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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.13532 OF 2016

M/s.TP Link India Pvt. Ltd.

... Petitioner

vs.

Deputy Commissioner

... Respondents

Vasai Virar City Municipal Corporation & Ors.

.....

Mr. Nandkishor a/w Mr.Prateek Katewa i/b. HSA Advocates for the Petitioner.

Mr. Atul Damle, Senior Advocate a/w. Ms. Swati Sagvekar for Respondent nos. 1 and 2.

Mr. P. G. Sawant, AGP for State.

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CORAM : M.S.SANKLECHA &

A.K. MENON, JJ.

DATE : 15th DECEMBER, 2016

P.C. :

1. This petition under Article 226 of the Constitution of India challenges :

(a) Order dated 7th November, 2016 passed by the Deputy Commissioner of Vasai Virar City Municipal Corporation (Corporation) under Rule 33(5) of the Local Body Tax Rules (Rules). The impugned order dated 7th November, 2016 assessess

the petitioner to Rs.1,92,29,347/- as Local Body Tax for the period 1st April, 2011 to 31st March, 2012 in the aggregate i.e. including interest and penalty;

(b) Copy of notice of demand dated 8th November, 2016 issued by the Corporation; and

(c) Notice dated 25th November, 2016 to the petitioner's bankers – HSBC calling upon it to pay an amount of Rs.1,92,29,347/- being the petitioner's liability in the aggregate to tax, interest and penalty as quantified in the impugned order dated 7th November, 2016.

2. Mr. Nand Kishore learned Counsel appearing for the petitioner states that after filing of the present petition, the petitioners have filed an appeal by paying tax payable under the impugned order dated 7th November, 2016 to the Commissioner of Vasai Virar City Municipal Corporation– respondent no.2. The petitioner has also filed application for stay of the impugned order dated 7th November, 2016. The stay application and the appeal are awaiting hearing.

3. In the above view of having exercised the right of an alternative remedy of filing an appeal, we were not inclined to entertain this petition.

4. However, Mr. Nandkishor states that the amount of interest and penalty as determined by the impugned order dated 7th November, 2016 amounts to Rs.1.64 crores. On instructions he states that the petitioner would continue to retain the above amount of Rs.1.64 crores in the bank account No.120101191001, HSBC Bank, Powai Branch, Mumbai till such time as the Commissioner – respondent no. 2 disposes of the petitioners appeal and for a period of two weeks thereafter. Mr.Damle, Senior Counsel on instructions states that the above safeguard is acceptable to the Corporation. However, it is made clear that the petitioner will continue to keep the amount of Rs.1.64 crores in the above Bank account for a period of three weeks from the date of communication of the order of the Commissioner on the petitioners and Corporation shall also not act upon its notice dated 25th November, 2016 for the said period of two weeks from the date of the communication of the order of the Commissioner to the petitioner.

5. Respondent no. 2 shall dispose of the appeal as expeditiously as possible and preferably within a period of 8 weeks but not later than 12 weeks from today.

6. The petition is disposed of on the above terms. No order as to costs.

(A.K. MENON,J.)

(M. S. SANKLECHA,J.)