

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 3124/2020

Siemens Limited, A company incorporated under the Companies Act, 1956 having its Office at Sector 2, Near Kharghar Railway Station, Kharghar Node, Navi Mumbai – 410210.

PETITIONER

.....VERSUS.....

1. The State of Maharashtra, Through the Government Pleader PWD Building, High Court, (A.S.), Mumbai – 400 032.
2. Commissioner of Local Body Tax, Navi Mumbai Municipal Corporation, 3rd Floor, Koparkhairne Ward Office Opp. Koparkhairne Bus Depot, Above Abhyudaya Bank, Sector – 6, Koparkhairne, Navi Mumbai – 400 709.
3. The Local Body Tax Officer, Navi Mumbai Municipal Corporation, 3rd Floor, Koparkhairne Ward Office, Opp. Koparkhairne Bus Depot, Above Abhyudaya Bank, Sector – 6, Koparkhairne, Navi Mumbai – 400 709.

RESPONDENTS

**WITH
WRIT PETITION NO. 9635/2021**

Siemens Limited, A company incorporated under the Companies Act, 1956 having its Office at Sector 2, Near Kharghar Railway Station, Kharghar Node, Navi Mumbai – 410210.

PETITIONER

.....VERSUS.....

1. The State of Maharashtra, Through the Government Pleader PWD Building, High Court, (A.S.), Mumbai – 400 032.
2. Commissioner of Local Body Tax, Navi Mumbai Municipal Corporation, 3rd Floor, Koparkhairne Ward Office Opp. Koparkhairne Bus Depot, Above Abhyudaya Bank, Sector – 6, Koparkhairne, Navi Mumbai – 400 709.
3. The Local Body Tax Officer, Navi Mumbai Municipal Corporation, 3rd Floor, Koparkhairne Ward Office, Opp. Koparkhairne Bus Depot, Above Abhyudaya Bank, Sector – 6, Koparkhairne, Navi Mumbai – 400 709.

RESPONDENTS

WITH
WRIT PETITION NO. 9636/2021

Siemens Limited, A company incorporated under the Companies Act, 1956 having its Office at Sector 2, Near Kharghar Railway Station, Kharghar Node, Navi Mumbai – 410210.

PETITIONER

.....VERSUS.....

1. The State of Maharashtra, Through the Government Pleader PWD Building, High Court, (A.S.), Mumbai – 400 032.
2. Commissioner of Local Body Tax, Navi Mumbai Municipal Corporation, 3rd Floor, Koparkhairne Ward Office Opp. Koparkhairne Bus Depot, Above Abhyudaya Bank, Sector – 6, Koparkhairne, Navi Mumbai – 400 709.
3. The Local Body Tax Officer, Navi Mumbai Municipal Corporation, 3rd Floor, Koparkhairne Ward Office, Opp. Koparkhairne Bus Depot, Above Abhyudaya Bank, Sector – 6, Koparkhairne, Navi Mumbai – 400 709.

RESPONDENTS

WITH
WRIT PETITION NO. 9637/2021

Siemens Limited, A company incorporated under the Companies Act, 1956 having its Office at Sector 2, Near Kharghar Railway Station, Kharghar Node, Navi Mumbai – 410210.

PETITIONER

.....VERSUS.....

1. The State of Maharashtra, Through the Government Pleader PWD Building, High Court, (A.S.), Mumbai – 400 032.
2. Commissioner of Local Body Tax, Navi Mumbai Municipal Corporation, 3rd Floor, Koparkhairne Ward Office Opp. Koparkhairne Bus Depot, Above Abhyudaya Bank, Sector – 6, Koparkhairne, Navi Mumbai – 400 709.
3. The Local Body Tax Officer, Navi Mumbai Municipal Corporation, 3rd Floor, Koparkhairne Ward Office, Opp. Koparkhairne Bus Depot, Above Abhyudaya Bank, Sector – 6, Koparkhairne, Navi Mumbai – 400 709.

RESPONDENTS

WITH
WRIT PETITION NO. 9638/2021

Siemens Limited, A company incorporated under the Companies Act, 1956 having its Office at Sector 2, Near Kharghar Railway Station, Kharghar Node, Navi Mumbai – 410210.

PETITIONER

.....VERSUS.....

1. The State of Maharashtra, Through the Government Pleader PWD Building, High Court, (A.S.), Mumbai – 400 032.
2. Commissioner of Local Body Tax, Navi Mumbai Municipal Corporation, 3rd Floor, Koparkhairne Ward Office Opp. Koparkhairne Bus Depot, Above Abhyudaya Bank, Sector – 6, Koparkhairne, Navi Mumbai – 400 709.
3. The Local Body Tax Officer, Navi Mumbai Municipal Corporation, 3rd Floor, Koparkhairne Ward Office, Opp. Koparkhairne Bus Depot, Above Abhyudaya Bank, Sector – 6, Koparkhairne, Navi Mumbai – 400 709.

RESPONDENTS

Shri Gopal Mundhra with Ms Ankita Vashistha i/b Economic Law Practice for the petitioner.

Shri A.A. Alaspurkar, Assistant Government Pleader for the respondent no.1.
Shri Sandip D. Ghaterao, counsel for the respondent nos.2 and 3.

CORAM : A. S. CHANDURKAR AND M.W. CHANDWANI, JJ.

DATE ON WHICH ARGUMENTS WERE HEARD : FEBRUARY 08, 2023

DATE ON WHICH JUDGMENT IS PRONOUNCED : MAY 03, 2023

JUDGMENT (PER : A.S. CHANDURKAR, J.)

Since similar challenges have been raised in these writ petitions, they are being decided together by this common judgment.

RULE. Rule made returnable forthwith and heard the learned counsel for the parties.

2. The facts relevant for considering the challenge raised in the writ petitions are that the petitioner is a ‘Company’ incorporated under the Companies Act, 2013 and has been registered as a ‘dealer’ in the State of Maharashtra under the provisions of Section 2(16A) of the Maharashtra Municipal Corporations Act, 1949 (for short, ‘the Act of 1949’). The Dealer was liable to pay cess on bringing goods within the limits of Navi Mumbai Municipal Corporation – hereinafter referred to as the Municipal Corporation under Section 152A of the Act of 1949. Accordingly, the Dealer filed returns for the period commencing from 01.04.2008 to 31.03.2009 and thereafter for each financial year till 31.03.2013 under the Maharashtra Municipal Corporation (Cess on Entry of Goods) Rules, 1996 (for short, ‘the Rules of 1996’). The assessment of cess is carried out under Rule 25 of the Rules of 1996. For each of the aforesaid years, the Dealer was issued notice in Form-H as provided by Rule 25(3) of the Rules of 1996 since the Commissioner was not satisfied with the returns filed by the Dealer. By such notice in Form-H, the Dealer was required to produce all evidence on which the Dealer sought to rely in support of the returns as filed. The relevant dates when Form-H came to be issued by the Municipal Corporation are as under:-

Relevant Period	Date of issuing notice in Form-H
01.04.2008 to 31.03.2009	02.12.2009
01.04.2009 to 31.03.2010	24.06.2010
01.04.2010 to 31.03.2011	20.07.2011
01.04.2011 to 31.03.2012	13.07.2012
01.04.2012 to 31.03.2013	30.10.2014

According to the Local Body Tax Officer, the Dealer failed to produce relevant documents in support of the returns as filed. After the last notice dated 30.10.2014, Form-H reminder came to be issued on 24.09.2019 for all the aforesaid years. According to the Dealer, by not completing the process of assessment for a long period of almost eight to ten years, the Municipal Corporation was not entitled to proceed further in the matter. In that premise, Form-H reminder issued on 24.09.2019 in each writ petition is under challenge. The Dealer seeks a declaration that the action of issuing such notice belatedly was contrary to the provisions of the Act of 1949 read with the Rules of 1996.

3. Shri Gopal Mundhra, learned counsel for the petitioner-Dealer referred to the provisions of Section 152A of the Act of 1996 alongwith Rule 25 of the Rules of 1996 and submitted that though the Municipal Corporation initiated the process of assessment within the time prescribed by Rule 25 of the Rules of 1996, the failure to complete the assessment process within reasonable time rendered the continuation of the process of assessment to be bad in law. It was submitted that under Rule 25(3) of the Rules of 1996 when notice under Form-H was issued, the Dealer was required to produce such evidence that was in possession of the Dealer on which it sought to rely in support of the returns or produce such evidence that was mentioned in the notice. The Commissioner under Rule 25(3) of the Rules of 1996 is required to consider all such evidence that is produced

on the date specified in the notice or as soon as may be thereafter so as to assess the amount of cess due from the Dealer. Under Rule 25(4) of the Rules of 1996, if a registered Dealer fails to comply with the terms of any notice issued under Rule 25(3) of the Rules of 1996, the Commissioner is required to assess the amount of cess to the best of his judgment. Further, under Rule 25(5) of the Rules of 1996 for failure on the part of the registered Dealer to furnish returns in respect of any period or before the date prescribed in the earlier returns, the Commissioner is required to assess the amount of cess due within three years from the end of the year in which such period occurs after giving the Dealer a reasonable opportunity of being heard. Relying upon the aforesaid provisions it is submitted that though the period for completing the assessment may not be specifically provided in Rule 25 of the Rules of 1996, it could not mean that for an indefinite and unreasonable period such process of assessment could continue. After issuance of notice in Form-H the Dealer had produced some material in support of its returns. However, the Commissioner thereafter did not take any further step to complete the assessment for a period of more than almost ten years from the initial notice in Form-H that was issued on 02.12.2009. It was urged that in absence of any prescribed period of limitation the Commissioner was required to act within reasonable period and in the facts of the present case the reminder issued by the Municipal Corporation in Form-H on

24.09.2019 was highly belated. Even this notice in Form-H referred to Rule 33 of the Maharashtra Municipal Corporation (Local Body Tax) Rules which was not at all applicable. In that regard, the learned counsel for the Dealer placed reliance on the decisions in *Reliance Transport and Travel Pvt. Ltd. Versus Union of India & Others* [2022 (3) BomCR 389], *Bombay Dyeing and Manufacturing Company Limited Versus Deputy Commissioner of CGST & CX, Div-IX, Mumbai Central GST Commissioner* [2022 SCC OnLine Bom 325], *Bashir Ahmed Chand Shaikh Versus State of Maharashtra & Another* [2010(1) Mh.L.J. 500], *Government of India Versus Citedal Fine Pharmaceuticals, Madras & Others* [(1989) 3 SCC 483], *State of Punjab & Others Versus Bhatinda District Cooperative Milk Producers Union Ltd.* [(2007) 11 SCC 363], *Bhagwandas S. Tolani Versus B.C. Aggarwal & Others* [1982 SCC OnLine Bom 453], *Universal Generics Pvt. Ltd. Versus Union of India* [1993 SCC OnLine Bom 741], *Sunrise Remedies Pvt. Ltd. Versus Union of India* [2019 (366) E.L.T. 994 (Guj.)], *State of A.P. Versus N.Radhakishan* [(1998) 4 SCC 154], *Wilco & Company Versus Union of India* [2002 SCC OnLine Mad 1176], *M/s J.M. Baxi & Co. Versus The Government of India & Others* [2016 SCC OnLine Mad 3176], *F.Jagat Ram Om Parkash Versus Excise & Taxation Officer* [AIR 1965 P&H 133 (FB)] and *Gupta Smelters Pvt. Ltd. Versus Union of India* [2019 (365) E.L.T. 77 (P & H)]. It was thus submitted that the reminder issued in Form-H in all writ petitions on 24.09.2019 was required to be quashed and set aside.

4. Per contra, Shri Sandip D. Ghaterao, learned counsel appearing for the Municipal Corporation opposed the aforesaid submissions. According to him, what was relevant was the initiation of the process of assessment and if it was shown that this process of assessment had been initiated within the prescribed time, the proceedings were not liable to be quashed only on the ground that the assessment proceedings were not concluded till date. The Dealer had sought to urge that by issuing the reminder in Form-H on 24.09.2019 the Municipal Corporation had sought to re-open the assessment. It was not a case of re-initiation or re-opening of the assessment but it was a matter of completion of the assessment. Having initiated the assessment proceedings within the prescribed period, same were not liable to be interfered with only on the ground that the assessment had not been completed. Infact, it was the Dealer who was responsible for the delay caused in completion of the assessment proceedings inasmuch as it failed to submit the relevant records despite the fact that the same had been demanded from time to time. On various occasions the representative of the Dealer had either remained absent or had sought time for producing further documentary material. Since the Dealer failed to submit all requisite documents despite grant of sufficient time, the reminder in Form-H came to be issued on 24.09.2019. The Municipal Corporation had acted in reasonable time and it could not be said that the assessment was liable to be set aside on the ground that it

continued for a long period. It was further submitted that the unit of the Dealer was located in the Small Scale Industrial Area and the litigation with regard to the demand of cess under Rule 35(1) of the Rules of 1996 was pending in **Writ Petition No. 8506 of 2016 with Connected Writ Petitions** [*M/s Super Label Manufacturing Co. Versus The State of Maharashtra & Others*]. The aforesaid writ petitions came to be decided on 29.07.2016 and the Special Leave Petition challenging that decision was pending before the Hon'ble Supreme Court. By an order dated 06.02.2017 it had been directed that no coercive steps be taken against the members of the Small Scale Entrepreneurs Association for recovery of any interest or penalty under Rule 41 of the Rules of 1996. This was one of the reasons for the assessment to be pending. The learned counsel for the Municipal Corporation relied upon the affidavit-in-reply filed in each writ petition and submitted that the completion of the assessment was delayed only on account of the non-cooperation on the part of the Dealer. In support of his contentions the learned counsel relied upon the decisions in *State of Punjab & Others Versus Tara Chand Lajpat Rai* [**AIR 1967 SC 1408**], *State of Punjab & Another Versus Murlidhar Mahabir Parshad* [(1968) 21 STC 29], *The Sales Tax Officer & Another Versus Messrs Sudarsanam Iyengar & Sons* [(1969) 2 SCC 396], *Indian Aluminium Cables Ltd. & Another Excise and Taxation Officer & Another* [(1977) 1 SCC 120], *Bharat Steel Tubes Ltd. & Another Versus State of Haryana & Another* [(1988) 3 SCC

478], *Commissioner of Income-Tax NHK Japan Broadcasting Corporation* [2008 SCC OnLine Del 1433], *Indian Hume Pipe Co. Ltd. Versus Commissioner of Income-Tax* [1990 SCC OnLine Bom 594], *Siemens India Ltd. Versus The State of Maharashtra* [1986 SCC OnLine Bom 420] and the Division Bench judgment of this Court in *Director of Income Tax Versus M/s Mahindra & Mahindra Limited* [Income Tax Appeal No. 3489 of 2009]. He further sought to distinguish the decisions on which reliance was placed by the learned counsel for the Dealer. It was thus submitted that all the writ petitions were liable to be dismissed.

5. We have heard the learned counsel for the parties at length and with their assistance we have perused the entire material on record. For appreciating the rival submissions it would be necessary to first refer to the relevant statutory provisions that would be material in this regard. It is not in dispute that the petitioner-Company is a 'dealer' as defined by Section 2(16A) of the Act of 1949. Section 152A of the Act of 1949 empowers the Corporation to levy cess on the entry of goods specified in Schedule-A at the rates prescribed in the said Schedule. Section 152B indicates the manner in which incidence of cess occurs. The turnover from the first day of April of the financial year in which the Municipal Corporation decides to levy the cess is required to be taken into account. Section 152J prescribes for the production and inspection of accounts and

documents as well as search of premises, seizure of books of accounts and goods, etc. Under Section 152K the Commissioner has the powers of a Civil Court. It may be noted that by virtue of Maharashtra Act XLII of 2017 Chapter XI-A and Sections 152A to 152O of the Act of 1949 have been deleted with effect from 01.07.2017.

Rule 25 of the Rules of 1996 relate to assessment of cess and the relevant provisions read as under:-

“25. Assessment of cess.

(1) *The amount of cess due from a registered dealer liable to pay cess shall be assessed separately for each period made applicable to his class of cess payers by the Commissioner under sub-rule (2) of rule 24.*

(2) *If the Commissioner is satisfied that the returns furnished by a registered dealer in respect of any period are correct and complete, he shall assess the amount of cess due from the dealer on the basis of such returns.*

(3) *Where a registered dealer has filed all the returns in respect of any period on or before the date prescribed for filing the last return pertaining to that period and if the Commissioner is not satisfied that the returns furnished by the registered dealer in respect of that period are correct and complete, and he thinks it necessary to require the presence of the dealer or the production of further evidence he shall serve on such dealer a notice requiring him on a date and at a place specified therein, either to attend and produce or cause to be produced all evidence on which such dealers relies in support of his returns, or to produce such evidence as is specified in the notice. On the date specified in the notice, or as soon as may be thereafter, the Commissioner shall, after considering all the evidence which may be produced, assess the amount of cess due from the dealer.*

(4) *If the registered dealer fails to comply with the terms of any notice issued under sub-rule (3), the Commissioner shall assess, to the best of his judgment, the amount of cess due from him.*

(5) *If a registered dealer does not furnish any or all of the returns in respect of any period on or before the date prescribed for the last return pertaining to that period, then the Commissioner shall, at any time within three years from the end of the year in which such period occurs, after giving the dealer a reasonable opportunity of being heard, proceed to assess, to the best of his judgment, the amount of the cess, if any, due from him.*

(6) *Where returns once furnished as required under sub-rule (1) of rule 24 they shall be assessed as and when they are furnished.*

(7) *If the Commissioner has reason to believe that a dealer is liable to pay cess in respect of any period, but has failed to apply for registration or failed to apply for registration within time as required by rule 13, the Commissioner shall at any time within three years from the end of the year in which such period occurs, after giving the dealer a reasonable opportunity of being heard, proceed to assess, to the best of his judgment, the amount of cess, if any, due from the dealer in respect of that period and any period or periods subsequent thereto.”*

On the Commissioner being satisfied with the returns furnished by a registered dealer for the relevant period he is required to assess the amount of cess due from the dealer on the basis of such returns. Under Rule 25(3) of the Rules of 1996, if the Commissioner is not satisfied with the returns furnished by a registered dealer and he thinks it necessary to require the presence of the dealer or the production of further evidence, he is required to serve on such dealer a notice requiring the dealer to attend

and produce or cause to be produced all evidence on which the dealer relies in support of its returns or to produce such evidence specified in the notice. On the date specified in the notice or “as soon as may be thereafter” the Commissioner is required to assess the amount of cess after considering all the evidence that may be produced. However under Rule 25(4) of the Rules of 1996 for failure on the part of the dealer to comply with the terms of any notice issued under Rule 25(3) of the Rules of 1996, the Commissioner is required to assess “to the best of his judgment” the amount of cess due from the dealer. Since the Dealer in the present case had furnished its returns, sub-Rules (5) and (7) of Rule 25 of the Rules of 1996 would not be relevant in the present factual context. Under Rule 25(10) of the Rules of 1996 the notice required to be issued under Rule 25(3) of the Rules of 1996 has to be in Form-H and the date fixed for compliance therewith is not required to be earlier than fifteen days from the date of service thereof. Under Rule 25(11) of the Rules of 1996 the Commissioner is required to issue notice in Form-H to a dealer to show cause why it should not be so assessed. The date for compliance with notice cannot be earlier than fifteen days from the date of service thereof.

6. Aforesaid scheme of the relevant provisions and especially Rule 25 of the Rules of 1996 indicates that a dealer can be assessed the amount of cess due based on the satisfaction of the Commissioner if the returns are

furnished. If the Commissioner is satisfied with the returns as furnished, he is required to immediately assess the cess due for the relevant period. On the other hand, if the Commissioner is not satisfied with the returns furnished by the dealer for the relevant period he can require the dealer to remain present before him or to attend and produce or cause to be produced all evidence on which the dealer seeks to rely in support of its returns. The Commissioner can also specify the evidence to be produced in this regard. The show cause notice has to be issued in Form-H and the date of compliance cannot be earlier than fifteen days from the service of such notice. On the date specified in the notice or as soon as may be thereafter the Commissioner is required to assess the amount of cess due from the dealer after considering all the evidence which may be produced. Failure to comply with the notice issued in Form-H permits the Commissioner to assess to the best of his judgment the amount of cess due from a dealer. The aforesaid scheme therefore clearly indicates that in the matter of assessment of cess, Rule 25 of the Rules of 1996 is a Code in itself since it prescribes in detail the manner in which assessment of cess has to be undertaken. The consequence of failure to comply with the notice issued in Form-H is also provided for by empowering the Commissioner to assess to the best of his judgment the amount of cess due from a dealer.

7. It is pertinent to note that Rule 25(3) of the Rules of 1996 requires the Commissioner to assess the amount of cess due from a dealer either on the date specified in the notice or as soon as may be thereafter. This provision therefore indicates that after giving an opportunity to the dealer to produce all evidence on which the dealer seeks to rely, the amount of cess due has to be assessed. The words 'on the date specified in the notice or as soon as may be thereafter' clearly indicate the expedition with which such assessment has to be done. It is clear from Rule 25(3) of the Rules of 1996 that the Commissioner should complete the assessment expeditiously. The use of the expression 'or as soon as may be thereafter' will have to be given its full meaning which indicates that the assessment has to be completed within a short period and without delaying the assessment for a long period. This can also be gathered from Rule 26(4) of the Rules of 1996 which permits the Commissioner to assess to the 'best of his judgment' the amount of cess due if the dealer fails to comply with the terms of any notice issued under Rule 25(3) of the Rules of 1996. The consequence of failure on the part of a dealer to comply with the notice in Form-H thus enables the Commissioner to assess the amount of cess due to the best of his judgment. It is therefore clear that the Commissioner is not required to continue to wait for the response of the dealer to a notice issued under Rule 25(3) of the Rules of 1996 in Form-H. He has to either on the date specified in the notice or as soon as may be thereafter complete

the assessment and if the dealer fails to comply with such notice, the assessment has to be done to the best of the Commissioner's judgment. Once it is shown that sufficient opportunity was given to a dealer to produce evidence on which he relies, the assessment is required to be completed either on the basis of the evidence produced by the dealer or on failure to produce such evidence, to the best of the judgment of the Commissioner. Both the contingencies namely, production of evidence as well as failure to comply with the terms of notice in Form-H, have thus been taken care of.

8. It is not in dispute that for all the relevant years from 01.04.2008 to 31.03.2013 the Dealer has submitted its returns for each year. The amount of cess paid for each year is as under:-

Financial Year	Amount of Cess
01.04.2008 to 31.03.2009	11,52,12,381/-
01.04.2009 to 31.03.2010	12,55,43,305/-
01.04.2010 to 31.03.2011	17,50,26,514/-
01.04.2011 to 31.03.2012	16,33,72,664/-
01.04.2012 to 31.03.2013	12,73,69,116/-

Since the returns for all the years have been filed, the provisions of Rule 25(3) and (4) of the Rules of 1996 would be attracted. The notice in Form-H has been issued for each assessment-year immediately at the end of each assessment year. After these notices were issued, the Municipal Corporation had issued reminders to the Dealer to

submit books of accounts for the period from 01.04.2008 to 31.03.2012. The last such reminder was issued on 21.08.2013. Form-H for the year 01.04.2012 to 31.03.2013 was issued on 30.10.2014. The reminder now issued for all the years in Form-H is dated 24.09.2019. It would thus be necessary to consider whether the Commissioner took necessary steps to assess the Dealer for the relevant years on the basis of the documents produced by the Dealer or to assess the Dealer to the best of his judgment for failure to comply with the terms of the notice issued. It is the specific stand of the Municipal Corporation in each writ petition that the delay in completing the assessment had been caused for failure on the part of the Dealer to produce before the Assessing Officer necessary Books of Accounts. It has been stated that though the Dealer was required to produce the Books of Accounts such as Sale and Purchase Register, Cash Book, Stock Register, Copy of Trade Account, Profit & Loss Account, Balance Sheet, Monthly Summary of Sale and Purchase, Details of Refund Claimed, as well as Sale and Purchase Invoices, the same were never produced by the Dealer before the Assessing Officer. As stated above, on 24.04.2012 the Dealer re-submitted the copy of its annual report up to the year 2010 with relevant documents. It is the unequivocal stand of the Dealer that it intended to rely only upon those documents. The last such reminder is dated 21.08.2013.

9. The aforesaid thus indicates that the Municipal Corporation did grant sufficient opportunity to the Dealer to produce all the evidence on which it desired to rely upon. It also called upon the Dealer to submit further documents but the Dealer failed to do so. In view of this the Commissioner was free to proceed with assessing the amount of cess due from the Dealer on the basis of the annual report for the year 2010 and documents as filed alongwith it. If the Commissioner was not satisfied with those documents and a direction was given to the Dealer to produce further documents, on failure of the Dealer to do so, the Commissioner ought to have assessed the amount of cess due from the Dealer based on his best judgment. There is no justification indicated by the Municipal Corporation for the failure on the part of the Commissioner to assess the amount of cess due from the Dealer to the best of the Commissioner's judgment at least from 21.08.2013 till the reminder in Form-H was issued on 24.09.2019. It is not the grievance of the Dealer that it was not granted any opportunity to submit documents in support of the returns filed by it. It had produced all documents it sought to rely upon in support of submission of such returns. If this material was insufficient for the Commissioner to proceed further or if the Dealer had failed to comply with the terms of notice issued under Rule 25(3) of the Rules of 1996, the option as provided by Rule 25(4) of the Rules of 1996 ought to have been exercised by the Commissioner within reasonable time. The Corporation is

not required to wait endlessly till the terms of notice issued under rule 25(3) of the Rules of 1996 are complied with. The Commissioner is empowered to act in accordance with Rule 25(4) of the Rules of 1996 on failure on the part of the Dealer to submit further documents. We therefore find that the only reason assigned by the Municipal Corporation that there was a failure on the part of the Dealer in submitting relevant documents cannot be a reason or justification for the Commissioner not to complete the assessment expeditiously.

10. As stated above, the Commissioner was required to act with expedition under Rule 25(3) of the Rules of 1996 or thereafter under Rule 25(4) of the Rules of 1996. The reply filed by the Municipal Corporation does not indicate any sufficient reason for not proceeding with completion of such assessment. Except for stating that the Dealer failed to submit relevant documents which reason has been found to be not legally tenable for not proceeding with the assessment, it cannot be said that there is any justification on the part of the Municipal Corporation in not completing the assessment. The scheme of Rule 25(3) and (4) of the Rules of 1996 do not leave any scope for the Commissioner to indefinitely postpone completion of the assessment on the ground that the registered dealer had failed to co-operate in the said matter with the Municipal Corporation. The consequence of failure to produce any evidence is contained in Rules 25(4)

of the Rules of 1996 itself. Infact, since the Dealer produced the annual report for the year 2010 alongwith accompanying documents which according to it was the only evidence it sought to rely which is clear from its communication dated 25.05.2012, the assessment ought to have been completed in terms of Rule 25(3) of the Rules of 1996. The evidence produced by the Dealer was required to be considered on the date specified in the notice or as soon as may be thereafter. Having produced the documents which according to the Dealer were sufficient and on which it intended to rely in support of its returns, there does not appear to be any legal justification on the part of the Municipal Corporation in waiting for a period of more than six years and thereafter continuing to seek further documents without assessing the Dealer to the best of the judgment of the Commissioner under Rule 25(4) of the Rules of 1996.

11. In the aforesaid backdrop, it would be necessary to consider as to whether failure to adjudicate of the notice issued in Form-H by the Municipal Corporation vitiates the proceedings on the ground of unreasonable delay. The learned counsel for the parties have relied upon various decisions in support of their respective submissions. While according to the Municipal Corporation there being no period of limitation prescribed for completing the assessment and the said process of completion having been undertaken within reasonable period, there was

no reason to interfere with such process of assessment. On the other hand, it is the case of the Dealer that by unnecessarily keeping the assessment proceedings pending for long period which is beyond reasonable period, the assessment proceedings are vitiated and are required to be quashed.

It may be stated that the challenge raised by the Dealer is to the failure to complete the assessment within reasonable period and not to its initiation. The question considered in *Tara Chand Lajpat Rai* (supra) was whether the finalization of the assessment order after three years from the period fixed for furnishing returns could be said to be time barred and thus beyond jurisdiction. The question was answered in the negative. Similar issue was considered in *Murlidhar Mahabir Parshad* (supra) which followed the earlier decision in *Tara Chand Lajpat Rai* (supra). Similar view has been taken in *Messrs Sundarsanam Iyengar & Sons* (supra). Hence ratio of these decisions would not apply to the present facts since the challenge is based on the failure to complete the assessment within reasonable period. The decisions in *NHK Japan Broadcasting Corporation* and *M/s Mahindra & Mahindra* (supra) also pertain to initiation of proceedings under Section 201 of the Income Tax Act, 1961 and are hence distinguishable. The decisions in *Indian Hume Pipe Co. Ltd.* as well as *Siemens India Ltd.* (supra) also do not assist the stand of the Municipal Corporation.

12. It is well settled that where no period of limitation is prescribed for completing an act, the same is required to be done/completed within reasonable period. As to what would be the reasonable period is dependant upon the facts and circumstances of each case. In this regard, reference can be made to the decisions in *Citedal Fine Pharmaceuticals*, *Bhatinda District Cooperative Marketing Producers Limited* and *Bharat Steel Tubes Limited* (supra). In *Bharat Steel Tubes Limited* (supra), which decision arose under the Punjab General Sales Tax Act, 1948, it was held that the assessment was required to be completed within a reasonable period. It was further observed that in the absence of any limitation being provided by statute it was necessary to ensure completion of assessment with expedition and reasonable haste but subject to rules of natural justice.

For determining what would be the reasonable period, it would be necessary to keep in mind the relevant statutory provisions applicable since the statutory scheme would be relevant for determining whether action has been taken within reasonable period. In this context, if the provisions of Rule 25(5) of the Rules of 1996 are perused, the same relates to failure on the part of a registered dealer in furnishing return on or prior to the date prescribed for the last return pertaining to that period. In such situation, the Commissioner is required to act at any time within three years from the end of the year in which such

period occurs, give the dealer a reasonable opportunity of being heard and thereafter proceed to assess to the best of his judgment the amount of cess if any due from the dealer. In other words, if a return is not furnished for a particular period then at any time within three years from the end of that relevant period, the Commissioner can initiate the process of assessment to the best of his judgment. Similar such time frame has been prescribed in Rule 25(7) of the Rules of 1996 of three years when the Commissioner has reason to believe that a dealer is liable to pay cess for any period but has failed to apply for registration or has failed to so apply within the time prescribed. Even in this situation, the Commissioner can act within three years from the end of the year in which such period occurs. The aforesaid provision thus indicates that Rule 25 of the Rules of 1996 itself contemplates assessment to be undertaken within a period of three years on the failure by a registered dealer in furnishing its return or failure by a dealer to apply for registration. Reasonable time to comply the assessment would thus take colour from the aforesaid provisions. In *Indian Aluminium Cables Ltd. & Another* (supra), the Hon'ble Supreme Court has observed that even with regard to best judgment of assessment, the same cannot be allowed to be made after the expiry of reasonable period in the context of the Punjab General Sales Tax Act, 1948.

13. The exercise of power to undertake assessment to the best of judgment of the Assessing Authority has been considered by the Full Bench of the Punjab and Haryana High Court in *F. Jagatram Omparkash* (supra). Under Section 11(4) of the Punjab General Sales Tax Act, 1948, on a registered dealer furnishing returns thereafter failing to comply with the notice issued under Section 11(2) of the Act of 1948, the Assessing Authority is entitled to proceed to assess to the best of its judgment within a period of three years after expiry of the relevant period the amount of tax due from the dealer. The aforesaid provision was considered by the Full Bench and after referring to the judgment of the Hon'ble Supreme Court in *Ghanshyamdas Versus Regional Assistant Commissioner of Sales Tax* [AIR 1964 SC 766], it was held that when a question arises as to whether or not an Assessing Authority has proceeded to assess to the best of its judgment, it is for that Authority to show that it has so proceeded within the period prescribed by the Statute. There must be some definite act or step taken from which it could be clearly ascertained that from that point of time, the Assessing Authority has proceeded to assess to the best of its judgment. The starting point of this process ought to be within the period of three years as provided by Section 11(4) of the Punjab General Sales Tax Act, 1948. In the present case, except for issuing notice on 21.08.2013 with regard to the annual assessment for the period from 01.04.2008 to 31.03.2012, nothing has been done till 24.09.2019 when the reminder in Form-H

came to be issued. For the period from 01.04.2012 to 31.03.2013 notice in Form-H has been issued on 31.10.2014. This is followed by the reminder in Form-H on 24.09.2019. There is no reason indicated by the Municipal Corporation for not completing the assessment to the best of the judgment of the Commissioner for all this period except failure on the part of the Dealer to submit further documents.

14. The issue with regard to belated adjudication of a show cause notice/demand notice has been considered in various decisions of this Court. For the present purpose, we find that reference to the decision in *Premier Limited, Mumbai & Another Versus Union of India & Others* [2017 (5) Mh.L.J. 433] would be relevant since this decision has been subsequently followed by various Division Benches in the decisions referred by the learned counsel. The following observations in paragraphs 9 to 11 are relevant and the same read as under:-

“9. We must outline the difference between the power that the authorities possess and which has to be exercised coupled with a duty. Just as there is power to issue any Show Cause Notice, equally there is a duty to adjudicate it promptly. If one is interested in protecting the revenue and to subserve the larger public interest, then, expediency demands that once a Show Cause Notice is issued and duly served, reasonable opportunity has to be afforded to the assessee to reply to the same and/or to submit his/her explanation on merits. If such an opportunity is availed of by the assessee and he/she duly inspects the record, then, the Revenue cannot be said to be

acting unreasonably if it directs the assessee to get ready and argue the case. The Revenue would be justified in granting reasonable accommodation, but liberal adjournments do not serve any purpose but would rather defeat the public interest. The Revenue must understand that just as it is anxious to recovery public money, the assessee is equally keen to face the consequences of legal proceedings. They do not wish to keep the proceedings lingering for they would want to concentrate on their business and not legal proceedings. It is a waste of their time as well. If an adjudication order is passed with reasonable expediency, even the assessee would arrange their affairs and in the event they are aggrieved, they would avail of the further remedies. Therefore, this is a power coupled with a duty and which the Revenue officials must realise. The earlier it is the better it would be for all concerned.

10. *The second aspect which requires elaboration is, if the understanding of the Revenue is that it has to wait endlessly for the assessee to appear and make submissions, it is not the assessee's right to delay the matter. There is no vested right in prolonging the proceedings and none can claim that the law permits this course. Adjournments may be sought frequently but they are not to be granted liberally. That gives impression that the Revenue is not interested in proceeding with the matter, or rather has a vested interest in assisting the assessee. In the case of Sangram Singh vs. Election Tribunal, Kotah and another, reported in AIR 1955 SC 425, the Hon'ble Supreme Court was required to explain as to what is an ex parte order.*

11. *Therefore, once the assessee is given sufficient opportunity to remain present, to argue his case, either by himself or with the assistance of an Advocate, then, the Revenue would be justified, if the assessee is prolonging the matter and deliberately, to pass orders in his absence. These orders can be then passed on merits and none can complain that he was not aware of or was denied the opportunity to defend himself. The principles of natural*

justice are not codified. They only contemplate that opportunity to defend has to be granted in the event an adverse order having civil consequences has to be passed. Therefore, the quasi-judicial authorities should realise that they need not be friendly or liberal with the assessee and to such an extent as would give an opportunity to the assessee to complain that the Show Cause Notice having been issued decades back, it cannot be adjudicated.”

15. We may note that in a recent decision in *ATA Freight Line (I) Pvt. Ltd. Versus Union of India & Others* [2022(3) BCR 20] after considering various earlier decisions on the question of belated adjudication of a show cause notice, the Division Bench held that non-adjudication of the show cause notice for a period of about ten years resulted in causing prejudice to the said petitioners. The Court proceeded to quash the said show cause notices.

16. The communication dated 07.01.2020 issued by the Assessing Authority of the Municipal Corporation reveals that it was of the view that the period of three years mentioned in Rule 25 of the Rules of 1996 was for initiation of the assessment proceedings and not for passing the assessment order. Even accepting this position that the period of three years is for initiation of the assessment proceedings and the present assessment proceedings for each year has commenced within the prescribed time by issuance of notice in Form-H, the same cannot mean that since no period of

limitation is prescribed for completing the assessment, the same can be completed at any point of time. The assessment proceedings are required to be completed within a reasonable time keeping in view the spirit of Rule 25 of the Rules of 1996 when read as a whole. It was also urged on behalf of the Municipal Corporation that on account of the pandemic situation the assessment proceedings could not be completed. It is to be noted that even if the period from 01.03.2020 to 28.02.2022 is excluded from consideration the same would not make much difference for the reason that the reminder in Form-H was given on 24.09.2019 and nothing precluded the Municipal Corporation from completing the assessment till the onset of the pandemic situation. Another reason orally put forth by the Municipal Corporation is the pendency of the proceedings with regard to the demand for cess under Rule 35(1) of the Rules of 1996 as well as challenge to Rule 41 of the Rules of 1996, **Writ Petition No. 8506 of 2016 alongwith other writ petitions** [*M/s Super Label Manufacturing Co. Versus The State of Maharashtra & Others*]. The said writ petition came to be dismissed on 29.07.2016 by the Division Bench. The aforesaid decision was challenged before the Hon'ble Supreme Court and while granting leave on 06.02.2017 it was directed that the Municipal Corporation would not take any coercive steps against the Members of the Small Scale Entrepreneurs Association for recovery of any interest or penalty under Rule 41 of the Rules of 1996. The pendency of these proceedings is hardly

relevant so as to prevent the Commissioner from completing the process of assessment. Rule 41 of the Rules of 1996 pertains to recovery of interest or penalty which is a stage subsequent to completion of assessment. Though such justification for non-completion of the assessment has not been put forward in the reply filed by the Municipal Corporation, since it was orally put forth as a justification for pendency of the assessment, we have considered the said submission.

17. We thus find from the aforesaid that it is necessary for the Municipal Commissioner to complete the assessment under Rule 25(3) of the Rules of 1996 either on the date specified in the notice issued in Form-H or as soon as may be thereafter on the basis of evidence produced by a registered dealer. On failure of a registered dealer to comply with the terms of notice issued under Rule 25(3) of the Rules of 1996, the Commissioner has to assess to the best of his judgment the amount of cess due under Rule 25(4) of the Rules of 1996. Since assessment has to be undertaken at any time within three years from the end of the year in which the relevant period occurs as per Rule 25(5) of the Rules of 1996 if a dealer does not furnish any returns or on failure to apply for registration under Rule 25(7) of the Rules of 1996, it becomes clear that though there is no outer period fixed for completing such assessment, the same has to be completed within reasonable period. In the facts of the present case, the

assessment has not been completed for a period of almost ten years from issuance of the initial notice in Form-H. The completion of assessment proceedings having been unnecessarily delayed by the Municipal Commissioner and there being no basis to hold that the Corporation is required to wait endlessly for the dealer to produce further documents despite having produced such documents on which it wanted to rely, it is held in the facts of the present case that failure to complete the assessment for a period of more than ten years from issuing the initial notice in Form-H amounts to continuing the assessment for an unreasonable period thus rendering such assessment liable to be quashed.

18. It is also to be noted that the reminder in Form-H dated 24.09.2019 issued to the dealer in all the writ petitions required the dealer to appear before the Local Body Tax Officer for the purposes of assessment under Rule 33 of the Maharashtra Municipal Corporations (Local Body Tax) Rules. It is to be noted that the Dealer had filed returns under Rule 25(1) of the Rules of 1996. The demand of cess was in view of the provisions of Section 152A of the Act of 1949. Entire Chapter XIA of the Act of 1996 with regard to the provisions that related to levy, calculation and recovery of cess in lieu of Octroi came to be deleted by Maharashtra XLII of 2017. This deletion took effect from 01.07.2017. Instead of assessing the cess in terms of Rule 25 of the Rules of 1996 the Municipal Corporation through its Local

Body Tax officer sought to invoke Rule 33 of the Local Body Tax Rules. Issuance of the said reminder on 24.09.2019 thus indicates non-application of mind to the relevant facts inasmuch as what was under consideration was the assessment of cess and not local body tax. The dealer having filed return under Rule 25 of the Rules of 1996, the assessment thereof was liable to be completed under the Rules of 1996. Recourse to the Local Body Tax Rules was totally unjustified. While it is true that quoting a wrong provision of law would not in a given case vitiate the proceedings if the Authority issuing the notice otherwise had authority to do so, the same however would clearly indicate absence of due application of mind to the material facts that were available on record. The aforesaid would thus indicate that even while issuing the reminder on 24.09.2019 the Municipal Corporation was not diligent in the matter and undertook recourse to Rule 33 of the Local Body Tax Rules instead of Rule 25 of the Rules of 1996.

19. We thus hold that failure to complete the process of assessment under Rule 25(3) and (4) of the Rules of 1996 for a period of more than ten years from the date of issuance of the initial notice in Form-H would render the process of assessment liable to be quashed on the ground of unreasonableness and failure to complete the assessment for no justifiable reason. On that basis the assessment for the period from 01.04.2008 to 31.03.2009, 01.04.2009 to 31.03.2010, 01.04.2010 to 31.03.2011,

01.04.2011 to 31.03.2012 has not been completed within the aforesaid period of ten years which we have found to be reasonable period for completion of assessment. The Commissioner was not precluded from completing the assessment either in terms of Rule 25(3) of the Rules of 1996 by treating the documents produced by the Dealer as the only documents on which the Dealer relied in support of his returns or under Rule 25(4) of the Rules of 1996 when the Dealer failed to submit any further documents pursuant to the notice in Form-H being issued to him. The period of ten years has been reckoned from the date of issuing the initial notice in Form-H and these notices have not been adjudicated even till the hearing of the writ petitions even in the absence of any order interdicting such adjudication.

20. As a result of the aforesaid discussion, Writ Petition Nos. 3124 of 2020, 9635 of 2021, 9637 of 2021, 9638 of 2021 are allowed. It is held that since the Commissioner failed to complete the assessment for the relevant years within a period of ten years of issuing the initial notice in Form-H, the notice dated 24.09.2019 is quashed. Since the period of ten years from issuance of notice in Form-H on 30.10.2014 for the year 01.04.2012 to 31.03.2013 is yet to expire, it is held that the Commissioner is free to proceed to complete the assessment expeditiously and in accordance with law. Writ Petition No. 9636 of 2021 is thus dismissed.

21. Rule accordingly. The parties shall bear their own costs.

(M.W. CHANDWANI, J.)

(A.S. CHANDURKAR, J.)

APTE