IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO. 1663/2017.
ATC Telecom Infrastructure Pvt. Ltd. -**VERSUS-** Amravati Municipal Corporation and others.
WRIT PETITION NO. 1702/2017.
ATC Telecom Infrastructure Pvt. Ltd. -**VERSUS-** Nagpur Municipal Corporation and others.
WRIT PETITION NO. 1703/2017.
ATC Telecom Infrastructure Pvt. Ltd. -**VERSUS-** Chandrapur Municipal Corporation and others.

Office notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's Orders

Shri S.V. Bhutada, Advocate for Petitioners.
Shri J.B. Kasat, Advocate for Respondent Nos.1 to 3.
Shri S.A. Sahu, h/f. Shri M.I. Dhatrak, Advocate for Respondent Nos.1 to 3 (Writ Petition No.1703/2017).
Shri N.R. Patil, A.G.P. for Respondent No.4 - State.

CORAM : R.K. DESHPANDE & VINAY JOSHI, JJ.

DATE : JANUARY 28, 2019.

Heard.

2. Relying upon Rule 17[2] of the Taxation Rules framed under the Maharashtra Municipal Corporation Act, it is urged by the learned Counsel appearing on behalf of petitioner that there is no public notice in respect of plant and machinery contained or situated in or upon any building of land belonging to any of the

classes specified therein. It is further urged that in absence of such a notification, the imposition of tax upon mobile towers is without the competence of respondent Corporation.

3. It is also urged that consequently, the penalty imposed also cannot be sustained.

4. Shri Kasat, learned Counsel appearing for respondent Corporation has relied upon Rule 7[1] of the said Taxation Rules and also upon paragraph no.31 of the judgment of Hon'ble Supreme Court in case of **Ahmedabad Municipal Corporation .vrs. GTL Infrastructure Limited and others ((2017) 3 SCC 545.** Said paragraph reads as under :

> *"31. The measure of the levy, though may not be determinative of the nature of the tax, cannot also be altogether ignored in the light of the views expressed by this Court in Goodricke (supra). Under both the Acts read with the relevant Rules, tax on Mobile Towers is levied on the yield from the land and building calculated in terms of the rateable value of the land and building. Also the incidence of the tax is not on the use of the plant and machinery in the Mobile Tower; rather it is on the use of the land or building, as may be, for purpose of*

the mobile tower. That the tax is imposed on the "person engaged in providing telecommunication services through such mobile towers" (Section 145A of the Gujarat Act) merely indicates that it is the occupier and not the owner of the land and building who is liable to pay the tax. Such a liability to pay the tax by the occupier instead of the owner is an accepted facet of the tax payable on land and building under Entry 49 List II of the Seventh Schedule."

5. According to the learned counsel for the respondent Corporation, the matters are not governed by Rule 7[2], as is relied upon by learned counsel for the petitioner. It is also urged that to challenge taxation imposed, there is an appeal provided under Section 406 of the Act, and if the tax demand is set aside, ultimately the question of imposition of penalty would not arise.

6. We have gone through the decision of the Hon'ble Supreme Court, more particularly the above quoted paragraph no.31 and we have also gone through the bill levying tax, issued in the name of owner of the building, as also the leave and licence agreement. The agreement specifically refers to the

vacant space on the terrace/ roof top area of 400 sq.ft. If it is to be considered in the light of the decision of the Hon'ble Supreme Court contained in paragraph no.31, it is clear that the imposition of tax on the rateable value of the land is taken on the basis of leave and licence agreement.

7. We do not find any substance in the challenge raised in the Writ Petition, the same is dismissed. No costs.

JUDGE **JUDGE**

Rgd.