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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.11975 OF 2016

M/s. Rathod Jewellers ..Petitioner
Versus
The Commissioner, Pune Municipal
Corporation & Anr. ..Respondents

WITH
WRIT PETITION (L)NO.4619 OF 2016
WITH
WRIT PETITION (L)NO.4620 OF 2016
WITH
WRIT PETITION (L)NO.4625 OF 2016
WITH
WRIT PETITION (L)NO.4836 OF 2016
WITH
WRIT PETITION NO.5455 OF 2016
WITH
WRIT PETITION (L)NO.5956 OF 2016
WITH
WRIT PETITION NO.12075 OF 2016
WITH
WRIT PETITION NO.13774 OF 2016
WITH
WRIT PETITION NO.13775 OF 2016

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Mr. Prasad Dhakephalkar, Senior Advocate, a/w Mr. N. V. Tapare, Sandip Ghaterao i/b. S. S. Deshmukh for the Petitioner.
Mr. Abhijeet Kulkarni a/w Manoj Badgujar for the Respondent.

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

DATE : 2nd FEBRUARY, 2017

P.C.

1. By consent of the parties, the petitions are disposed of at the stage of admission.

2. All these petitions under Article 226 of the Constitution of India challenge demand notices issued by respondent no.1 Corporation under the Maharashtra Municipal Corporations (Local Body Tax) Rules (LBT Rules) framed under the Maharashtra Municipal Corporation Act, 1949 (MMCA).

3. It is an undisputed position between the parties that all the petitions are identical on facts and law (except dates). The only relevant dates having a bearing in all these petitions are the impugned demand notices of different dates as indicated in the following chart:-

Sr.No.	Name of the Petitioners	Date of Demand Notice
1	M/s. Rathod Jewellers WP/11975/2016	28/07/2015
2	Atul Shah (Chandukaka Saraf) WP/13774/2016	02/09/15
3	M/s. Vinayak Jewellers WPST/5254/2016	28/07/2015
4	M/s. Parag Y. Gadgil WPST/4625/2016	08/09/15
5	M/s. Vijayraj W. Ranka WPST/4836/2016	27/07/2015

6	M/s. Kawediya Jewellers WPST/4832/2016	27/07/2015
7	M/s. Choksi Pukhraj & Sons WPST/5956/2016	31/07/2015
8	M/s. Shripad S. Nagarkar WPST/4620/2016	27/07/2015
9	M/s.Ashtekar Brothers Jewellers WPST/4627/2016	30/07/2015
10	M/s. P.N. Gadgil Jewellers Pvt.Ltd. WPST/4619/2016	08/09/15

4. The grievance of the petitioner in all these petitions is that the impugned demand notices have not been preceded by any Assessment Order. Consequently, there is a breach of principles of natural justice inasmuch as the condition precedent to demand notices i.e. Assessment Orders have not been served upon the the petitioners. Therefore the petitioners are not only ignorant of the basis of the demand but are also unable to effectively challenge the basis of the demand notices before the appellate authorities.

5. It is an undisputed position before us that in all these petitions the Annual Returns in Form E-II for the period 2013-14 have been filed with the Corporation in accordance with Rule 29 (2)(b) of LBT Rules. Thereafter the notices of demand were issued to the petitioners under Rule 33(11) of the LBT Rules. These demand notices were not preceded

by any Assessment Order in Form I as required in terms of Rule 33 (9) and (11) of the LBT Rules.

6. It is submitted on behalf of the petitioners that the impugned demand notices be set aside as they are not preceded by Assessment Orders. Further the respondent-Corporation be directed to pass Assessment Order in accordance with law and only thereafter issue demand notices.

7. In ***Hariom Sarees Depot v/s. Commissioner, Ulhasnagar Municipal Corporation and others 2016 (3) Mh.L.J. 678*** one of us (A.K.Menon,J.) had occasion to consider similar challenge and it held that the demand notices in Form J have to be preceded by an order of assessment in Form I. Further it held that a demand notice in the absence of an order of assessment is not sustainable. The Corporation has not been able to show any distinguishing features in the present facts which would warrant a different view. Although in Hariom Sarees (supra) the petitioner had deposited the amount demanded on its own as it had filed an appeal before moving this Court in its writ jurisdiction. We don't think an order of pre-deposit is warranted in this case as no Assessment Order has been admittedly passed. Therefore we set aside all the demand notices in all

the petitions.

8. However it is clarified that in case the respondent Corporation decides to proceed against the petitioners in respect of the above dues, it would only be in accordance with Rule 33 of the LBT Rules which requires a notice and a personal hearing before passing an Assessment Order, in cases where the return as filed is not being accepted.

8. It is needless to state that the merits of the petitioners contentions have not been examined by this Court. The Assessing Officer would decide the local body tax due from the petitioners in accordance with law without in any manner being influenced by any observation in this order.

4. All the petitions are disposed of. No order as to costs.

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