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

Writ Petition No. 2941 of 2016.

M/S Gauri Enterprises Vs. The Commissioner and Appellate Authority, Akola.

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

Shri U. J. Deshpande, Advocate for Petitioner.
Shri C. A. Joshi, Advocate for Respondent.

Coram: **MANISH PITALE, J.**
Date : 22nd April, 2019.

1. By this Writ Petition, the Petitioner has challenged the order dated 07/04/2016 passed by the Respondent – Commissioner/Appellate Authority, Akola Municipal Corporation under the Bombay Provincial Municipal Corporation (Local Body Tax) Rules, 2010, whereby five times penalty over and above the Local Body Tax (LBT) paid by the Petitioner was imposed.

2. The Petitioner, being a wholesale dealer of readymade garments, had claimed refund of LBT from the Respondent - Corporation as per the aforesaid rules. Instead, it was found by the Deputy Commissioner that the Petitioner was

liable to pay the said amount towards penalty and this demand notice was issued by the Deputy Commissioner on 18/02/2016, whereby an amount of Rs.1,13,670/- was demanded from the Petitioner.

3. Aggrieved by the aforesaid demand notice issued by the Deputy Commissioner, the Petitioner preferred an appeal under Rule 26 of the aforesaid Rules read with Section 406(6) of the Maharashtra Municipal Corporation Act, 1949. The Petitioner produced documents on record in support of the contention that he was not liable to pay penalty as demanded by the Deputy Commissioner and that infact, it was entitled for refund of the tax already paid. These documents included certain documents showing transportation of the goods by the Petitioner from various Transporters.

4. The Respondent i.e. the Commissioner/Appellate Authority passed the impugned order on 07/04/2016 not only rejecting the contention of the Petitioner, but holding that it was liable to pay five times penalty on the LBT, by exercising power under

Rule 48 of the aforesaid Rules. The Respondent found that certain communications received from the Transporters demonstrated that the claims made by the Petitioner were false and that the documents placed on record in respect of the said Transporters were fabricated. It is on the basis of this finding that the Respondent passed the impugned order.

5. In the present Writ Petition challenging the impugned order, the principal contention raised on behalf of the Petitioner is that principles of natural justice were violated since the Petitioner was not given an opportunity to dispute and contest the documents received by the Respondent/Appellate Authority, which had infact become the basis of the impugned order. It was contended that the documents obtained behind the back of the Petitioner, which were not put to the Petitioner, could not have been made the basis for passing the impugned order. According to the Petitioner, if proper opportunity had been granted, the Petitioner would have been able to demonstrate that the claims made by him were indeed correct and that proper and sufficient

material could have been produced to demonstrate that the documents relied upon by the Appellate Authority were not sustainable. In the absence of such an opportunity, according to the Petitioner, the impugned order stood vitiated.

6. This was disputed on behalf of the Respondent/Appellate Authority and it was stated that when false claims were raised on behalf of the Petitioner and documents filed by it were found to be fabricated, no fault could be found with the impugned order.

7. Having heard the counsel for the parties and upon perusal of material placed on record, it appears that the basis for the conclusion rendered in the impugned order by the Respondent/Appellate Authority against the Petitioner, is the documents and communications said to have been given by the Transporters before the Appellate Authority stating that the goods of the Petitioner were infact not transported by the Transporters. The Respondent/Appellate Authority was impressed by the said material that came on

record in the process of verification of claims made by the Petitioner. Therefore, it becomes clear that the said material was the basis for holding against the Petitioner.

8. In this situation, the Respondent/Appellate Authority was expected to put the said material to the Petitioner before giving findings regarding alleged fabrication of documents by the Petitioner and falsity of claims made by it. Before reaching such adverse findings against the Petitioner, principles of natural justice demanded that fair opportunity ought to have been granted to the Petitioner to bring on record such material as may be available to it to counter the material that had already come on record in the form of aforesaid communications issued by the Transporters. In the absence of such opportunity granted to the Petitioner, it becomes clear that the Respondent/Appellate Authority committed an error in reaching drastic adverse findings against the Petitioner while imposing penalty going up to five times the amount of LBT payable by the Petitioner.

9. In this regard, the learned counsel for the Petitioner has placed reliance on certain judgments of this Court, but it would not be necessary to refer to and discuss the same because the facts in the present case make it absolutely clear that fair opportunity was not granted to the Petitioner to counter the adverse material that had come on record before the Appellate Authority during the process of verification of the claims made by the Petitioner.

10. In the light of the above it becomes clear that the impugned order is not sustainable and that the Writ Petition deserves to be partly allowed. Accordingly, the impugned order dated 07/04/2016 passed by the Respondent/Appellate Authority is quashed and set-aside. The matter is remanded to the Respondent/Appellate Authority for reconsideration after giving proper opportunity to the Petitioner to place on record such material as it may desire to demonstrate that the claims made by it are sustainable despite the aforesaid communications issued by the Transporters. The Respondent/Appellate

Authority is directed to grant sufficient opportunity to the petitioner in this regard and then pass appropriate orders. It is further made clear that the Respondent/Appellate Authority would also be required to issue notice if it comes to the conclusion that despite opportunity being granted to the Petitioner, it is still liable to pay penalty under the aforesaid Rules, before passing any order under Rule 48 for imposing penalty up to five times LBT. The Petitioner shall appear before the Respondent/Appellate Authority on 02/05/2019. Thereafter, the appeal preferred by the Petitioner shall be decided expeditiously and in any case within a period of 3 months from the date when the Petitioner appears before the Respondent/Appellate Authority.

11. Writ Petition is disposed off accordingly. No Costs.

JUDGE