IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.11134 OF 2014

Tech Mahindra Ltd.	**...**	**Petitioner**
Versus		
State of Maharashtra and Ors.	**...**	**Respondents**

Dr.Birendra Saraf, Senior Counsel a/w Mr.Vaibhav S. Charalwar and Ms.Chaya Asher i/b M/S K.Ashar & Co. for the Petitioner.

Mrs.Ashwini A. Purav, AGP for State-Respondent No.1.

Mr.A.P. Kulkarni a/w Mr.A.R.Nandu for Respondent Nos.2 to 4.

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

DATE :- AUGUST 01, 2019

P.C. :-

1. By this writ petition under Article 226 of the Constitution of India, the petitioner-Tech Mahindra Limited has impleaded the State of Maharashtra, Joint Commissioner of Local Body Tax, Pune Municipal Corporation together with the Commissioner, Pune Municipal Corporation as party respondents for the simple reason that the petitioner is primarily engaged in providing information technology services to clients located in India and abroad. The petitioner has been visited with a demand notice bearing No.1197 issued by the third respondent, *inter alia*, levying a penalty of Rs.48,75,767/- and seeking to recover the same coercively.

2. The grievance is that local body tax was imposed. That is imposed by the local civic bodies in India on goods imported into a local area for consumption, use and sale therein. That tax has to be paid in accordance with the rules and regulations framed by the respective State Governments and it superseded the octroi and cess. In 2013, the first respondent imposed this tax in place of octroi and cess with effect from 1st April, 2013. It was imposed within the municipal limits of Pune as well.

3. The further grievance of the petitioner before us is that the representatives of the Corporation visited the premises and directed production of record. The petitioner pointed out that the demand of tax is also satisfied and demand drafts of 10th March, 2014 as part-payment were forwarded. Then, the records were also forwarded so as to satisfy the authorities about the recovery and payment of taxes. The shortfall was made good by making part payment of tax alongwith interest. Thus, the tax liability for the financial year in question 2013-14 was, according to the petitioner, satisfied in toto.

4. However, a notice of demand dated 2nd July, 2014 bearing the aforestated number was issued and in that, demand of penalty was made.

5. It is the case of the petitioner that it has fully satisfied this levy. The petitioner has preferred an appeal and that appeal is pending before the competent court. The petitioner was called upon to pay, as pre-deposit, the penalty amount in terms of the demand notice.

6. According to the petitioner before us, the appeal should have been heard so as to justify the demand of tax and penalty. If the tax liability had indeed been satisfied in toto, then, there is no question of levy of penalty.

7. In any event, the argument before us and canvassed by Mr.Saraf, learned counsel appearing for the petitioner is that there is no warrant for insisting on pre-deposit of penalty. Such a pre-deposit must be mandated by the legal provision under which the appeal is provided. In any event, if the appeal can be filed against the demand, then, during the pendency of the appeal, the pre-deposit could not have been insisted. If indeed there is no appeal provided against the demand of penalty, then, all the more, before such imposition is justified in a legal proceeding before the competent forum, recovery by coercive means was out of question.

8. Only on this short point, the matter has remained pending in this Court.

9. Rule 36 of the Maharashtra Municipal Corporations (Local Body Tax), Rules, 2010, according to the petitioner, provides for an appeal under sub-section (6) of Section 406 of the then Bombay Provincial Municipal Corporation Act, 1949 and now the Maharashtra Municipal Corporations Act, 1949. Section 406, as it stands today, reads as under :-

> **406.** (1) Subject to the provisions hereinafter contained, appeals against any rateable value 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 been 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 rateable 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 he 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 disputed rateable value, upto the date of filing, the appeal has been deposited by the appellant with the Commissioner.

(2A) Where the appeal is not filed in accordance with the provisions of clauses (a) to (e) of sub-section (2), it shall be liable to be summarily dismissed.

(3) In the case of any appeal entertained by the Judge, but not heard by him, before the date of commencement of the Maharashtra Municipal Corporations (Amendment) Act, 1975, the Judge shall not hear and decide such appeal, unless the amount of the disputed tax claimed from the appellant, or the amount of the tax chargeable on the basis of the disputed rateable value, as the case may be, upto the date of filing the appeal has been deposited by the appellant with Commissioner, within thirty days from the date of publication of a general notice by the Commissioner in this behalf in the local news-papers. The Commissioner shall simultaneously serve on each such appellant a notice under sections 473 and 474 and other relevant provisions of this Act, for intimating the amount to be deposited by the appellant with him.

(4) As far as possible, within fifteen days from the expiry of the period of thirty days prescribed under sub-section (3), the Commissioner shall intimate to the Judge the names and other particulars of the appellants who have deposited with him the required amount within the prescribed period and the names and other particulars of the appellants who have not deposited with him such amount within such period. On receipt of such intimation, the Judge shall summarily dismiss the appeal of any appellant who has not deposited the required amount with the Commissioner within the prescribed period.

(5) In the case of any appeal, which may have been entertained by the Judge before the date of commencement of the Act aforesaid or which may be entertained by him on and after the said date, the Judge shall not here and decide such appeal, unless the amount of the tax claimed by each of the bills, which may have been issued since the entertainment of the appeal, is also deposited, from time to time, with the Commissioner in the first month of the half year to which the respective bill relates. In case of default by the appellant at any time before the appeal is decided, on getting an intimation to that effect from the Commissioner, the Judge shall summarily dismiss the appeal,]

(6) An appeal against the demand notice in respect of levy of cess under Chapter XIA or the Local Body Tax under Chapter XIB shall lie,-

(i) to the Deputy Commissioner, when the demand notice is raised by the Cess Officer or any other officer, not being the Deputy Commissioner;

> (ii) to the Commissioner, when the demand notice is raised by the Deputy Commissioner.
>
> (7) The appeal under sub-section (6) shall be filed within fifteen days from the date of the demand notice.
>
> (8) No appeal under sub-section (6) shall be entertained by the Deputy Commissioner or, as the case may be, the Commissioner unless the amount of the disputed tax claimed from the appellant has been deposited by the appellant with the Commissioner."

10. Section 406 provides for an appeal. The appeals against any rateable value 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. No such appeal shall be entertained unless it is brought in terms of sub-section (2) of Section 406. In the event the tax is the subject matter of challenge, then, the Section says in clearest terms that if the rateable value based on which the tax is demanded is the ground on which the assessee has proceeded, he must have filed a complaint to the Commissioner before approaching the appellate forum. That complaint has to be disposed of. In the case of an appeal against any tax, including interest and penalty imposed in respect of which the 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. In the case of an appeal against amendment made in the assessment book for property tax during the official year, a complaint has been made by the person aggrieved within the time stipulated in sub-clause (d) of sub-

section (2) of Section 406 and his complaint has been disposed of. In the case of an appeal against a tax, or in the case of an appeal made against a rateable value or capital value, as the case may be, the amount of the disputed tax or the amount of the tax chargeable on the basis of the disputed rateable value or the capital value, as the case may be, upto the date of filing of the appeal has been deposited by the appellant with the Commissioner. Then there are sub-sections (2A), (3) and (4) with sub-section (5) which provides that in the case of any appeal, which may have been entertained by the Judge before the date of commencement of the Act or which may be entertained by him on and after the said date, the Judge shall not hear and decide such appeal, unless the amount of the tax claimed by each of the bills, which may have been issued, is also deposited, from time to time, with the Commissioner as provided. In case of default by the appellant at any time before the appeal is decided, on getting an intimation to that effect from the Commissioner, the Judge shall summarily dismiss the appeal. Now, an appeal against the demand notice in respect of cess under Chapter XI-A or the local body tax under Chapter XI-B has been provided by sub-section (6) to the Deputy Commissioner, when the demand notice has been raised by the cess Officer or by any other officer, not being the Deputy Commissioner and to the Commissioner, when raised by the Deputy Commissioner. The appeal has to be filed within fifteen days and for it to be entertained, the amount of disputed tax claimed from the appellant has to be deposited by the appellant with the Commissioner.

11. The argument before us is that insofar as the tax is concerned, that is already paid. The appeal is a composite one. As far as the argument of Mr.Saraf that an appeal could have been filed only against the penalty although the demand of tax is admitted and undisputed, we do not find any such stipulation in sub-section (6) of Section 406. Therefore, the preliminary objection to the maintainability of this writ petition cannot be sustained.

12. There is absolutely no reply denying any of the allegations in the writ petition. In the demand notice issued to the petitioner, it is clear that what has been referred to is the import of goods within the limits of Pune Municipal Corporation and these goods attracted local body tax. By a demand notice, copy of which is at Exhibit 'D-1', the local body tax of Rs.24,77,909/- is demanded. In addition, due to the non disclosure of goods liable to payment of local body tax, the petitioner is called upon to pay penalty equivalent to two times local body tax. The penalty amount is stated to be 48,75,767/-. The petitioner has been informed that

its representative one Mr.Shikhare and Consultant Mr.Priyaranjan are aware of this liability to pay penalty. That is how the demand is stated to be sustained.

13. The petitioner replied on 4th July, 2014 that by demand drafts of Rs.5,95,094/- and Rs.4,89,972/- of 10th March, 2014, part payment of local body tax for the period of April 2013 to January 2014 is made. The local body tax is thus cleared and if there is any liability in relation thereto, remaining to be cleared, the petitioner pointed out by its letter of 4th July, 2014 that they are not liable to pay any penalty. Thus, the tax is paid in full and there was no justification for levy of penalty. It is stated that the petitioner has paid the amount of tax.

14. To our mind, this statement of the petitioner has not been disputed. Our attention is invited to Exhibit 'K', which is the communication from the Municipal Corporation dated 14th August, 2014 from the Pune Municipal Corporation to the Branch Manager, IDBI Bank. It says that there is a penalty of Rs.48,75,767/- which has yet to be remitted to the Pune Municipal Corporation. In this communication as well, there is no reference to any outstanding tax liability. Further, we find that the petitioner replied on 27th August, 2014 and stated that the petitioner has filed an appeal with the office of the Commissioner

under Section 406(6) of the Maharashtra Municipal Corporations Act, 1949 towards the disputed amount of penalty. Therefore, the local body tax having been already paid, any liability to pay penalty does not arise. If there is an alleged delay in making payment of local body tax, then, the petitioner stated that there is an explanation and which should be considered before such demand for penalty is raised.

15. It is categorically stated in the memo of the writ petition as well that the tax liability has been cleared. The petitioner has stated that the demand drafts of 10th March, 2014 by which part payment was made of the local body tax followed by further payment of Rs.14,28,961/- alongwith interest of Rs.1,76,668/- towards part payment of local body tax dues on 1st April, 2014, fully satisfies the demand for the tax and we find that this explanation has not been considered nor the petitioner has been afforded an opportunity to contest the demand of penalty. The show cause notice in that behalf is taken to be uncontested. That does not appear to be the position as narrated in the petition. There is no denial of the same.

16. As a result of the above discussion, we allow this petition. We direct that the third respondent shall now proceed to grant a personal hearing to the petitioner and allow to contest the

demand of penalty raised on the petitioner by a show cause notice and communication of 14th August, 2014. The demand raised on the bank of the petitioner, which has an account, shall be treated as a show cause notice and the petitioner shall be afforded an opportunity of personal hearing after which alone, any recovery by coercive means would be permissible. We direct the petitioner to appear before the said Joint Commissioner on 8th August, 2019. That Joint Commissioner shall, after considering the oral arguments as also any documentary evidence produced in support thereof, pass a reasoned order and communicate the same to the petitioner. The recovery by coercive means shall be held in abeyance until the Joint Commissioner passes the above order, meaning thereby, the order of this Court dated 1st September, 2014 shall operate and continue to be operative till the reasoned order is passed and communicated to the petitioner.

17. The writ petition is allowed in these terms.

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