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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.2118 OF 2015

Svizera Labs Pvt.Ltd. ...Petitioner
vs.
The State of Maharashtra & Anr. ...Respondents

Mr.Ashok Singh for the Petitioner
Ms R.A.Salunkhe, AGP for the respondent No.1
Mr.Sandip Ghalekar i/b Mr.N.V.Tapare for respondent No.2

CORAM : A.S.OKA, &
P.N.DESHMUKH, JJ.
DATE : FEBRUARY 20, 2018

P.C.:

1 The challenge is to the assessment of cess payable by the petitioner made by the Navi Mumbai Municipal Corporation. It is not in dispute that against the order of assessment of cess, an appeal under section 406 of the Maharashtra Municipal Corporations Act,1949 (for short `the said Act of 1949') is available.

2 The submission of the learned counsel for the petitioner is that the impugned order of assessment is illegal and irrational and therefore, a writ Court notwithstanding the availability of remedy of appeal can entertain a writ petition. He invited our attention to several documents on record including the letters dated 27th January 2014 and 30th June 2014. He also invited our attention to the

letter dated 5th December 2013. These are the letters addressed by the petitioner to the Officers of the Municipal Corporation.

3 We have perused the impugned order of assessment passed by the Assessment Officer of the Municipal Corporation. The order notes at two places that the petitioner did not produce its books of accounts for inspection and verification. Reliance is placed on the letter dated 10th December 2013 by which the petitioner was called upon to produce the books of accounts for verification. It is recorded in the order that though the petitioner was called upon on 16th December 2013 to do so, the petitioner did not produce the books of accounts. In fact, the Best Judgment Proposal dated 28th November 2013 addressed by the Assessment Officer of the Municipal Corporation to the petitioner (Exhibit G to the petition) specifically makes a grievance that the petitioner has not produced books of accounts for verification.

4 The three letters on which reliance is placed by the petitioner (5th December 2013, 27th January 2014 and 30th June 2014) do not state that the books of accounts were produced for verification.

5 The contention of the petitioner is that it had produced the books of account for verification. Prima face, there is no material on record to show that the books of accounts were produced for verification. In any case, if the petitioner desires

to establish that he had produced the books of accounts for verification, it is a matter of evidence which can be adduced by adopting the remedy provided under section 406 of the said Act of 1949. Apart from the dispute regarding making available the books of accounts for verification, there are other disputed questions of fact.

6 Therefore, we decline to entertain this petition under Article 226 of the Constitution of India on the ground of availability of an efficacious remedy under section 406 of the said Act of 1949. Accordingly, writ petition is rejected. The remedy of the petitioner is kept open. If an appeal is preferred by the petitioner, the Appellate Authority is bound to take a note that this petition was filed in this Court on 16th September 2015 and the same remained pending in this Court till today.

(P.N.DESHMUKH,J.) (A.S.OKA,J.)