Sbw

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.12847 OF 2016
WITH
CIVIL APPLICATION NO.3021 OF 2016
WITH
CIVIL APPLICATION NO.3022 OF 2016

M/s. Hindustan Platinum Pvt.Ltd. ..Petitioner
Versus
The State of Maharashtra & Anr. ..Respondents

....

Mr. V. Sridharan, Senior Advocate, a/w Prakash Shah, Jas Sanghavi i/b. PDS Legal for the Petitioner.
Mr. N. V. Tapare a/w Sandip Ghaterao a/w Sachin Patil for Respondent no.2.
Mr. Vishal Thadani, AGP, for respondent no.1.

....

CORAM: M. S. SANKLECHA &
A. K. MENON, JJ.

DATE : 15th DECEMBER, 2016

P.C.:

1. By consent of the Advocates, this Petition is being disposed of finally at the stage of admission.

2. Leave to amend by substituting paragraphs 31, 32 and ground (B) of the petition in terms of the draft amendment handed over. Amendment to be carried out forthwith. Re-verification dispensed with.

3. This petition under Article 226 of the Constitution of India assails the order dated 9th November, 2016 and demand notice dated 9th November, 2016 passed by the Local Body Tax (LBT) officer demanding an amount of Rs.73.91 lakhs being the aggregate of tax, interest and penalty. This demand is on account of LBT payable for the period 2013-14 under the Local Body Tax Rules, 2010 (Rules) framed under Maharashtra Municipal Corporation Act, 1949 (the Act).

4. The respondent Corporation objects to this petition being entertained. It is submitted that an efficacious alternative remedy to challenge the impugned order before the Deputy Commissioner under Section 406 of the Act, is available.

5. In response, it is submitted on behalf of the petitioner that the impugned order has been passed in breach of principles of natural justice. It is submitted that the various contentions raised by the petitioner as contained in its letter dated 2nd November, 2016 has not been considered. It, *inter alia,* requested the Assessing Officer to consider its submissions as contained in Writ Petition No.11778 of 2016 filed and pending in this Court in respect of its case for exemption to goods from LBT received for processing and return, which has been rejected by order dated 22nd July,

2016 of the Municipal Commissioner. The petitioner in its above letter had also requested that the assessment for the earlier years i.e. 2011-12 and 2012-13 which were still pending, be taken up for assessment before taking up the Assessment for the year 2013-14. In the circumstances, the petitioner sought an adjournment. However, it was rejected and a best judgment Assessment was passed by the impugned order without considering the issues raised by the Petitioner.

6. Normally, as matter of self imposed limitation, we do not entertain a writ petition, where a statutory remedy of an appeal is available, as in this case under Section 406 of the Act. However, in the peculiar facts of this case, we find that the decision taking process leading to the impugned order is hopelessly flawed, that it requires consideration. In fact, we find that the LBT officer proceeded to pass a best judgment assessment for the year 2013-14 when assessment for the years 2011-12 and 2012-13 were still pending and the petitioner had requested that the assessment for the earlier years be taken up. Nor did the LBT Officer accede to the Petitioner's request for an adjournment sought, *inter alia,* to await the result of its challenge to the order dated 22nd July, 2016 in Writ Petition No.11178 of 2016 with regard to its claim for exemption for LBT in respect of processing of goods would have a bearing on the assessment.

However, the Assessing Officer without considering the request, proceeded to pass the impugned order dated 9th March, 2016 as according to him, there was no stay of Assessment Proceedings.

7. Moreover, a Best Judgment Assessment by itself implies making an assessment to the best of his judgment. This requires consideration of facts and submissions on record before making an assessment. A best judgment assessment is not a carte blanche to the Assessing Officer to decide and assess a party on a wild and arbitrary basis. We do concede that a best judgment assessment would certainly have an element of guess work, but yet such guess work cannot be arbitrary ignoring the facts on record. In fact, we can do no better than rely upon the following observations in relation to best judgment assessment made by the Privy Council in ***CIT v/s. Laxminarain Badridas 5 ITR 170***:-

> *"The officer is to make an assessment to the best of his judgment against a person who is in default as regard supplying information. He must not act dishonestly or vindictively or capriciously because he must exercise judgment in the matter. He must make what he honestly believes to be a fair estimate of the proper figure of assessment …... and for that purpose take into consideration his knowledge of previous return …. and all other matters which he thinks will help him in arriving at a fair and proper estimate."*

Therefore the best judgment assessment would entail taking into consideration the submissions on record of the party and deal with the same while arriving at his best judgment of the tax payable by the assessee.

8. We find that the impugned order dated 9th November, 2016 does not consider the letter dated 2nd November, 2016 in respect of taking into account the contents of its writ petition No.11778 of 2016 as well as to take up the assessment for the earlier years. It also needs to be pointed out that the order of the Commissioner of Corporation dated 22nd July, 2016 denying the benefit of tax exemption on processing (also be available to the Petitioner under Rule 28 of LBT Rules) has been set aside by this Court on 1st December, 2016 in Writ Petition No.11778 of 2016 and restored it to the Municipal Commissioner for fresh disposal. Therefore, even though in the peculiar facts and circumstances of this case, the issue may require reconsideration at the hands of the LBT Officer, it has to be after putting the Petitioner to terms.

9. It is an admitted position that the tax payable as per the impugned order would be Rs.19.93 crores (after excluding the exemptions claimed in terms of Rule 28 of the Rules, interest and penalty). Therefore we are inclined in these peculiar facts to exercise our extraordinary jurisdiction and set aside the impugned order dated 9th November, 2016 and the

consequent demand dated 9th March, 2016 and restore the assessment to the LBT Officer for passing an order in accordance with the principles of natural justice. However, in view of the fact that the petitioner had also not attended the last hearing before the Assessing Officer which had been instrumental in passing of the impugned order, the interest of revenue would need to be protected. At this Mr. Shridhar, learned counsel for the petitioner on instructions states that the petitioner will furnish a Bank Guarantee of an amount of Rs.19.93 crores of a Nationalized Bank in favour of the Municipal Commissioner, Navi Mumbai Municipal Corporation within one week from today and keep it alive till the LBT Officer passes the order and for a period of three weeks from the date of communication of the order to be passed by the LBT Officer.

10. However it is made clear that it is only on the petitioner furnishing the bank guarantee in favour of the Municipal Commissioner, Navi Mumbai Municipal Corporation on or before 23rd December, 2016 would the impugned order dated 9th November, 2016 and consequent demand be set aside. Thereafter LBT Officer would grant a hearing to the petitioner, at which time the petitioner will produce all the necessary evidence in support of its case.

11. Mr. Tapare, the learned counsel appearing for the Corporation on instructions states that within a period of three months from today, the LBT Officer would finalize the assessment for the period 2013-14 after following the principles of natural justice. Needless to state that the petitioner would cooperate with the Assessing Officer in early disposal of the assessment and attend the personal hearing when called for with the required documents and without seeking adjournments.

12. Petition is accordingly disposed of. No order as to costs.

13. In the above view, the Civil Application Nos.3021 of 2016 and 3022 of 2016 taken out by the petitioner are also disposed of as infructuous.

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