

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.13074 OF 2016

M/s. Formertron Engg.(I) Pvt. Ltd. .. Petitioner
Vs
The State of Maharashtra and Others. .. Respondents

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Shri E.A. Sasi for the Petitioner.
Shri Manish M. Pabale, AGP for the Respondent Nos.1 to 4.
Shri Ankit Kulkarni i/b Little & Co for the Respondent Nos.5 and 6.
Shri Sandeep V. Marne for the Respondent Nos.7 to 10.
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CORAM : A.S. OKA &
SMT. VIBHA KANKANWADI, JJ

DATED : 24TH JULY 2017

PC.

1. Rule. The Advocate for the seventh to tenth Respondents waives service. The learned AGP waives service for the first to fourth Respondents. Service of notice to other Respondents is not necessary as the prayer made in this Petition has been confined to Prayer Clause (a) as noted in the order dated 1st July 2017.

2. In the Prayer Clause (a), the only challenge is to the notice of attachment dated 30th May 2016 which is Exhibit-E to the Petition. By the said notice of attachment, a Cash Credit Account of the Petitioner with the Bank of Baroda, Bandra East Branch has been attached by the

Cess Officer, Navi Mumbai Municipal Corporation for non payment of outstanding amount of cess as well as penalty and interest. The learned counsel appearing for the Petitioner relies upon a Judgment and Order of the Division Bench of this Court dated 8th July 2010 in Writ Petition No.4313 of 2008 (**M/s.Sargam Foods Pvt. Ltd and another v. State of Maharashtra and others**). A Division Bench of this Court, while dealing with the similar action of the said Municipal Corporation of attaching the Cash Credit Account/Overdraft Facility, held that the Municipal Corporation has no legal authority to attach such Cash Credit Account on the ground that the un-utilized overdraft account does not render the banker a debtor in any sense and the banker is, therefore, not a person from whom money is due to the customer.

3. As of today, the decision in the case of **M/s.Sargam Foods Pvt. Ltd.** has attained finality and, therefore, the same binds this Court.

4. On the aforesaid ground, the Petition must succeed and we pass the following order:-

ORDER :

- (a) The impugned notice dated 30th May 2016 (Exhibit-E to the Petition) is quashed and aside;

- (b) We have not made any adjudication on the issue of liability of the Petitioner to pay cess and other dues. The Municipal Corporation, notwithstanding the setting aside of the impugned notice, can always take steps to recover the amount payable by the Petitioner in accordance with law;
- (c) If the Petitioner is a member of the Small Scale Entrepreneurs Association- TTC, while taking action, the Navi Mumbai Municipal Corporation will have to consider the effect of the order dated 6th February 2017 in the Petition for Special Leave to Appeal Nos.2552-2557 of 2017;
- (d) Rule is made partly absolute on above terms;
- (e) The Navi Mumbai Municipal Corporation shall issue a necessary communication to the concerned Branch of Bank of Baroda informing the said Branch about the withdrawal of attachment.