

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

WRIT PETITION NO. 2565 OF 2017

M/s. Instakart Services Private Limited .Petitioner
A company incorporated under the
Companies Act, 2013 having its office at
Vaishnavi Summit, Ground floor, 7th Main,
80 feet Road, 3rd Block, Koramangala
Industrial Layout,
Bangalore - 560 034.

Vs.

1. The State of Maharashtra .Respondents
through the Secretary,
Urban Development Department,
Having his office at Mantralaya,
Mumbai - 400 020.
2. The Municipal Commissioner,
Pune Municipal Corporation
Having his office at PMC Building,
Shivajinagar,
Pune - 411 005.
3. The Joint Municipal Commissioner,
Local Body Tax,
Pune Municipal Corporation,
Having his office at PMC Building,
Shivajinagar,
Pune - 411 005.
4. Flipkart Internet Private Limited
Buildings Alyssa, Begonia & Clover
Embassy Tech Village, Outer Ring Road,
Varthur Hobli, Bengaluru,
East Taluka,
Karnataka - 560 103.

Mr. Rafique Dada, Senior Advocate a/w. Mr. Rohit Jain, Mr. Gopal Mundhra, Ms Ginita Bodani & Ms Ankita Vashistha i/b. Economic Laws Practice, for the Petitioner

Mr. Rohan P. Shah a/w Ms Surabhi Prabhudesai i/b. Ms Deepali Kamble, Advocate, for Respondent No. 4

Mr. Abhijit P. Kulkarni, Advocate, for Respondent Nos. 2 & 3 – PMC

Ms M. P. Thakur, AGP, for Respondent No. 1 - State

**CORAM : SUNIL B. SHUKRE AND
M. W. CHANDWANI, JJ.**

DATE : 20 JANUARY 2023

P. C.

. Heard.

2. Rule.

3. Rule is made returnable forthwith. With the consent of the parties, the Petition is taken up for final disposal at the stage of admission itself.

4. By this Petition, the Petitioner has questioned the legality and correctness of the order dated 03.12.2017. This order has been passed on behalf of the Respondent - Corporation through its Commissioner. By this order, the challenge made by the Petitioner to the show cause notice, issued by the Corporation calling upon the Petitioner to register itself as “Dealer/Importer” for the purpose of assessment and levy of local body tax, has been rejected. The Commissioner has reasoned that the

Petitioner is working as “commission agent” as it imports goods from outside and delivers goods to the buyer located within the limits of the Municipal Corporation, Pune by collecting necessary charges from the buyers, which operation and transaction makes the Petitioner to be an importer of goods sold by it as Commission Agent to the individual buyer, who purchases goods through the internet platform, which stands in the name of “Flipkart Internet Pvt. Ltd.”.

5. Learned Senior Advocate for the Petitioner submits that the impugned order is illegal and by no stretch of imagination, the Petitioner, considering it’s role in the whole transaction, could be termed to be either a “Dealer” or “Commission Agent” or “Importer” within the meaning of the relevant provisions of The Maharashtra Municipal Corporation (Local Body Tax) Rules, 2015, r/w. relevant provisions of the Municipal Corporation Act, 1888.

6. Learned Senior Advocate submits that the Petitioner is only a Preferred Logistics Service Provider in respect of goods purchased by various buyers from the sellers listed on E Commerce platform run by the Flipkart Internet Pvt. Ltd. with login ID as “www.flipkart.com”, and, not a dealer or commission

agent or importer, within the contemplation of relevant rules.

7. Learned Senior Advocate submits that for the transaction of sale and purchase that takes place between the individual buyer and seller of the goods, internet platform operated by the Flipkart Internet Platform is being used. He further submits that once the transaction is over and the payment is made in advance or agreed to be made on delivery of goods, the Flipkart Internet Pvt. Ltd., on behalf of the concerned seller and also individual buyer, undertakes to deliver the goods through the Petitioner to the individual buyer at his door step and for this purpose, what is charged from the customer is not the commission, nor any percentage of price, but only charges levied on transportation and delivery of the goods. Learned Senior Advocate further submits that in these transactions, the Petitioner only acts like a transporter and it is the individual buyer, who imports goods purchased for his own use and that the Petitioner does not receive any commission upon sale of the goods. He also submits that if transportation of goods is to be understood as import, just for the sake of argument, still it would not be covered by the statutory definition of the term “import”, as it is not made for own use of the Petitioner. He, therefore, submits that the Petitioner is not liable under the provisions of

Local Body Tax Rules and as such is not required to register himself under these rules to pay any local body tax.

8. Learned counsel for the Corporation submits that as of now, no assessment of LBT has been made and the Petitioner is only called upon to register itself for the purposes of assessment and levy of LBT. He further submits that if it is the contention of the Petitioner that he is not liable to pay any local body tax, the Petitioner can always make his submission on that line, but, for that purpose, the Petitioner would have to register itself first for the purpose of local body tax.

9. Learned counsel for the Corporation further submits that, even otherwise, the Petitioner is squarely covered by the relevant provisions of the LBT rules and also the MMC Act. He, therefore, submits that it can be said that the Petitioner is amenable to levy of the LBT. In support of his contention, the learned counsel has invited our attention to Rules 3 and 7 of the Maharashtra Local Body Tax Rules and Sections 2(16A) and 2(28A) of the Maharashtra Municipal Corporations Act, 1949.

10. Insofar as operations carried on and indulged in by the Petitioner are concerned, there is no dispute. Undisputedly,

the Petitioner is the Logistics Service Provider and is the agency, which delivers goods on behalf of Flipkart Internet Pvt. Ltd. to an individual buyer upon completion of the transaction of sale of goods between individual buyer and individual seller by using platform of the Flipkart Internet Pvt. Ltd.. This is the nature of the operation and transaction undertaken by the Petitioner.

11. Now, the question is - Whether the Petitioner would be an entity which is liable for assessment and levy of LBT ? The question can be answered by ascertaining as to whether or not the relevant provisions of law contemplate for levy of LBT the kind of operations the Petitioner is carrying on. Let us, therefore, consider the relevant provisions of law. We would first begin with the definitions of relevant terms.

“Dealer” and “Importer” are the terms which are relevant here. They are to be found in Sections 2(16A) and 2(28A). For the sake of convenience, both these provisions are extracted as below :-

“Section 2(16A)

“dealer” means any person who whether for commission, remuneration or otherwise imports, buys or sells any goods in the City for the purpose of his business or in connection with or incidental to his business, and includes [...]

Exception. - (i) Any individual who **imports**

goods for his exclusive consumption or use and a department of State or Central Government **not engaged** in business shall not be a dealer;”

“Section 2(28A)

“importer” means a person who **brings or causes to be brought** any goods into the limits of the City from any place outside the area of the City for use, consumption or sale therein;”

12. The above referred provisions would indicate that if buying or selling of any goods in the city is important for the purpose of levy of LBT, activity of import in the city is equally important. In this case, it is nobody’s case that the Petitioner is buying goods or selling goods or bringing goods within the limits of the Corporation for the purpose of his own use or for commission. The whole dispute revolves around the activity of import carried out by the Petitioner for another and the reason being that the Petitioner is being viewed as an importer of goods and hence, liable to register itself under the provisions of Local Body Tax Rules (“LBT Rules” for short). This would necessitate understanding the term ‘importer’ defined in Section 2(28A). This definition, reproduced above shows that an importer is a person, who brings any goods into the limits of the Corporation from any outside place for such purposes or any of the them as (i) use, (ii) consumption or (iii) sale. That means, any person

who brings any goods into the limits of Corporation for any purpose other than own use or consumption or sale would not be a person who is an importer within the meaning of the term “importer” defined in Section 2(28A). Such other purpose can be like bringing goods for temporary storage and then dispatching them to another at outside place or for repackaging and sending them back to original or another source situated at outside place or for simply delivering them to a person who has bought the goods for use or consumption or sale and so on. In none of these instances, the person bringing the goods into the city limits would be covered by above definition of the term “importer”.

13. In the present case, the goods which are brought from outside by the Petitioner into the limits of Pune Municipal Corporation, as can be seen from the operations carried out by the Petitioner, are not for his own use or for earning commission or sale, but are for the purpose of being delivered at the door step of the individual buyer. In other words, what the Petitioner is doing here is import of goods for the purpose of delivery to some other person and for this purpose, the Petitioner acts like a courier or postman or delivery person. Thus, activity of the Petitioner would not be covered by the definition of the word “importer”. If the Petitioner cannot be called to be a person who

“imports” goods into the city limits for use or consumption or sale and if the Petitioner is also not the person who is alleged to be selling or buying goods for commission or remuneration or otherwise in the city, the Petitioner would not be a “dealer” within the contemplation of Section 2(16A). If this is so, then the Petitioner would not be liable for any registration for the purpose of LBT under rule 3 of the LBT Rules.

More clarity in respect of our above finding can be had by considering the relevant LBT Rules, which are Rule 3 and Rule 7. For the sake of convenience they are reproduced as below:

“3. The limits of turnover for registration.

(1). The limits [- - -] for registration shall be,-

[(a) in the case of a dealer, who is an importer and the value of all the goods imported by him during the year is not less than Rs. 1,00,000.

(b) in any other case, including the case where a dealer has not become liable to pay Local Body Tax under clause (a), and the turnover of all his sales or purchases during such year, is not less than Rs. 5,00,000.]

(2) Notwithstanding anything contained in sub-rule (1), if a dealer or a person not carrying on a particular business in the City on regular basis, carries on business in the City in any year on a temporary basis, then he shall be liable for temporary registration under the provisions of the Act and these rules, whether or not is

liable under sub-rule.(1) of this rule.”

“7. Commission agent etc., liable to pay local body tax on account of principal.

(1) Where a commission agent or any other agent, by whatever name called, or an auctioneer imports any goods on behalf of his principal, into the limits of the City for consumption, use or sale. therein, such commission agent, other agent, or, as the case may be, the auctioneer and the principal shall, both jointly and severally, be liable to pay local body tax in respect of such goods.

(2) If the principal, on whose behalf the commission agent, any other agent or auctioneer has imported any goods into the limits of the City for consumption, use or sale therein, shows to the satisfaction of the Commissioner that the local body tax has been paid by his commission agent, other agent or auctioneer, on such goods, under sub-rule (1), the principal shall not be liable to pay local body tax again in respect of same goods.

(3) Where a manager or agent of a non-resident dealer imports any goods into the limits of the City for consumption, use or sale therein, then the non-resident dealer, and the manager of such agent residing in the City, shall be jointly and severally liable to pay local body tax in respect of such goods.

(4) If the non-resident dealer shows to the Commissioner, that the local body tax has been paid by the manager or agent residing in the City, then the non-resident dealer shall not be liable to pay local body tax again in respect of the same goods.”

It would be clear from Rule 3 that even though it does not directly lay down any conditions and requirements for registration for the purpose of assessment and levy of LBT, it prescribes limits in terms of value of goods or turnover of sales or purchases, as the case may be for registration and in doing so it prescribes that such limits for registration would be applicable to a dealer who is an importer and who imports goods, value of which is not less than Rs.1 Lakh during the year or a dealer who is not importer but whose turnover of all sales or purchases during the year is not less than Rs.5 Lakhs. Thus, the requirement of registration for the purpose of assessment and levy of LBT under Rule 3 of LBT Rules, has been prescribed only in case of a dealer who is an importer or whose turnover of all sales or purchases during the year is not less than the amount prescribed therein. This rule does not refer to any person other than a dealer who is required to obtain registration under LBT Rules.

Rule 7 deals with a commission agent or any other agent by whatever name called or an auctioneer importing goods on behalf of his principle into the limits of city for consumption, use or sale within the city limits, and prescribes that such commission agent or other agent or as the case may be, the

auctioneer and the principle, shall, both jointly or severally be liable to pay Local Body Tax in respect of goods brought within the limits of the Corporation for consumption or use or sale.

In the present case, the discussion made earlier, would show that the Petitioner is not a dealer within the contemplation of the Maharashtra Municipal Corporation Act and therefore would not be a dealer as envisaged under Rule 3 of LBT Rules. As regards commission agent, or any other agent, we must say that the impugned order considers the Petitioner as a commission agent but, having regard to activity carried out by the Petitioner and service rendered by it, we have already found that the Petitioner, is a person who brings goods within the limits of the Corporation for the purpose of their delivery to the buyer who buys the goods independently from different seller by using internet platform provided by Flipkart and thus, the Petitioner acts like courier or a postman or a delivery person. Therefore, the Petitioner could not be said to be an agent, either of the seller or the buyer much less a commission agent. The Petitioner is also not an auctioneer who imports any goods on behalf of the principle and that is not the case of the Corporation either. Besides, the Petitioner does not bring any goods within the city limits for consumption or use or sale but brings those goods into

the city limits only for the purpose of their delivery to the individual buyer. It then follows that Petitioner cannot be called to be an entity which is a commission agent or any other agent or an auctioneer importing goods on behalf of the principal. If this is so, the Petitioner would not be covered either by the provisions made any Rule 3 or in Rule 7.

14. All these aspects of the matter which are very critical for the purpose of assessment and levy of local body tax have not been considered by the Municipal Commissioner, Pune. The impugned order is illegal and bad-in-law. Such an order cannot be sustained in the eyes of law and deserves to be quashed and set aside. Accordingly, we pass the following order.

O R D E R

- (i). The Petition is allowed;
- (ii). The impugned order dated 03.02.2017 issued by Respondent No. 2 - Corporation is quashed and set aside;
- (iii). The Bank guarantee, if it is valid till this date stands discharged.

15. Rule is made absolute in the above terms.

16. The Petition is disposed of accordingly.

(M. W. CHANDWANI, J.)

(SUNIL B. SHUKRE, J.)