IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 3858 OF 2007

Hadapsar Industries Association
through its Chairman Mr. K.V. Kothari ... Petitioner.
V/s.
The State of Maharashtra and ors. ... Respondents.

Mr. S.R. Nargolkar I/b Mr. Aumkar Joshi for the Petitioner.
Mr. A.I. Patel, AGP for the Respondents – State.

CORAM : R. M. BORDE AND
PUSHPA V. GANEDIWALA, JJ.
DATE : 20th FEBRUARY 2019.

ORAL JUDGMENT (PER R.M. BORDE, J):

1] Heard.

2] The petitioner/members of the Association are objecting to the demand notices claiming additional N.A. Assessment dues issued by the revenue authorities. According to the petitioner/members of the Association, the demand has been issued without extending any opportunity of hearing to the petitioner/members of the Association.

3] The petitioner/members of the Association contend that the members are regular in paying N.A. Assessment dues. The recovery of dues is claimed for the period of 30 years, i.e., from 1971 to 2001, which according to the petitioner/members of the Association is not permissible, firstly after lapse of 35 years and secondly in view of provisions of sub-section (2) of Section 113 of the Maharashtra Land Revenue Code, 1966 (for short "***said Code***"), the period covered under demand is a guaranteed period and proviso to sub-section (2) of Section 113 of the said Code and as such no revision in respect of N.A. Assessment is permissible.

4] The petitioner/members of the Association contend that in view of sub-section (2) of Section 113 of the said Code, the standard rate of non-agricultural assessment shall remain in force for a period of five years and shall then be liable to be revised in accordance with the provisions of Chapter - VII. In view of proviso to sub-section (2) of Section 113 of the said Code, the first such guaranteed period shall commence on the first day of August, 1979 and shall expire on the 31st day of the July, 1991. The petitioner/members of the Association contend that the revised demand is for a period 1971 to 2001 is impermissible in view of the sub-section (2) of Section 113 of said Code.

5] Sub-section (2A) of Section 113 of the said Code reads thus:

> *"(2A) Where the standard rate of non-agricultural assessment in any block in any urban area has been fixed or revised before (the 1st day of August, 1979, such standard rate shall be deemed to be due for revision at any time on and after the 1st day of August, 1979; and then such standard rate if so revised shall be deemed to have come into force with effect from the 1st day of August, 1979 on which date the first guaranteed period commenced and would remain in force up to 31st July 1991 and would then be subject to further revision under sub-section (2B), from time to time]"*

6] The petitioner/members of the Association contend that had it been extended an opportunity of hearing, it could have been pointed out to the authorities that the demand claimed by the respondent – revenue authorities from the petitioner/members of the Association is not sustainable in law.

7] The second ground raised by the petitioner is that the revenue authorities have claimed the revised N.A. Assessment solely on the basis of certain objections raised by the Auditor General of Nagpur in the Audit Report for a period between 1971 and 2001.

8] In this context, the explanation tendered in affidavit in reply by one Astha Luthra, functioning as Senior Deputy Accountant General/ Admn. in the office of Accountant General (Audit) - II, Maharashtra, Nagpur presented in Writ Petition No. 720 of 2017 is relevant. In paragraph Nos. 2 to 8 it is recorded thus :

> *"2. At the outset I submit that the Office of the Accountant General (Audit) – II, Maharashtra, Nagpur, conducts the audit of the accounts of the State Government of Maharashtra for and on behalf of the Comptroller and Auditor General of India (hereinafter referred to as CAG for short), an independent constitutioinal authority, under the provisions of Article 148 to 151 of the Constitution of India and the CAG's (Duties Powers and Conditions of Service) Act, 1971.*
>
> *3. I say that the audit report of CAG relates to matters arising from performance audit of selected programmes and activities and compliance audit of Govt. Departments. The compliance audit refers to examination of transactions relating to expenditure and revenue receipts of the audited entities to ascertain whether the provisions of the Constitution of India, applicable laws, Rules, Regulations and various orders and instructions issued by competent authorities are being complied with whereas Performance Audit examines whether the objective of an organization, programme or a scheme have been achieved economically, efficiently and effectively.*
>
> *4. In Compliance Audit, initially the Audit Party test checks the records/ documetns etc. of the auditee units and brings out the irregularities noticed during such test checks to the notice of the Head of the Auditee Unit for examination and reply. In case reply of the Head of the Unit is convincing, the audit objection is settled on the spot. The irregularities which*

cannot be settled based on the replies of the Head of the Auditee Unit are included in the Inspection Report incorporating the views of the Head of Auditee Unit are included in the Inspection Report incorporating the views of the Head of Auditee Unit to be issued by the O/o. Accountant General (Audit) – II, Maharashtra, Nagpur to the Head of Auditee Unit as well as its higher authorities for examination and reply.

5. Major Irregularities in the form of audit objections in the Inspection Report, which are not settled due to replies of the executives bearing unconvincing or there being no reply are again brought to the notice of the highest authority of the State Government in the form of Draft Paragraph for examination.

6. Such Draft Paragraphs and replies of the State Government thereto are considered by the Office of the CAG and are included in the Audit Report to be submitted to the Governor of Maharashtra for laying before the State Legislature in accordance with the provisions of Article 151 of the Constitution of India after approval by the CAG.

7. In performance Audit, the irregularities noticed by Audit party are brought to the notice of head of auditee units for examination and reply. In case reply of the Head of the Unit is convincing , the audit objection is settled on the spot. The irregularities which cannot be settled based on the replies of the Head of the Auditee Unit are included in the Draft Performance Audit Report, incorporating the views of the Head of Auditee Unit is issued by the Audit to the concerned Ministry of Government for comments/ compliance. On receipt of Ministry's comments the objection are included in the Audit Report of the C & A.G. of India to be submitted to the Governor of the State for laying before the State Legislature, in case the reply of Ministry is not convincing or no reply is received from the Ministry.

8. Audit Paragraph from the Audit Reports of the CAG are examines by the Public Committee, a Parliamentary Committee constituted by the State Legislature in accordance with the provisions of the Rules of Procedures and Conduct of Business in State Assembly. Accordingly, the CAG of India presents the Audit Report to the Governor of State which is laid before the State Legislature."

9] On consideration of the procedure and the purpose of conducting the audit by the Accountant General in respect of the Government Accounts, the Petitioner would be justified in contending that mere raising of objections by the Auditor in the Audit Report/ Inspection Report itself shall not form the basis for recovery of the amount. The concerned authorities have to independently apply mind and arrive at appropriate decision as regards the admissibility of claim of amount towards the revenue recovery.

10] For the reasons recorded aforesaid, the revenue authorities ought not to have raised the demand without extending an opportunity of hearing to the petitioner/members of the Association and ought not to have branded it as a defaulter. In this view of the matter, the demand notices issued to the petitioner / members of the Association impugned in this petition shall not be enforced and are accordingly quashed. If the concerned revenue authorities deemed it appropriate, they may issue fresh notices raising the demand and extend an opportunity of hearing to the petitioner/members of the Association to place it's contention before them prior to arriving any final decision. The decision arrived at by the concerned revenue authorities shall be communicated to the petitioner/members of the Association and it would be open for the petitioner/members of the Association to take steps in respect of such order as permissible in law. The determination of issue of demand shall be dealt with by an Officer not below the rank of Dy. Collector.

11] Rule is accordingly made absolute. There shall be no order as to costs.

(PUSHPA V. GANEDIWALA, J.) **(R. M. BORDE, J.)**