IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.8299 OF 2019

Pernod Ricard India Pvt. Ltd. .... Petitioner
Vs.
State of Maharashtra & Others .... Respondents

Mr. Puneet Agrawal with Ms Nikita Hinger for the Petitioner.
Mr. Vikas M. Mali, AGP, for Respondent No.1-State.
Mr. Abhijit M. Adagule for Respondent Nos.2 & 3.

CORAM: S.C. DHARMADHIKARI &
SANDEEP K. SHINDE, JJ.

DATE : JULY 31, 2019

P.C:

1. In this writ petition, the petitioner submits that the petitioner should not be relegated to the alternate remedy because it is inefficacious and in any event there is no bar to entertaining a petition under Article 226 of the Constitution of India merely because there is an alternate and equally efficacious remedy available to the petitioner/assessee. This is more a rule of prudence rather than absolute bar. It is only a

matter of caution but the plenary jurisdiction of this Court, under Article 226 of the Constitution of India, is not ousted. We are unable to accept this contention for more than one reason. The five official years from 2011-12 to 31-3-2016 resulted in five Demand Notices and five Assessment Orders passed on 28-3-2019. These Orders were passed by the Additional Commissioner, Kolhapur Municipal Corporation under Rule 33(9) of The Maharashtra Municipal Corporations (Local Body Tax) Rules, 2010. It is stated that the Assessment Orders were passed without issuance of the statutory jurisdictional Notice in Form-H as mandated by sub-rule (7) of Rule 33 of the above Rules. No hearing was conducted by the Assessing Authority and the assessment proceedings were held before a firm of private Chartered Accountants to whom the assessment function has been outsourced by the Kolhapur Municipal Corporation. The petitioner objected to this course.

2. Then it is claimed that for the Financial Years 2013-14 to 2015-16, no notification has been issued by the State Government, as mandated by Section 99B of The Maharashtra

Municipal Corporations Act, 1949. Thus, the rate of Local Body Tax ("**LBT**") for the aforesaid period has not been fixed. Absent such fixing of rates, the Kolhapur Municipal Corporation had no power or authority to charge the LBT. It is in these circumstances that the counsel would submit that issues going to the root of the claim are raised in this petition. It is a challenge to the *vires* of the levy and that cannot be decided in the alternate remedy by way of an Appeal.

3. To our mind, there is no substance in this contention. The grievance of the petitioner, as crystallised in the writ petition itself, is that it is manufacturing Indian made foreign liquor and for that purpose it imports certain goods from Goa, which is manufactured at its factory at Bicholim in Goa. The stock transfer of those goods from Goa is made based on payment of export fee to the State of Goa. The further grievance is that, the impugned order is wholly unconstitutional and violative of Article 243X r/w Article 243P(e) of the Constitution of India and which provides that the Legislature of the State may, by law, authorise a Municipality or a Municipal

Corporation to levy and collect tax in accordance with the procedure as may be specified in law. *Prima facie*, there is a difference between the issue of *vires* as projected by the counsel and as pleaded in the writ petition. That there was no notification fixing the rates issued by the State Government and therefore there was no authority to tax, is the real complaint and grievance. We do not see how that cannot be raised as a ground in Appeal. If there is indeed no notification, then appropriate relief will be granted if the arguments of the petitioner are accepted and based on this ground. If there is indeed an authority to levy a tax and recover it, then, the ground would obviously fail. In any event, even if the levy is upheld, the recovery of interest is not permitted and in that regard Rule 48 of the LBT Rules has been referred. Even that argument can be canvassed in the plea that may be raised in the grounds of appeal. To our mind, therefore, this writ petition is no different than the companion one (Civil Writ Petition No.5204 of 2019) which we have dismissed today on the ground that the petitioner has an alternate, efficacious remedy by way of an appeal. To our mind, no different view needs to be taken in this case for the challenge is identical and if one goes by the prayer, it is indeed an Assessment Order.

4. The counsel relies upon a Judgment of the Hon'ble Supreme Court reported in AIR 1969 SC 556 (**Baburam Prakash Chandra Maheshwari v. Antarim Zila Parishad now Zila Parishad, Muzaffarnagar**).

5. The argument on behalf of the Khandsari sugar manufacturer was that this was a seasonal manufacturing activity and it was carried on at two places in the District of Muzaffarnagar for less than five months in a year. The U.P. District Boards Act 10 of 1922 empowered the District Board of Muzaffarnagar to levy tax under Sections 108 and 114 in the rural areas. There, the attention of the Supreme Court was invited to Section 114 and thereafter to Section 123. The Rules which were notified by the State of U.P. under Section 123 of that Act on 1-3-1928 provided, among other matters, that all the activities of as assessee within the District, whether carried on

under the same or different name, shall be considered in calculating the total amount to be assessed, and the tax shall be assessed by an Assessing Officer appointed by the District Board and there were other conditions also imposed before the assessment was finalised that, *inter alia,* included filing objections by the assessee. The argument was that, after the U.P. Antarim Zila Parishad Act was passed by the U.P. Legislature, it was deemed to have come into force on 29-4-1958, and expired on 31-12-1959. Thereafter, there was an Amending Act. The Assessment Order was passed and by an officer purporting to act as Taxing Officer of the Antarim Zila Parishad. Aggrieved, the authority of the respondent/Antarim Zila Parishad to impose the tax was challenged. The writ petition was dismissed on a preliminary ground. There the argument was that, during the pendency of this Special Appeal No.452 of 1960, against the order of the learned single Judge dismissing the writ petition, another new Act was passed by the U.P. Legislature which received the assent of the President of India on 29-11-1961. The case of the appellant was that, on 15-1-1962, without giving any notice or inviting any objections, the Taxing Officer passed the Assessment Order for 1961-62 in respect of the circumstances and property tax regarding one unit. That resulted in a writ petition being filed under Article 226 of the Constitution of India, which was again dismissed. The Special Appeal was also dismissed by the Division Bench. It is in these circumstances that the Court was called upon to deal with the preliminary objection. The Hon'ble Supreme Court reiterated the legal principle that availability of alternate, equally efficacious remedy does not constitute an absolute bar to entertaining a writ petition under Article 226 of the Constitution of India. That is more a rule of caution and prudence rather than a prohibition or bar. The Court found that if the proceedings are taken before a Tribunal under a provision of law which is *ultra vires*, it is open to the party aggrieved thereby to move the High Court under Article 226 for issuing appropriate writs for quashing the proceedings and they should not be allowed to run their full course. Secondly, in the absence of the principles of natural justice being followed, a writ petition can be entertained.

6. In that case, there was a specific challenge raised because after an initial enactment a latter statute intervened. The latter statute was resorted to, to frame an assessment but it was found that the ground was that the Taxing Officer had no authority to impose the tax as there was no validly constituted Antarim Zila Parishad after 31-12-1959. The argument that Sections 114 and 124 of the U.P. District Boards Act 10 of 1922 violated Article 14 of the Constitution, was also raised.

7. Thus, the argument was that the creature of the statute, which was itself challenged as *ultra vires,* could not have framed an assessment. That authority lacked the inherent jurisdiction. If the statute itself is challenged as *ultra vires*, then the authority thereunder and in-charge of levying, assessing and recovering taxes could not *prima facie* have the power/authority to proceed and assess the tax.

8. This decision is distinguishable on facts for we do not think that the LBT Act has been challenged. The validity of

that Act has been upheld. The argument is that the statutory prerequisites for charging the tax are not fulfilled or satisfied and therefore the levy is illegal. To our mind, this argument can be raised in Appeal and there is no embargo in that being considered by the Appellate Authority which is, as held above, fully empowered by law, as a pre-established and pre-existing Court, to entertain it.

9. In the circumstances afore-stated, this writ petition is dismissed for want of jurisdiction as the petitioner has alternate and equally efficacious remedy to challenge the levy.

(SANDEEP K. SHINDE, J.) (S.C. DHARMADHIKARI, J.)