

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

WRIT PETITION NO.9569 OF 2018

1. Reliance Communications Ltd.)

A company incorporated under the provisions)

of Companies Act, 1956 and having its)

Registered Office at 'H'-Block, First Floor,)

Dhirubhai Ambani Knowledge City,)

Kopar Khairane, Navi Mumbai- 400 710.)

2. Reliance Infratel Ltd.)

A company incorporated under the provisions)

of Companies Act, 1956 and having its)

Registered Office at 'H'-Block, First Floor,)

Dhirubhai Ambani Knowledge City,)

Kopar Khairane, Navi Mumbai- 400 710.)

3. Suchitra Maharana)

Indian Inhabitant,)

Second Floor, Reliance Center,)

Off. Western Express Highway, Mumbai.) .. Petitioners

Versus

1. Thane Municipal Corporation)

a Body Corporate, constituted under the)

provisions of the Maharashtra Provincial)

Municipal Corporation Act, 1949,)
 having its office at Mahapalika Bhavan,)
 Dr.Almeida Road, Chandanwadi,)
 Panchpakhadi, Thane - 400 062.)

2. The Assessor And Collector of Taxes)
 Assessment & Collection Department)
 Thane Municipal Corporation)
 having its office at Mahapalika Bhavan,)
 Dr.Almeida Road, Chandanwadi,)
 Panchpakhadi, Thane - 400 062.)

.. Respondents

Mr.Sarosh Bharucha a/w Mr.Shrey Fatterpekar & Mr.Paresh Patkar i/by
 Mulla and Mulla and Craigie Blunt and Caroe for the petitioners.
 Mr.N. R. Bubna for the respondent no.1.

CORAM : R.D. DHANUKA, J.

DATE : 28th August 2018

Judgment :-

. By this petition filed under Article 227 of the Constitution of India, the petitioners have impugned the order dated 6th September 2017 passed by the learned Civil Judge, Senior Division, Thane rejecting the application filed by the petitioners herein for waiver of condition of deposit of disputed tax amount under Section 406(2)(e) of the Maharashtra Municipal Corporation Act, 1949 (for short “the said Act”).

2. A short question that arises in this writ petition is whether the petitioners are required to deposit penalty as well as interest also along with the property tax as per demand as a condition precedent for entertaining the appeal filed by an assessee under Section 406 (2)(e) of the said Act or not. The relevant portion of Section 406 of the said Act reads as under :-

“406. Appeals when and to whom to lie.

(1) Subject to the provisions hereinafter contained, appeals against any reteable value 3[or the capital value, as the case may be,] or tax fixed or charged under this Act shall be heard and determined by the Judge.

(2) No such appeal [shall be entertained] unless—

(a) it is brought within fifteen days after the accrual of the cause of complaint ;

(b) in the case of an appeal against a reteable value [or the capital value, as the case may be,] a complaint has previously been made to the Commissioner as provided under this Act and such complaint has been disposed of ;

(c) in the case of an appeal against any tax [including interest and penalty imposed] in respect of which provision exists under this Act for a complaint to be made to the Commissioner against the demand, such complaint has previously been made and disposed of ;

(d) in the case of an appeal against any amendment made in the assessment book for property taxes during the official year, a complaint has been made by the person aggrieved within [twenty-

one days] after the first received notice of such amendment and his complaint has been disposed of ;

(e) in the case of an appeal against a tax, or in the case of an appeal made against a rateable value [or the capital value, as the case may be] [the amount of the disputed tax claimed from the appellant, or the amount of the tax chargeable on the basis of the dispute reteable value up to the date of filing the appeal, has been deposited by the appellant with the Commissioner].

3. The petitioners provide various telecommunication services including National Long Distance services, International Long Distance services, Internet services on all India basis. The respondent no.1 Corporation is constituted under the provisions of the said Act for the purpose of carrying out the provisions of the said Act. The respondent no.1 had issued a property tax bill dated 30th April 2015 for the bill period 1st April 2016 to 31st March 2017 demanding various amounts including the amount towards penalty under Section 267A of the said Act. The petitioners filed a writ petition in this Court. The respondent no.1 had issued a demand notice dated 6th January 2017 seeking to recover the amount of Rs.21.72 crores from the petitioners. The petitioners challenged the said demand notice dated 6th January 2017 by filing a writ petition bearing No.1636 of 2017 in this Court. The said bill include the demand for penalty and interest also.

4. By an order dated 23rd February 2017, this Court dismissed the said writ petition on the ground that there was an efficacious alternate remedy by way of statutory appeal provided under Section 406 of the said Act. The petitioners thereafter preferred 80 appeals impugning the said assessment bill and the notice of demand. The petitioners also filed an appeal on 29th March 2017 and also filed an application for waiver of the pre-condition of deposit of the disputed tax amount for the duration 1st April 2016 till 31st March 2017 under Section 406(2) (e) of the said Act. The said application was opposed by the respondent no.1 by filing an affidavit-in-reply on 31st July 2017. On 6th September 2017, the learned Civil Judge, Senior Division, Thane rejected the said application below Exhibit-09 filed by the petitioners for seeking waiver of pre-condition of deposit of the disputed tax amount on the ground that pre-condition deposit cannot be waived. The petitioners challenged the said order dated 6th September 2017 by filing this writ petition under Article 227 of the Constitution of India.

5. Mr.Bharucha, learned counsel for the petitioners invited my attention to the provisions of Section 406(2)(c) and 406(2)(e) of the said Act. He also strongly placed reliance on the judgment of the learned Single Judge of this Court in the case of ***C.G. International Pvt. Ltd.***

Vs. State of Maharashtra & Ors., 2010 (2) Mh.L.J. 693 and in particular paragraphs 7 to 22 thereof.

6. It is submitted by the learned counsel that the learned Single Judge of this Court has held that the concept of tax, interest and penalty is different. He submits that though there was an amendment to Section 406(2)(c) with effect from 3rd October 2008 and by the said amendment, the words “including interest and penalty imposed” were inserted in Section 406(2)(c) of the said Act, there was no corresponding amendment to Section 406(2)(c), in so far as the amount of deposit is concerned. He submits that after considering the said amendment, the learned Single Judge of this Court in the said judgment in the case of ***C.G. International Pvt. Ltd. (supra)*** has held that the assessee was not required to deposit interest and penalty under Section 406(2)(e) along with property tax of the said Act.

7. Learned counsel for the petitioners fairly invited my attention to the judgment of Division Bench of this Court in the case of ***Chennai Network Infrastructure Ltd. & Anr. Vs. Kalyan Dombivli Municipal Corporation, 2017 (3) Mh.L.J. 874*** and in particular paragraphs 11 and 12 thereof. He submits that though the Division Bench

of this Court has held that any interest or penalty charged is included in the expression “tax” used in Section 406(1) and is appealable as such, the said judgment is clearly distinguishable in the facts of this case in view of the fact that the Division Bench of this Court has not considered whether an assessee is required to deposit any amount of penalty and interest while challenging such demand by filing an appeal.

8. Mr.Bubna, learned counsel for the respondent no.1, on the other hand, submits that the Division Bench of this Court in the case of ***Chennai Network Infrastructure Ltd. & Anr. (supra)*** has on interpretation of Section 406 of the said Act in toto has laid down a law that interest or penalty charged is included in the expression “tax.” He submits that thus when an appeal is preferred against the levy of property tax including the penalty and interest, pre-condition of deposit under Section 406(2)(e) would apply to the entire components of tax inclusive of penalty and interest and not only property tax.

REASONS AND CONCLUSIONS :-

9. There is no dispute that the respondent no.1 has raised a demand for payment of municipal taxes and also the penalty and interest

upon the petitioners herein. It is also not in dispute that the petitioners herein had filed 80 appeals challenging the demand for property taxes along with penalty and interest in the appeal preferred under Section 406 of the said Act before the trial Court.

10. Supreme Court in the case of ***Gujrat Agro Industries Co. Ltd. Vs. Municipal Corporation of City of Ahmedabad & Ors., (1999) 4 SCC 468*** has observed that the right to appeal is neither an absolute right nor an ingredient of natural justice the principles of which must be followed in all judicial and quasi judicial adjudications. The right to appeal is statutory right and it can be circumscribed by the condition in the grant. The Hon'ble Supreme Court while dealing with the constitutional validity of Section 406(2)(e) of the said Act has held that the said provision did not violate Article 14 of the Constitution of India. This Court in the case of ***M/s.Elora Construction Co. Vs. the Municipal Corporation of Greater Bombay and Ors., AIR 1980 Bom 162*** while dealing with constitutional validity of Section 217 of the BMC Act which provision is in pari materia with Section 406(2)(e) of the said Act has upheld the validity of the said provision of Section 217 and requirement of pre-deposit of the disputed tax for entertainment of the appeal.

11. A learned Single Judge of this Court in the case of **C.G. International Pvt. Ltd. (supra)** and more particularly in paragraph 17 thereof has held that the tax, interest and penalty are three different concepts. Learned Single Judge has considered the amendment to Section 406(2) (c) of the said Act by Maharashtra Act No.IV of 2009 with effect from 3rd October 2008 thereby inserting the words “including interest and penalty imposed” in clause (c) of sub-section (2) of Section 406 of the said Act. Learned Single Judge has held that though there was an amendment to Section 406 (2)(c) by inserting the words “including interest and penalty imposed,” there is no corresponding amendment to clause (e) of sub-section (2) of Section 406 of the Act and thus the assessee was not liable to deposit the interest and penalty.

12. Division Bench of this Court however while interpreting Section 406(2) read with Sections 128A, 129 and Section 267A of the said Act in a later judgment i.e. in the case of **Chennai Network Infrastructure Ltd. & Anr. (supra)** has held that Sections 128A and 129 provide for property taxes on structures within the city, which are legally erected, whereas Section 267A provides for penalty on structures within the city which are unauthorisedly erected. Both are compulsory exactions. It is held by the Division Bench that if the argument of the assessee is

accepted, the Court would have to come to a startling conclusion that though for determination and collection under the Act, there is no difference between 'tax' under Sections 128A and 129, and 'penalty' under Section 267A, such determination and collection are subject to appeal in the case of tax under Sections 128A and 129 but not in the case of penalty under Section 267A. Division Bench has accordingly held that the intention of legislature to treat the penalty as tax for the purposes of Section 406 and make any fixation or charge of penalty appealable. Division Bench in the said judgment has held that interest or penalty charged under the Act, by definition, comes within the expression 'tax' used in sub-section (1) of Section 406. Appeals merely lie against the matters provided in sub-section (1) which include 'tax.' Division Bench has accordingly held that the interest or penalty charged is included in the expression 'tax' used in Section 406(1) and is appealable. In my view, Section 406(2)(c) has to be read with Section 406(2)(e) which provides for deposit of disputed tax amount as a condition precedent for entertaining the appeal under Section 406 (1) is appealable.

13. I am thus not inclined to accept the submission of Mr.Bharucha, learned counsel for the petitioners that though the appeal can be preferred against the penalty as well as interest under Section 406

(1), pre-condition of mandatory deposit under Section 406(2)(e) would not include the expression “penalty or shasti” for the purpose of pre-condition of deposit of such disputed amount while entertaining the appeal under Section 406(1) of the Act. The judgment of the Division Bench of this Court in the case of ***Chennai Network Infrastructure Ltd. & Anr. (supra)*** would squarely apply to the facts of this case.

14. A perusal of Section 406 of the said Act clearly provides that the said provision provides not only for remedy of an appeal against any rateable value or tax fixed or charged under the said Act including interest and penalty imposed in respect of which the provision exists under the said Act and also provides for a procedure and mandatory condition for entertaining such appeal provided under Section 406(1) of the said Act. The remedy of appeal provided under Section 406(1) is not absolute but is subject to certain conditions prescribed in Section 406(2)(a) to 406(2)(e) of the said Act. It is not in dispute that the words “including interest and penalty imposed” were inserted in Section 406(2)(c) of the said Act by Maharashtra Act, 2008 with effect from 3rd October 2008. As a result of the said amendment, remedy of an appeal also is provided against a demand of payment of interest and penalty in

addition to the tax and thus the expression “interest and penalty” has been included in the said provision.

15. In so far as Section 406 (2)(e) of the said Act is concerned, the said provision provides for pre-condition of deposit for entertaining such appeal provided under Section 406(1) of the said Act. In my view, the said Section 406(2)(c) which is a condition for entertaining the appeal provided under Section 406(1) upon deposit of the demanded amount has to be read with Section 406(1) of the said Act. The said provision is a composite provision i.e. providing a remedy of appeal, mode and manner of filing that appeal and the condition imposed for entertaining such appeal and thus in my view, Section 406(2)(e) cannot be read in isolation and cannot be segregated with the earlier sub-section of the said Section 406 forming part of the said provision.

16. If the argument of Mr.Bharucha, learned counsel for the petitioners is accepted that the expression “penalty and interest” has to be read in Section 406(2)(c) of the Act only for the purpose of entertaining the appeal and not for deposit under Section 406(2)(e) though an appeal is provided for the purpose of entertaining the dispute not only in respect of the tax but also the penalty and interest, it would make the provision

of Section 406(2)(e) redundant and unworkable. The learned Single Judge of this Court while deciding the case of ***C.G. International Pvt. Ltd. (supra)*** did not have the benefit of the judgment of the Division Bench of this Court in the case of ***Chennai Network Infrastructure Ltd. & Anr. (supra)***. In my view, the petitioners are thus liable to deposit as a condition precedent under Section 406(2)(e) of the said Act the amount as demanded as property tax, penalty, interest or shasti and not only the property tax. I do not find any infirmity in the impugned order dated 6th September 2017 passed by the Civil Judge, Senior Division, Thane. The petition is devoid of merit and is accordingly dismissed. No order as to costs. Parties to act on the authenticated copy of this order.

R.D. DHANUKA, J.