Scale Entrepreneurs Association (supra)Small Scale Entrepreneurs Association (supra)*** and that the challenge was only restricted to the Notification dated 17 December 1991, to the extent, the notification, whilst constituting the NMMC had included within its jurisdictional area, the MIDC's notified area, wherein, the petitioners' properties/industries are located. Once, the challenge to such inclusion came to be negatived, as a corollary therefore, the NMMC was held entitled to levy property taxes and other taxes upon the petitioners' industries, though, such industries may be stated to be located within the MIDC's notified area. Further, perusal of the decision in case of ***Small Scale Entrepreneurs Association (supra)*** makes it clear that the contentions now sought to be raised in the present petitions, had been substantially raised in case of ***Small Scale Entrepreneurs Association (supra).*** In the context of property taxes and other taxes, the contention has been reproduced in paragraph 25 and 26 in case of ***Small Scale Entrepreneurs Association (supra)*** and the same reads thus:-

> *25. Without prejudice to their basic contention that the MIDC area does not form part of the municipal limits of NMMC, the petitioners submit that in view of clause 7 of the First Schedule of the M.R.& T.P.Act, they are not liable to pay the property taxes and the other taxes levied by the NMMC as they are the lessees of MIDC. The petitioners rely upon the Division Bench Judgment of this Court in the case of Jalgaon Municipal Corporation in Writ Petition No.1012 of 2003 dated 9th October, 2006 for contending that it is the statutory obligation of MIDC to provide services in the area falling under the MIDC and consequently, the NMMC cannot provide any services in the said area. The petitioners have brought on record the levies of MIDC and NMMC. They submit that none of the duties as prescribed under sections 63 and 66 of the BPMC Act are discharged by the NMMC in so far as the MIDC area is concerned and consequently, the NMMC cannot levy and recover any taxes from the MIDC area. The petitioners have also assailed the MOU dated December 1, 2005 entered into between the MIDC and the NMMC, whereunder, the MIDC has handed over the maintenance of roads, drains etc. to the NMMC. It is the contention of the petitioners that the MIDC cannot contract out of its statutory functions. By entering into MOU dated December 1, 2005 the MIDC has abdicated its statutory duties.*
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> *26. On April 11, 2002 the NMMC filed first affidavit of Mr.Prakash Kulkarni, Deputy Assessor and Collector (Property Tax), interalia contending that none of the petitioners or any other organization or association of Industries had objected to inclusion of Industrial area within the municipal limits of the NMMC at the time of its*

> *formation. As per section 127 of the BPMC Act, the NMMC is authorised to impose property taxes among other taxes within its area. The mode and manner of recovering the municipal taxes is laid down u/s.128 of the BPMC Act. After following the procedure laid down under the BPMC Act, the NMMC has levied the property tax on all the buildings and lands within its area including the TTC Industrial area of the MIDC."*

11] This Court, ultimately, rejected the contentions similar to this now raised by the petitioners upon detailed considerations of the provisions of MMC Act, MRTP Act and MIDC Act and the Constitution of India. This court, at paragraph 54(v) has observed thus:

> *(v) As noted earlier, under the provisions of the MID Act, what can be levied and recovered is the fees or service charges. However, there is no provision empowering the MIDC to levy and recover the taxes. Now, coming to clause 7 of the First Schedule under the M.R.& T.P.Act, it lays down that whenever the relevant authority (MIDC in the present case) itself provides in the area within the jurisdiction of the local authority (NMMC in the present case) all or any of the amenities, which the local authority provides, the relevant authority shall not be liable to pay taxes including the property taxes, if any, but it shall be lawful to the local authority to arrive at an agreement with the relevant authority with the prior sanction of the State Government to receive the lumpsum contribution from the relevant authority in lieu of all or any of the taxes levied or services rendered by the local authority. In view of the provisions of clause 7 of First Schedule, it is the relevant authority who is exempt from*

payment of taxes including the property taxes. The contention of the petitioners that even the plot holders in the MIDC area are exempt and are not liable to pay the taxes, is wholly misconceived. As noted earlier, even under the BPMC Act, there is no provision for granting exemption from payment of taxes, save and except referred to herein above. Clause 7 of the First Schedule exempts the relevant authority from payment of taxes and not the plot holders in the jurisdiction of the relevant authority. But for clause 7 of the First Schedule, even the MIDC would have been liable to pay taxes including property taxes to NMMC. We have noted that under the BPMC Act, the NMMC is empowered to levy various taxes for the purposes of the said Act within its area of operation. Even under the MID Act, the MIDC is empowered to levy fees and service charges on the plot holders as per Section 17 thereof. In the case of Solapur MIDC (supra) the Apex Court held that the scope and ambit of the BPMC and that of MID Act is different. This aspect has also been considered by the Apex Court in thecase of Saij Grampanchayat V/s.State of Maharashtra, (1999) 2 SCC 366. In that case it has been held that the Municipal Corporation Act and the Industrial Development Act have distinct fields of operation and there is no interse conflict between the two. In paragraph No.20 of the said judgment, the Apex Court observed as under:

> *“Explaining the purpose behind Section 16, the High Court has rightly held that having regard to the power conferred upon the Gujarat Industrial Development Corporation in the matter of provision of amenities and common facilities in industrial estates and industrial areas, on levy of certain charges upon those who set up industries therein, an industrial area would ordinarily be a self-sufficient township in itself which provides*

> *its own amenities and recovers charges therefor. A local authority having jurisdiction over such area will have to perform very few of its statutory or discretionary duties in respect of such area. Yet it may levy and collect taxes from those who set up industries in the area........".*

> *Thus, even in respect of the area covered under the MIDC, the local authority having jurisdiction over such area can levy and collect taxes from those who set up industries in the area. In our opinion, to avoid this virtual dual control and administration which might impede the growth and development of Industries that provision of Clause 7 of Schedule I of the M.R. & T.P. Act is made, which provides that the NMMC and the MIDC may arrive at an agreement with prior sanction of the State Government to receive all or any of the taxes levied or services rendered by the NMMC. This is clearly an enabling provision, which however, cannot be interpreted to mean that the plot holders in the jurisdiction of the MIDC are not liable to pay taxes."*
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> *(emphasis supplied)*

12] The decision in case of ***Saij Gram Panchayat (supra),*** has been duly considered by the Division Bench of this Court, holding that the principle laid down therein, in fact, militates against the contentions now sought to be raised by the petitioners. Thus, the decision in case of ***Saij Gram Panchayat (supra),*** upon its proper construction offers no assistance to the petitioners. This Court in case of ***Small Scale Entrepreneurs Association (supra)*** has further held that the provisions of MMC Act and MIDC Act and MRTP Act are required to be construed harmoniously. Thus construed, this Court did not find any substance in the contention raised by the petitioners that they were not liable to pay any taxes. This Court has in fact held that the MIDC area is the part of municipal limits of NMMC and therefore, the NMMC has the power to levy tax and recover cess amounts from the petitioners.

13] The petitioners, have, in terms, admitted that Writ Petition No. 2787 of 2001, instituted by the Small Scale Entrepreneurs Association, was a petition instituted by the said Association at the behest of the petitioners. In para 7 of Writ Petition No. 8506 of 2016, the petitioner has stated that in the year 2001 the Association filed Writ Petition No. 2787 of 2001, in which, the Association was bonafide pursuing its stand that the MIDC Industrial Area does not fall within the jurisdiction of the NMMC. It is further stated that at the time of filing of said writ petition, the Association has agitated the ground s "*whatsoever available to establish their case that the MIDC area is not coming withing the area of NMMC*". However, it is the contention of the petitioner, in para 8 of the said petition that the Association had never challenged the statutory validity of Notification dated 17 December 1991.

14] If the decision in case of ***Small Scale Entrepreneurs Association (supra)*** is analysed, it is quite clear that the Small Scale Entrepreneurs Association, which had espoused the cause of the petitioners as well, had raised exhaustive contentions precisely upon the issue as to why according to them, the property taxes or any other taxes cannot be levied by the NMMC in respect of MIDC's notified areas. The Association, in that sense, had squarely attacked the Notification dated 17 December 1991 constituting the NMMC, to the extent, the MIDC's notified areas were included within the jurisdiction of NMMC. By merely rephrasing the reliefs or by purporting to raise some additional grounds, it is impermissible for the petitioners to distance themselves from the decision in case of ***Small Scale Entrepreneurs Association (supra).*** By such a device, the petitioners, cannot, individually seek to reopen or reagitate the issues which stand substantially decided by a coordinate bench of this Court, in case of ***Small Scale Entrepreneurs Association (supra).*** Accordingly, we see no merit in the first challenge in these petitions and same is hereby rejected.

15] Insofar as the challenge to validity of Rule 41 as aforesaid is concerned, it must be noted that nothing prevented the Small Scale Entrepreneurs Association from raising such challenge in Writ Petition No. 2787 of 2001, which has since been disposed of on 8 July 2010. It is impermissible for parties to raise challenges in installments, when it is apparent that the entire purpose for institution of Writ Petition No. 2787 of 2001 was to question the levy of property taxes or other taxes by the NMMC, insofar as the petitioners' properties/industries, which are located within MIDC's notified area are concerned. To that extent, the principles of constructive *res judicata* might be attracted. However, we do not propose to non-suit the petitioners upon such principle particularly as we are satisfied that even otherwise, there is no merit in the challenge as to the said rules, as raised by the petitioners.

16] Mr. Sasi, learned counsel for the petitioners, urged that Rule 41 as contained in Schedule-D to the MMC Act or Rule 41 of the Maharashtra Municipal Corporation (Cess on Entry of Goods) Rules 1996, to the extent, such rules authorised levy of penalty and interest upon the cess amount unpaid or paid beyond the stipulated date, are *ultra vires* the parent Act, which is MMC Act. Mr. Sasi submitted that the parent Act has no substantive provision which permits the State Government from framing rules of such nature. In the alternate, Mr. Sasi submitted that since in the parent Act, there is no substantive provision for levy of penalty and interest upon the cess amount payable, no such penalty or interest can be authorised by rules and to that extent, the rules are *ultra vires* the parent Act or otherwise unconstitutional.

17] Insofar as the challenge to the rules being *ultra vires* the provisions of the parent Act, i.e., MMC Act, is concerned, reference is required to be made to the provisions contained in Chapter – XXIX of the MMC Act, entitled *"RULES, BYE-LAWS, REGULATIONS AND STANDING ORDERS"*

18] The Chapter - XXIX of the MMC Act comprises Sections 453 to 468. Section 453, which is important to appreciate the petitioners' contention, in terms, provides that the rules in Schedule-D as amended from time to time shall be deemed to be a part of the MMC Act. In the decisions of ***State of Kerala Vs. Madras Rubber Factory (supra)*** and ***VVS Sugar Vs. Government of A.P. (supra),*** upon which reliance was placed by Mr. Sasi, there was no provisions in the parent Act similar to the provision contained in Section 453 of the MMC Act. By means of legislative fiction, Section 453 of the MMC Act makes it clear that the rules in Schedule-D as amended from time to time shall be deemed to be a part of the parent Act, i.e., MMC Act. Thus construed, it cannot be said that the rules which the petitioners attached are *ultra vires* the parent Act, i.e., MMC Act.

19] In case of ***Madras Rubber Factory Ltd. (supra),*** the Hon'ble Supreme Court has held that the charge under a taxing statute can only be under the Act and not under the rules. In the present case, there is no dispute that the charge of cess is squarely provided for under the MMC Act. The decision in ***Madras Rubber Factory Ltd. (supra)*** is therefore, inapplicable to the present case. Further Section 453 of the parent Act itself provides that the rules in Schedule-D as amended from time to time shall be deemed to be a part of the MMC Act. Such was also not the position in case of ***Madras Rubber Factory Ltd. (supra).***

20] The decision in case of ***V.V.S. Sugars (supra)*** is also inapplicable, in the facts and circumstances of the present case. In the said case, the Hon'ble Supreme Court was concerned with the interpretation of Section 21 of the Andhra Pradesh Sugarcane (Regulation of Supply and Purchase) Rules, 1961, as amended by Act 25 of 1976, which came into force with effect from 29 December 1975. Section 21 (3-D) (5) introduced by way of amendment with effect from 29 December 1975 had provided that the arrears of tax shall carry interest at such rates as may be prescribed. In this context, the Hon'ble Supreme Court held that the provisions came into force on date of commencement of the amending Act. The provisions are open-ended and are intended to apply upon the commencement of the amending Act with no limitation in time. There being no substantive provision in the Act for levy of interest on arrears of tax that applied to purchases of sugarcane made subsequent to the date of commencement of the amending Act, no interest thereon could be so levied, based upon application of some provision in the rules or otherwise. The position in the present case offers no parallel to the position in case of ***V.V.S. Sugars (supra).***

21] Further, Section 454 of the MMC Act provides that the Corporation may add to the Schedule-D rules not inconsistent with the provisions of the MMC Act, which expression shall, in this section, be deemed not to include the said Schedule to provide for any matter dealt with or for any of the purposes specified in the said Schedule and may subject to the same limitations, amend, alter or annul any rule in the said Schedule. The proviso to this section deals with rule regulating punishment of an offence, and therefore, we are, in the present petitions, not concerned with such proviso.

22] Section 456 of the MMC Act reads thus:

456. Power of 1 [State Government to make rules.

(1) The [State] Government may at any time require the Corporation to make rules under section 454 in respect of any purpose or matter specified in section 457;

(2) If the Corporation fails to comply with such requisition within such reasonable time as may be fixed by the [State] Government, the [State] Government may, after previous publication make such rules and the rules so made shall, on final publication in the Official Gazette, have effect as if enacted in this Act.

23] Section 456A of the MMC Act reads thus:

456A. Special Power of State Government to make rules.

(1) Notwithstanding anything contained in sections 454 and 456, the State Government may, by notification in the Official Gazette, make rules consistent with the provisions of this Act generally to carry out all or

any of the purposes of this Act. Such rules may provide for charging of fees for any of the purposes of this Act:

Provided that, no rules in respect of any matter relating to the preparation of electoral rolls and conduct of elections shall be made without consultation with the State Election Commissioner.

(2) All rules made under this section shall be subject to the condition of previous publication:

Provided that, if the State Government is satisfied that circumstances exist which render it necessary to take immediate action, it may dispense with the requirement of previous publication of the rules to be made under this section, for the purposes of conduct of elections, under this Act.

(3) Every rule made under this section shall be laid as soon as may be after it is made, before each House of the State Legislature while it is in session for a total period of thirty days which may be comprised in one session or in two successive sessions, and if, before the expiry of the session in which it is so laid or the session immediately following both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, and notify such decision in the Official Gazette, the rule shall from the date of publication of such notification have effect only in such modified form or be of no effect, as the case may be, so however, that any such modification or annulment shall be without prejudice to the validity of anything previously done or omitted to be done under that rule."

24] Mr. Marne, learned counsel for respondent Nos.7 to 9 has submitted that the Maharashtra Municipal Corporation (Cess on Entry of Goods) Rules 1996 have been enacted by the State Government by resort to special power of the State Government under Section 456A of the MMC Act. Section 456-A confers special powers of the State Government to make rules and this section opens with a non-obstanate clause, thereby, making it clear that the power of the State Government to make rules under Section 456A is not in any manner circumscribed by anything contained in Sections 456 and 456A of the MMC Act. The rules in the present cases provide for levy of interest and penalty where from cess amount is either not paid at all or paid beyond the period stipulated. There is nothing arbitrary or unreasonable in such rules. We are, in such circumstances, unable to accept the plea that the rules impugned in these petitions are *ultra vires* the parent Act or that they are *ultra vires* Constitution of India.

25] In all these cases, the petitioners have been resisting payment of cess for several years. To begin with, the petitioners avoided payment of cess for several years by contending that the NMMC had no legal authority to levy such cess, since, the petitioners' industries fell within the MIDC's notified area. Upon Writ Petition No. 2787 of 2001 instituted by the Small Scale Entrepreneurs Association, which was espousing the cause of the petitioners being dismissed, the petitioners, have contested and challenged the demands for payment of cesss, interest and penalty by instituting the present petitions.

26] The petitioners have not disclosed as to whether in pursuance of liberty granted by this Court in Writ Petition No. 2787 of

2001, the petitioner had instituted appeals under Section 406 of the MMC Act in order to question the levy of cess. Possibly, the petitioners have avoided taking such route because Section 406(8) of the MMC Act, *inter alia* provides no appeal under sub-section (6) shall be entertained unless the amount of disputed tax claimed from the appellant has been deposited by the appellant with the Commissioner.

27] We have noticed that parties routinely instituting petitions in this Court, by adding some challenge to the vires of the provisions of the MMC Act or the rules made thereunder, so as to evade the requirement of pre-deposit, as mandated in Section 406(8) of the MMC Act. The extraordinary jurisdiction under Articles 226 and 227 of the Constitution of India is not meant to by-pass the statutory remedies otherwise available under the MMC Act. We say this because the learned counsel for the petitioners did not even make any attempt to challenge the demands of cess, interest or penalty on merits except to submit that in most cases the amount of cess had in fact been paid by the petitioners to the NMMC. The challenges in these petitions were mainly to the Notification dated 17 December 1991 and the *vires* of the rules. Upon consideration of the challenges as aforesaid, we find no merit in the challenges so raised.

28] For all the aforesaid reasons, Rule is discharged in Writ Petition No.8506 of 2016 and interim order is hereby vacated. The remaining petitions are also hereby dismissed.

29] In the facts and circumstances of the present case, there shall however be no order as to costs.

[M. S. SONAK, J.] [V. M. KANADE, J.]