IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE CIVIL JURISDICTION

WRIT PETITION NO. 2020 OF 2017
WITH
WRIT PETITION NO.2025 OF 2017

Interglobe Aviation Limited .. Petitioner.
v/s.
The State of Maharashtra
& Others .. Respondents.

Mr. Iqbal Chagla, Sr. Advocate with Mr. Prakash Shah, Mr. Prasad Paranjape, Mr. Arun Jain and Mr. Jehan Mehta i/b. PDS Legal, for the Petitioner.
Mr. J. F. Pochkhanwalla, Sr. Advocate with Ms. Oorja Dhond, Mr. S. K. Sonawane, for Respondent Nos., 2 and 3.
Mr. Sandeep Baber, AGP for Respondent-State.

CORAM: M.S.SANKLECHA, &
A.K.MENON, JJ.
DATE : 16th FEBRUARY, 2017.

P.C:-

The issue raised in both these Petitions is – whether an air-craft engine (part of the air-craft) when imported in the city of Mumbai to be fitted into an Aeroplane so as to enable the Aeroplane to fly out of Mumbai, would amount to 'use' of the air-craft engines for the levy of octroi under the Mumbai Municipal Corporation Act, 1888 (the Act) and the Octroi Rules, framed thereunder?

2 The Petitioner is engaged in the business of passenger transportation by air in domestic and international sectors from various airports in and out of India. The Petitioner's air-craft being VT-ITFMSN

6860 (Aeroplane) was grounded/ stalled at Mumbai Airport. The Aeroplane is registered by the Director General of Civil Aviation, as having its place of usual station at Delhi.

3 The Petitioner was advised that to make the grounded Aeroplane fit for flying, then its air-craft engine, would have to be replaced. Accordingly the Petitioner, imported an air-craft engine into Mumbai. On 28th January, 2017, the Petitioner addressed a letter to the Corporation, seeking grant of 'N' form facility in respect of air-craft engine which is to be imported for the purpose of fitting/ installing the same in the stalled Aeroplane. On 30th January, 2017, the Petitioner filed an application to the Deputy Assessor & Collector of the Corporation, for import of one air-craft engine for the purpose of immediate exportation to Gurgaon. The Municipal Officer, on the basis of the above declaration of the Petitioner in form 'N' Certificate, exempted the Petitioner from paying any octroi duty on the import of air-craft engines as it was for immediate exportation outside Mumbai.

4 Thereafter, Petitioner found that fitting of the air-craft engine into the Aeroplane did not enable the Aeroplane to fly. Thus, Petitioner was advised to import one more air-craft engine. The Petitioner sought exemption from octroi on the second air-craft engine also as it was not for use, consumption and/or sale within the city of Mumbai. However, Respondent-Corporation orally informed the Petitioner that no such facility could be extended to the second air-craft engine being imported. Further, by letter dated 10th February, 2017, the Corporation also withdrew the earlier 'N' form facility, granted to the Petitioner on 30th January, 2017 in respect of the earlier (first) import of air-craft engine.

5 It is the Petitioner's case that the issue of no octroi being leviable in respect of air-craft engines is now concluded in its favour. This in view of the decision of this Court in ***Jet Airways (India) Ltd.,Mumbai & Another v/s. Municipal Corporation of Greater Mumbai and Another 2012 SCC Online Bom. 487,*** besides also being covered by the various decisions of the Apex Court.

6 On the other hand, Respondent contends that the decision of this Court in Jet Airways (India) Ltd., (supra) may not apply to the facts of the present case in view of difference in facts.

7 We note that the Petitioner had addressed a communication dated 28th January, 2017, seeking 'N' form facility for import of air-craft engines for being fitted into its Aeroplane. However, in its 'N' form, the Petitioner had mentioned the import of the air-craft engine into Mumbai,was for immediate exportation to Gurgaon. Thus, the same was allowed by the Respondent-Corporation. It is the Respondent's case that on the basis of the aforesaid representation of immediate exportation that 'N' form facility was granted to first air-craft engine imported into Mumbai by the Petitioner.

8 It is contended by the Petitioner that notwithstanding the fact that the two air-craft engines are not being immediately exported but fitted into an Aeroplane for flying outside Mumbai, would not make any difference, as it is not for use within the limit of Mumbai within a determinate time. Thus, import of air-craft engine would not satisfy the test of using, selling and/or consuming air-craft engine within the limits of Mumbai Municipal Corporation.

9 This is an issue which would require factual determination, particularly with regard to '*use*' within Mumbai. This factual determination could be done by a Senior Officer of the Corporation under the Act. This decision by the Assessor and Collector, would be taken after considering the manner in which the imported air-craft engines are being used, if at all and thereafter the applicability of various decisions relied upon by the Petitioner, particularly, decision of this Court in Jet Airways (supra) and the appropriate classification of the air-craft engines for payment of octroi.

10 Mr. Pochkhanwalla, learned Senior Counsel appearing for the Corporation states that Mr. A. V. Bhangle, Deputy Assessor & Collector, Mumbai Municipal Corporation, would adjudicate the issue after granting a personal hearing to the Petitioner. The submission of the Petitioner on the above issue, would be disposed of by a speaking order, at an early date.

11 However, this process of considering the submission and passing the order may take some time. In the meantime, keeping the Aeroplane stalled/ idle at Mumbai Airport, would serve no purpose Therefore, in the present facts, it would be appropriate if the Corporation is secured to the full amount of octroi which may become due, if the Deputy Assessor & Collector Mumbai Municipal Corporation passes an adjudication order adverse to it, in respect of liability to octroi on the air-craft engine parts imported into Mumbai.

12 Mr. Pochkhanwalla, learned Senior Counsel appearing for the the Respondent-Corporation, on instruction, states that the amount, which according to the Corporation, would be payable by the Petitioner in

respect of two air-craft engines, would aggregate to a little over to Rs.8 Crores (approx). Therefore, if the Petitioner (as agreed between the parties), furnishes a bank guarantee of HDFC Bank, in a form containing terms and conditions to the satisfaction of the Respondent-Corporation, it would be accepted by the Respondent-Corporation.

13 Needless to state that on the Petitioner securing the Respondent-Corporation by furnishing a bank guarantee as stipulated herein above, the Petitioner would be entitled to fit the two air-craft engines into the Aeroplane and fly it out of Mumbai in the course of its business.

14 It is made clear that in case the order of the Deputy Assessor & Collector, Mumbai Municipal Corporation is adverse to the Petitioner, the bank guarantee will not be encashed for the period of three weeks from the date of the communication of the adjudication order passed by the Deputy Assessor & Collector, Mumbai Municipal Corporation.

15 Accordingly, both the **Petitions** are **disposed of** in the above terms. No order as to costs.

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