

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 4309 OF 2023

Kokuyo Camlin Ltd.

... Petitioner

Versus

1. The State of Maharashtra
2. The Commissioner of Vasai-Virar City Municipal Corporation
3. The Deputy Commissioner, Local Body Tax Dept. ... Respondents

And

WRIT PETITION NO.4310 OF 2023

Kokuyo Camlin Ltd.

... Petitioner

Versus

1. The State of Maharashtra
2. The Commissioner of Vasai-Virar City Municipal Corporation
3. The Deputy Commissioner, Local Body Tax Dept. ... Respondents

Mr. R. V. Desai, Senior Advocate with Mr. Deepak Bapat and Mr. Sumedh Hinge, for the Petitioner.

Ms. Shruti D. Vyas, 'B' Panel Counsel for the State.

Ms. Swati Sagavekar, for Respondent Nos. 2 and 3.

CORAM:	G. S. KULKARNI & JITENDRA JAIN, JJ.
RESERVED ON	27 July, 2023
PRONOUNCED ON	10 August, 2023

Oral Judgment (Per G. S. Kulkarni, J.)

1. These are two petitions filed under Article 226 of the Constitution whereby two Assessment Orders both dated 13 March, 2023 for the year 2015-16 and 2016-17, passed by the Assessing Officer/Deputy Commissioner, Vasai-Virar Municipal Corporation, assessing the liability of the petitioner for levy of

Local Body Tax (LBT) under the Maharashtra Municipal Corporation Act (for short '**the MMC Act**'), has been assailed. For the year 2015-16 a demand against the petitioner is for Rs.2,09,72,136 and for the year 2016-17, the demand is of an amount of Rs.2,71,36,506/-.

2. At the outset, Ms.Sagvekar, learned Counsel for the respondent – municipal corporation raised a preliminary objection to the maintainability of this petition on the ground that there is an alternate remedy of an appeal available to the petitioner under Section 406 of the Act. Section 406 of the MMC Act being appeal provision, is required to be noted which reads thus:

406. Appeals when and to whom to lie. - (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 be 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 a 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, [or the capital value, as the case may be] 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 the Commissioner, within thirty days from the date of publication of a general notice by the Commissioner in this behalf in the local newspapers. 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.”

(emphasis supplied)

3. In support of Ms. Sagvekar’s contention that the petitioner needs to take recourse to the alternate remedy, reliance is placed on the decision of the Division Bench of this Court in the case of **Kharghar Co-op. Housing Societies Federation Ltd. through General Secretary & Anr. Vs. Municipal Commissioner, Panvel Municipal Corporation**¹. She would submit that this Court referring to several decisions on the issue including the recent judgment of the Supreme Court in **M/s Godrej Sara Lee Limited Vs. The Excise and Taxation Officer-cum-Assessing Authority & Ors.**² has held that as a challenge was made to the levy of tax under the MMC Act, the petitioner in such proceedings could not have maintained a petition under Article 226 of the Constitution of India, to assail the assessment order. Ms. Sagvekar has also referred to an order passed by this Court in **“Pidilite Industries Ltd. Vs. The State of Maharashtra & Ors”**³ and according to her, these were proceedings, which in the past were clubbed alongwith the present proceedings. She would accordingly submit that these petitions be not entertained and the petitioner be relegated to avail the remedy of a statutory appeal.

1 WRIT PETITION NO. 8586 OF 2021, decided on 6 April 2023

2 2023 SCC OnLine SC 95.

3 Writ Petition No.1297 of 2023, dated 1 February 2023

4. Ms.Vyas, learned Assistant Government Pleader for the State would also support the objection as raised on behalf of the Municipal Corporation. She would also submit that this Writ Petition ought not to be maintained in view of an alternate remedy being available to the petitioner of filing an appeal.

5. Mr. R. V. Desai, learned Senior Counsel for the petitioner, however, would oppose the preliminary objection, as urged on behalf of the Municipal Corporation and the State Government.

6. Mr. Desai has made submissions on the applicability of the provisions of Section 152D to contend that it is ill-conceivable that there is liability to pay LBT on the petitioner, merely because the petitioner was purchasing goods from unregistered dealers within the municipal limits. It is his contention that in fact, the benefit of Section 152B also needs to be made available to the petitioner and therefore, the levy is bad and illegal.

7. Mr. Desai would urge on the in-applicability of the provisions of Section 152D referring to the provisions of the definition of Cess as defined under Section 152A of the Act to contend that it is not entry of goods at the hands of the petitioner which is being taxed, but at the hands of the third party who are the sellers of the petitioner. He would submit that the petitioner is entitled to the reliefs as prayed for in the Writ Petition. He has accordingly advanced submissions, not only on the issue of alternate remedy, but also on the merits of

the case in contending that the petitions be adjudicated qua the reliefs as prayed for.

8. To appreciate the rival contention, it would be necessary to note the factual matrix:

The case of the petitioner is that it is holding a registration certificate under the LBT in respect of its factory which is situated at Rajprabha Udyog Nagar Building No.6B & C, Golani Naka, Waliv, Vasai (East), District Palghar. It is not in dispute that the said factory premises of the petitioner are situated within the municipal limits of Vasai-Virar City Municipal Corporation.

9. Surprisingly, in Writ Petition No.4309 of 2023 there are no factual averments except as to what has been stated in paragraph 3 which sets out that the challenge is to the assessment order dated 13 March, 2023. As to the nature of the business, the goods in question being imported within the limits of the municipal corporation etc. there are no details / averments in the petition. Mr. Desai has contended that, however, there are grounds raised in the petition in support of the prayers as made in the petition. Mr.Desai would submit that there are grounds in assailing the impugned assessment orders as also supporting the legal plea that the provisions of Section 152D of the MMC Act are ultra vires the Constitution.

10. As to what is the case of the petitioner in the grounds can also be noted. The petitioner has contended that the Assessing Officer (respondent No.3) has passed the assessment order dated 13 March 2023 under Section 152S of the MMC Act read with sub-rule (3) of Rule 33 of the Bombay Provincial Municipal Corporation (Local Body Tax) Rules, 2010 (for short '**the LBT Rules**') without authority of law comprising of tax, interest and penalty. It is the petitioner's case that Section 152D of the MMC Act is ultra virus and violative of Article 19(1)(g) of the Constitution of India as the same is contrary to Section 127(2)(aaa) of the MMC Act, as the Assessing Officer has invoked Section 152D of the MMC Act and levied tax on the purchase value of the goods, without establishing on the documentary evidence that the suppliers are not registered under the Act and the goods sold by them to the petitioner have been imported by the supplier into the limits of the City from any place outside of the City area. It is contended that the levy of LBT under Section 152D and Rule 28(3) of the LBT Rules are contrary to charging Section 127(2)(aaa) of the MMC Act, which provides that a registered dealer is liable to pay LBT on the entry of the goods into the limits of the City for consumption, use or sale therein. It is contended that as such the basis for the levy of LBT is that a registered dealer has imported goods into the limits of the city from any place outside the limits of the city. The petitioner has contended that, however, the assessing officer has levied tax by invoking Section 152D and Rule 28(3) without complying with the pre-requisites of the aforesaid provisions namely that the goods purchased by the petitioner from the

unregistered suppliers which were imported by them within the municipal limits and the petitioner had moved the said goods outside the city for carrying out the process enumerated in the Explanation to Rule 28 and after the said process is carried out, the same have been imported into the limits of the city. It is, thus, contended that the demand raised by the impugned assessment order is without authority of law.

11. It is also contended that the provision to file an appeal against any assessment order before the Appellate Authority as provided under Section 406(6)(ii) of the MMC Act read with sub-section (8) thereof, is also not an efficacious remedy inasmuch as such provision requires that for an appeal to be maintainable, the disputed tax is required to be deposited and it is difficult for the petitioner to pay the entire amount of disputed tax and it is for this reason this petition has been filed. The averments to that effect is made in paragraph 5(f) read thus:

“5(f) It is submitted that there is a provision to file appeal against any assessment order, to the appellate authority constituted under Section 406(6)(ii) of the Municipal Act. However, sub-section (8) to Section 406 of the Municipal Act provides that “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.” However, the provision of not allowing the filing of appeal for non-payment of disputed tax is arbitrary, harsh and irrational and it is difficult for the petitioner to pay the entire amount of disputed tax. Therefore, this petition has been filed.”

(emphasis supplied)

12. Thus having noted the nature of the challenge as mounted by the petitioner, we may also note the nature of the assessment order which has been challenged by the petitioner in both these petitions which is an order to levy and demand local body tax. Illustratively, the assessment order in the first petition may be extracted which reads thus:-

Form “J”
[See Rule 33 (11)]
Notice of Demand

VVMC/LBT/1909/2022-2023
DATE:- 13/03/2023

To,
Mr. Shriram Danekar
M/s. KOKUYO CAMLIN LIMITED
Building No.06, A to C,
Rajprabha udyog nagar,
Golani naka, Waliv,
Vasai east, Taluka – Vasai,
Dist. - Palghar 401 208.

R.C. No. 28/141/2011/I-GN

- i. Take notice that the local body tax payable by you for the period from 01/04/2016 to 31/03/2017 has been determined by me under Order No. dated 13/03/2023 at Rs. 67,12,635/-. A penalty of Rs. 1,34,25,270/- and interest of Rs. 69,98,600/- has also been imposed under rule 48.
- ii. The total amount of Rs. 2,71,36,506/- should be paid to corporation at on or before 28/03/2023.
- iii. If you do not pay the amount on date specified above, the amount will be recoverable as an arrears of property tax under rule 40 of local body tax Rules.
- iv. If the amount is not paid without reasonable cause by the specified date, you will also liable for penalty under rule 49 of the local Body Tax Rules.
- v. Any appeal against the order must be presented to the authority prescribed within the time and the manner laid down in section 406 of the Maharashtra municipal corporation Act (1949).

Place: Waliv.

Sd/-

Dated: 13/03/2023

(Dr. Kishor Gawas)
Deputy Commissioner
Vasai-Virar City Municipal Corporation”

13. To appreciate as to whether the prayers as made in these petitions need to be adjudicated in the present proceedings, we may briefly note the legislative scheme in respect of the taxing provision. Prior to the introduction of the local body tax ‘cess’ was levied on the entry of goods within the municipal limits for use, consumption and sale, which was included as one of the municipal taxes under Section 127 of the MMC Act. The said provision was amended by the Maharashtra Act No. 27 of 2009, whereby in substitution of cess, the municipal corporation was permitted to levy LBT (Local Body Tax).

14. The relevant provisions can be noted which read thus:-

Section 2(31A): Definition of Local Body Tax

“Local Body Tax” means a tax on the entry of goods into the limits of the city, for consumption, use or sell therein, levied in accordance with the provisions of Chapter XI-B, but does not include cess as defined in Clause 6A and Octroi as defined in Clause 42.

Section 127 : Taxes to be imposed under this Act

- (1)
- (2) In addition to the taxes specified in sub-section (1) the Corporation may for the purposes of this Act and subject to the provisions thereof impose any of the following taxes, namely:
 - (a)
 - (aa)
 - (aaa) Local Body Tax on the entry of the goods into the limits of the City for consumption, use or sale wherein, in lieu of octroi or cess, if so directed by the State Government by notification in the Official Gazette.
 - (b)
 - (c)
 - (d)
 - (e)
 - (f)
 - (2A)

(3) The municipal taxes shall be assessed and levied in accordance with provisions of this Act and the rules.

(4)

.....

Section 152B: Incidence of Cess

(1) Every dealer whose turnover either of all sales or of all purchases or of all imports made,—

(a) during the year immediately preceding to the year; or

(b) during the year,

in which the Corporation has decided to levy the cess specified in sub-section (2) of section 127, has exceeded or exceeds the relevant limit prescribed in this behalf, shall be liable to pay the cess under this Act.

Provided that, a dealer to whom sub-clause (a) does not apply but sub-clause (b) applies and whose turnover either of all sales or of all purchases or of all imports first exceeds the relevant limit prescribed in this behalf after the first day of April of the year in which the corporation has decided to levy the cess, shall not be liable to pay the cess in respect of the goods imported by him into the limits of the city for consumption, use or sale therein upto the time when his turnover of sales or of purchases or of imports as computed from the first day of April of the said year, does not exceed the relevant limit prescribed in this behalf.

(2) Every dealer whose turnover either of all sales or of all purchases or of all imports made during any year commencing on the first day of April, being a year subsequent to the years mentioned in sub-section (1) first exceeds the relevant limit prescribed in this behalf, shall be liable to pay cess under this Act:

Provided that, a dealer shall not be liable to pay the cess in respect of the goods imported by him into the limits of the city for consumption, use or sale therein during the period commencing on the first day of April of the said year upto the time when his turnover of sales or of purchases or of imports, as computed from the first day of April of the said year does not exceed the relevant limit prescribed in this behalf.

(3) Every dealer who has become so liable for payment of cess shall continue to be so liable until his registration is duly cancelled ; and shall again become liable on the day his turnover of sales or purchases or imports again first exceeds the relevant limit prescribed in this behalf.

Section 152D: Liability of Cess in certain cases

Where on and after the date fixed by the Corporation for levy of Cess, any goods on which cess is leviable under this Chapter are imported into the limit of the City by any person (not being a registered dealer) from any place outside of the City area and sold to a registered dealer, there shall be levied and collected cess on such goods at the rates fixed by the Corporation, under the rules, from time to time, and such registered dealer shall be liable to pay the cess so levied:

Provided that, no cess on the same goods shall be levied if such purchasing dealer proves to the satisfaction of the Commissioner that the cess has been paid earlier on the said goods to the Corporation.

152L. Offences and Penalties:

(1) Whoever,—

(a) not being a registered dealer under section 152F falsely represents that he is or was a registered dealer, at the time when he sells or buys or imports or delivers goods, or

(b) knowingly furnishes a false return, or

(c) knowingly produces before the Commissioner false bill, cash memorandum, voucher, declaration, certificate or other document for any purpose referred to in section 152J, or

(d) knowingly keeps false accounts of the value of the goods bought or imported or sold or delivered by him in contravention of section 152I, or

(e) knowingly produces false accounts registers or documents or knowingly furnishes false information, or

(f) issues to any person, a certificate required under relevant provisions of the rules or a false bill, cash memorandum, voucher or other document which he knows or has reason to believe to be false, or

(g) willfully attempts in any manner whatsoever to evade any cess leviable under this Chapter, or

(h) willfully attempts in any manner whatsoever to evade any payment of any cess, penalty, interest or sum forfeited under the provisions of this Chapter, or

(i) aids or abets any person in commission of any act specified in clauses (a) to (h), or

(j) fails without sufficient cause to furnish any information as required by the rules, or

(k) fails without sufficient cause to furnish any return as required by the rules by the date and in the manner prescribed, or

(l) fails to pay any cess as required by this Chapter, or

(m) fails without sufficient cause to comply with any requirements made of him under section 152J, or

(n) obstructs any officer making any search or seizure under section 152J, or

(o) without sufficient and reasonable cause contravenes provisions of sections 152F, 152G or 152I,

shall, on conviction, be punished with imprisonment for a term which may extend to two years and with fine.

(2) Whoever commits any of the acts specified in sub-section (1) and the offence is a continuing one under any of the provisions of the sub-section (1) shall, on conviction, be punished with daily fine which shall not be less than rupees one hundred during the period of the continuance of the offence, in addition to the punishment provided under this section.

(3) Notwithstanding anything contained in sub-section (1), no person shall be proceeded against under that sub-section for the acts referred to therein if the total amount of cess evaded or attempted to be evaded is less than rupees two hundred during the period of a year.

(4) Where a dealer is accused of an offence specified in sub-section (1),

the person deemed to be the manager of the business of such dealer shall also be deemed to be guilty of such offence unless he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission thereof.

(5) No prosecution for an offence under this section shall be instituted in respect of same facts on which a penalty has been imposed by the Commissioner under any provisions of this Chapter.

Bombay Provincial Municipal Corporations (local body tax) Rules, 2010

Rule 33: Assessment of Local Body Tax

(1) The amount of Local Body Tax due from a registered dealer liable to pay it, shall be assessed separately for each period,

(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 local body tax due from such dealer, on the basis of such returns.

(3) The Commissioner may assess a registered dealer who,
(i) has failed to furnish returns for any period, or,
(ii) has furnished all the returns in respect of all the periods on or before the date prescribed for furnishings the last return pertaining to that period, if he is not satisfied that the returns furnished by the registered dealer in respect of that period, are correct and complete, and if he thinks it necessary to require the presence of the dealer or the production of further evidence in respect thereof, or,
(iii) has furnished returns in respect of any period and claimed refund in the returns furnished by him, or
(iv) has applied for cancellation of his certificate of registration,

(4) The Commissioner may assess a dealer or a person who-
(i) is liable to pay local body tax but has failed to apply for registration or has failed to apply for registration within the time prescribed therefor under these rules, or,
(ii) has been directed by him by an order in Form G, to furnish returns

(5) if a registered dealer fails to comply with the terms of any notice issued under sub-rule (3) or (4) of this rule, the Commissioner may assess him to the best of his judgment, the amount of local body tax due from him.

(6) Notwithstanding the foregoing provisions of this rule, where the Commissioner is not satisfied about the correctness or the completeness of the accounts of a dealer, or where no method of accounting has regularly been employed by a dealer, the Commissioner may, after giving such dealer a reasonable opportunity of being heard, assess, to the best of his judgment the amount of local body tax, if any, due from him.

(7) For the purpose of sub-rule (3), (4), (5) and (6) of this rule, the Commissioner may proceed to assess the dealer within five years from the end of the year to which such assessment related, by serving on the dealer, a notice in Form H and fix a date which shall not be earlier than fifteen days from the due date of Service thereof.

(8) Any assessment made under this rule, shall be without prejudice to any penalty or interest or prosecution for an offence under the Act.

(9) The order of assessment shall be in Form-I

(10) An order imposing a penalty or interest under rule 48 or an order of forfeiture with or without interest penalty or interest or both in respect of any period, may be incorporated in the order of assessment relating to that period, made under this rule.

(11)

(12)

(13)

(14)

Rule 48(2) and (3): Imposition of penalty and interest in certain cases:

(1)

(2) If, while assessing or re-assessing the amount of local body tax due from a dealer or person under any provisions of the Act and the rules or while passing any order in any appeal or revision or rectification proceedings, it appears to the Commissioner that such dealer or, as the case may be, a person

(a)

(b)

(c) has failed to disclose any entry of goods on which local body tax is leviable in the City for consumption use or sale therein or has failed to show in the return the appropriate liability to pay local body tax or has claimed inaccurate deduction, refund or has failed to disclose fully and truly all material facts necessary for the proper and correct quantification of the local body. liability, the Commissioner may, after giving the dealer or person a reasonable opportunity of being heard, by an order in writing, impose upon dealer or, as the case may be, a person by way of penalty in addition to a local body tax assessed or re-assessed or found due in the appeal or revision or rectification proceedings, as the case may be-

(i)

(ii)

(iii) in the case covered by clause (c) sum not exceeding (two times) the amount of local body tax found payable under the said clause.

(6)(a) If a dealer or a person does not pay the local body tax within

the time he is required by or under the provisions of these rules to pay it, then he shall, without prejudice to any other action taken or proposed to be taken under other provisions of the Act and these rules for the recovery of local body tax due, be liable to pay by way of simple interest, in addition to the amount of such local body tax, a sum equal to,-

- (i) two percent per month of such local body tax after the last date by which he should have paid such local body tax, and
- (ii) ***

(b) if any local body tax, other than the local body tax on which interest is leviable under clause (a) is found due from a dealer or a person in respect of any period as a result of an order of assessment passed under the provisions of the Act and the rules in his case, then such dealer or person shall be liable to pay by way of simple interest, a sum equal to two percent of such local body tax for each month from the first date after the end of the period for which the dealer or the person has been so assessed till the date of such order of assessment. If as result of any order passed under the provisions of the Act or the rules, the amount local body tax found due is enhanced or reduced, as the case may be, the interest shall be enhanced or reduced accordingly.

Provided that the total amount of interest so payable under this sub-rule shall not exceed the total amount of local body tax on which interest under this sub-rule is so charged.

Explanation:- For the purpose of this sub-rule, a part of a month shall be counted as one month.

- (4)
- (5)
- (6)
- (7)
- (8)
- (9) ”

15. Having heard learned counsel for the parties and having noted the legislative scheme of the MMC Act in relation to the levy and collection of Local Body Tax (“LBT”), we may observe that the municipal taxation in regard to the levy and recovery of the LBT is part of a well defined statutory scheme, which is a Code by itself. The question would be whether the petitioner has made out any

exceptional case so as to be made an exception from deviating the statutory scheme and discipline as may be legitimately required in entertaining the present petition. Considering the case as averred by the petitioner in the petition, as also argued before us, we are of the clear opinion that at this stage of the proceedings we are not inclined to examine the vires of sub-section 152D of the MMC Act, as challenged by the petitioner as prayed for in prayer clause (a). This for the reason that we are of the clear opinion that what was questioned by the petitioner are primarily the assessment orders, which is clear from the reading of prayer clause (b) of the petition. Illustratively prayer clause (b) of the petition reads thus:-

“(b) This Hon’ble Court be pleased to issue a writ of certiorari or a writ in the nature of certiorari or any other appropriate writ, order or direction for calling for the records of the present case and after going through the legality and validity thereof be pleased to quash and set aside the Assessment order dated 13/03/2023 for the period 2016-17 as per “Exhibit-A” raising total demand of Rs. 2,71,36,506.”

16. It would quite justified for us in taking such view considering the clear averments as made in the memo of petition in paragraph 5(f) when the petitioner takes a position contrary to the well settled principles of law, i.e. when the petitioner contends that the provision of not allowing filing of a statutory appeal without deposit of the disputed tax is arbitrary, harsh and irrational (when the validity of the said provision of pre-deposit has already been upheld]. Also when the petitioner clearly avers in the petition that it is difficult for the petitioner to pay the entire amount of disputed tax to maintain the appeal, and for such reason

this petition is filed. The averments as made are already noted by us in paragraph 9 above.

17. In our opinion, such contentions as urged by the petitioner are also contrary to the observations of the Division Bench of this Court in case **Kharghar Co-op. Housing Societies** (supra) when in the context of payment of municipal taxes the Division Bench referring to the provisions of Section 406 and considering the several decisions of the Supreme Court in **Shivram Poddar Vs. Income Tax Officer, Central Circle II, Calcutta and Anr.**⁴; **Income-Tax Officer Lucknow Vs. M/s S.B. Singar Singh & Sons & Anr.**⁵ ; **Assistant Collector of Central Excise, Chandan Nagar, West Bengal Vs. Dunlop India Ltd. & Ors.**⁶; **M/ s. Godrej Sara Lee Ltd. Vs. The Excise and Taxation Officer-cum-Assessing Authority & Ors.**⁷ has held that the petition under Article 226 of the Constitution assailing the assessment and demand order ought not to be entertained and the proper remedy would be to challenge the assessment order by taking recourse to the statutory remedy of an appeal. Such decision is squarely applicable in the facts of the present case, as contention of the petitioner is similar to one considered by the Division Bench in **Kharghar Co-op. Housing Societies' case** (supra). The relevant observations of the Division Bench are required to be noted which read thus:-

4 AIR 1964 SC 1095

5 (1976)4 SCC 325

6 (1985)1 SCC 260

7 2023 SCC OnLine SC 95.

“36. Be that as it may, we would also consider as to whether the grounds on which the present petition has been filed, in any manner are precluded to be raised, in such statutory appeal. As noted above, primarily the grounds as raised by the petitioners in the present petition are, *firstly*, non-adherence to the provisions of law in assessment and levy of property taxes which is quite vague, *secondly*, no authority to levy retrospective tax and *thirdly*, principles of natural justice not being followed.

37. We are not impressed with any of the grounds as urged by the petitioner so as to persuade us to entertain this petition and/or to come to a conclusion, that the petitioners be permitted to by-pass the statutory remedy made available by law to persons who are aggrieved and who intend to assail the property tax bills. All these grounds are certainly grounds which can be raised by the petitioners in a statutory appeal under Section 406 of MMC Act. In our opinion, the grounds as raised by the petitioner in fact can be more effectively raised, only by taking recourse to the statutory remedy of an appeal, as each of the assessee would be required to prove on evidence, that the PMC in issuing individual bills in respect of each of these assesses, has not acted in accordance with the provisions of law and/or that in respect of such assesses there was a breach of principles of natural justice. We may also observe that all these are issues which are purely subjective and which are required to be individually adjudicated before the appellate authority. On a deeper scrutiny, it would certainly not be possible for this Court, in exercise of its writ jurisdiction under Article 226 of the Constitution of India and in such blanket manner, examine these issues, albeit camouflaged by the petitioners to be common issues.

38. If we accept the contentions as made on behalf of the petitioners, we fear that we are creating a new pattern and jurisprudence in relation to such matters being entertained in exercise of writ jurisdiction, thereby rendering the provision for a statutory appeal wholly otiose. This would lead to severe and drastic consequences, in as much as assessments as may be levied by the several Municipal Corporations, governed by the provisions of the MMC Act, would become vulnerable to challenge by approaching the High Court in its extraordinary writ jurisdiction. This would be applicable across the board in respect of all the Municipal Corporations in the State of Maharashtra. We would hence certainly not accept such wanton contention as sought to be urged by the petitioners, that an enbloc writ petition assailing the property tax bills be entertained. The legislative wisdom behind Section 406 providing for a statutory appeal cannot be defeated, merely because petitioner no.1 is a Federation, with several member societies, and merely because it is claimed that they have a common cause. It would be wrong reading of law that merely by forming a federation, a different color could be given to an individual cause so as to contend that the writ petition be entertained. In our opinion, for such reasons the petitioners are under an erroneous impression that merely because they have many members who purportedly share a common cause, namely, to assail the bills issued to

them, the petitioners would have a foothold to maintain the present petition and that looking at the numbers albeit miniscule number of assesseees, the High Court would be under some obligation, to entertain such a petition. Certainly, the law would not accept such a drastic proposition.

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49. The procedure for levy and collection of municipal taxes falls under **Chapter XI** of the MMC Act titled as ***“Municipal Taxation”***. Section 127 which falls under the said Chapter, is the charging Section, providing that the Municipal Corporation, inter alia, is authorised to impose taxes and one of them being property taxes. Section 128 provides for the prescribed manner in which the Municipal taxes may be recovered by the Rules. Section 128-A provides that the property taxes leviable on buildings and lands in the City under the Act shall include water tax, water benefit tax, sewerage tax, sewerage benefit tax, general tax, education cess, street tax and betterment charges. Section 129 provides for property taxes leviable on rateable value, or on capital value, as the case may be and at what rate. The entire chapter dealing with Municipal Taxation comprises of provisions of Section 127 to Section 152-1A. This apart, Chapter VIII falling under Schedule ‘D’ of the MMC Act provides for Taxation Rules, which contains **Rules 1 to 63** dealing with the assessment of taxes. It can certainly be said that the provisions of “Chapter IX (Municipal taxation)” from Section 127 to 152-1A of the MMC Act read with the “Taxation Rules” (Rule 1 to 63) incorporated thereunder is a Code by itself. Thus, on one hand the MMC Act provides substantive provisions in regard to the municipal taxation. Read with these provisions is the provision of Section 406 which forms an inextricable concomitant, of the taxing provisions, when it provides for a statutory remedy of an appeal. Thus, such provision which is integral to the mechanism of the taxing provisions, necessarily is required to be given its highest weightage, when the Court considers whether a challenge to levy or demand of tax being raised in the proceedings under Article 226 of the Constitution of India could be entertained. The petitioners’ contention to disregard this provision is not the correct approach.

18. In so far as the contention of the petitioner on merits are concerned namely that the petitioner has not brought the goods, subject matter of assessment within the municipal limits for use, consumption and sale and has purchased goods locally and therefore such goods are not liable for the levy of the LBT, is a factual contention, which can be effectively examined on the basis of

the documents and which can be certainly examined in the proceedings of a statutory appeal.

19. For the aforesaid reasons, we are of the clear opinion that the petitioner has not made out any case for interference in these petitions so as to persuade the Court to make an exception to entertain the petitions, notwithstanding the statutory remedy of an appeal available to the petitioner as provided under the provisions of Section 406 of the MMC Act.

20. We may also observe that merely for the reasons that the vires of a statutory provision namely Section 152D of the MMC Act being assailed by the petitioner, would not mean that *de hors* a strong foundation and a cause of action for assailing such provision being made out, the Court nonetheless would be under an obligation to examine the vires of the said provision and entertain the petitions.

21. For the aforesaid reasons, we dispose of these petitions by the following order:-

ORDER

- i. The petitioner is permitted to avail the remedy of an appeal under Section 406 of the MMC Act to assail the impugned assessment orders. Let such appeal be filed within four weeks from today.
- ii. If such appeals are filed, the same be adjudicated by the appellate authority on its merits without an objection as to limitation as the

petitioner was bonafide pursuing the present proceedings. All contentions of the parties on the merits of the proceedings if any instituted before the appellate authority are expressly kept open.

iii. We keep open the challenge of the petitioner to the vires of the provision of Section 152D of the MMC Act to be asserted as and when the need so arises. All contentions of the parties in that regard are expressly kept open.

iv. Disposed of in the above terms. No costs.

(JITENDRA JAIN, J.)

(G. S. KULKARNI, J.)