

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO. 5045 OF 2013

(M/s. PBA Infra-structures Private Limited vs. The State of Maharashtra thr. Secretary, Urban Development Department & Anr.)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders or directions
and Registrar's Orders.

Court's or Judge's orders.

**CORAM : B.P. DHARMADHIKARI &
KUM. INDIRA JAIN, JJ.
JUNE 21, 2016.**

Heard Shri Parchure, learned counsel for the petitioner, Mrs. A.R. Kulkarni, learned AGP for respondent No. 1 and Shri J.B. Kasat, learned counsel for respondent No. 2 for some time.

The question is, whether demand for octroi on vehicles / machineries used for the purposes of construction of taxi-way, is sustainable. The demand is also on account of raw material used for said construction.

Shri Parchure, learned counsel, submits that the demand for octroi includes 10 times penal duty. He further adds that the raw material has been purchased from outside octroi limits and it has been used outside such limits. As such, there is no question of paying any octroi. He submits that if any material is purchased within octroi limits, it is octroi paid and as such the petitioner cannot be asked to pay anything on it.

Lastly, he submits that Road Rollers, Dumpers and other similar vehicles were old and kept outside octroi limits and whenever required, were brought in and taken to

the site and after finishing the work, the same were taken outside octroi limits. The effort is to show that there is no import as such, within the octroi limits to enable the Corporation to demand octroi.

Shri Kasat, learned counsel, in reply submits that not even a one time octroi duty has been paid by the petitioner. He states that a show cause notice was issued to the petitioner and the petitioner has given his reply to it. In reply, there is only a defence of exemption on the basis of some certificate given by MIHAN authorities that the project is coming up in SEZ area. He submits that later on this defence has been given up and the octroi for the period from 18.12.2012 has been paid by the petitioner. According to him, in this situation, no case is made out warranting interference.

The question is, whether in all cases, the Corporation can insist for payment of penal duty at 10 times. It is not in dispute that single octroi duty claimed from the petitioner works out to Rs.15,40,958.73. The petitioner has not paid that amount.

We have perused the show cause notice as also reply given thereto by the petitioner. The reply does not show that all defences which are raised before us were pressed into service before the Nagpur Municipal Corporation. The tender work is already completed by the petitioner. Prima facie, it appears that old machinery was used for completing the work.

In this situation, we find it proper to direct the petitioner to deposit with Corporation, twice the demanded

sum i.e. an amount of Rs.31 lakh provisionally within a period of three weeks from today. The petitioner shall also file his reply pointing out all defences and shall produce necessary material to support it. It will be open to the respondent – Corporation to conduct an inquiry into said defences and to finalize the demand as per law. The exercise shall be completed after giving an opportunity of hearing to the petitioner, within next eight weeks. After this exercise, if any amount is found refundable to the petitioner, the same shall be refunded within next four weeks and if the amount is found to be recoverable from the petitioner, the same shall be recovered as per law.

Subject to this and keeping all rival contentions open, we dispose of the present petition. No order as to costs.

JUDGE

JUDGE

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