

Digitally
signed by
PURTI
PRASAD
PARAB
Date:
2024.08.27
16:07:20
+0530

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 3821 OF 2024**

Wintry Engineering And Chemicals
Private Limited, A Private Limited
Company incorporate under the
provisions of Companies Act and having its
registered office at Plot No. A-63 to A-67
and C-23 to C-25 in the Dombivli
Industrial Area of Village Chole, MIDC,
Phase-I, District-Thane, Maharashtra – 421 203.

...Petitioner

Versus

1. The Commissioner of Local Body Tax
Department, Kalyan Dombivli Municipal
Corporation, Jagannath Commerce Plaza,
1st Floor, Near Godrej Showroom, Manpada
Road, Dombivli (E)
2. The Commissioner of (Local Body Tax),
Kalyan Dombivli Municipal Corporation,
Jagannath Commerce Plaza, 1st Floor,
Near Godrej Showroom, Manpada
Road, Dombivli (E).

...Respondents

Mr. Sriram Sridharan a/w Mr. Shanmuga Dev for Petitioner.
Mr. Sandeep D. Shinde for Respondents.

**CORAM : K. R. SHRIRAM &
JITENDRA JAIN, JJ.
DATED : 20th / 22nd AUGUST 2024**

ORAL JUDGMENT : (PER : K.R. SHRIRAM, J.)

1. Mr. Shinde for respondent sought time saying that only yesterday he was given the brief. Mr. Sridharan states that petition was served way back in March 2024 and undertakes to file affidavit of service. In view thereof and since the issue involved was narrow, i.e., interpretation of provisions of the Maharashtra Municipal Corporation Act, 1949 (the Act) and the Maharashtra Municipal Corporation (Local Body Tax) Rules (the

Rules) the court felt the matter can be disposed without giving any further time to, respondent to file reply.

2. Petitioner is impugning an order dated 22nd February 2024 to the extent where it says under Section 406 (6) (i) (ii) of the Act no appeal shall be entertained unless the amount of the disputed tax claimed plus interest and penalty has been deposited by appellant with the Commissioner. Admittedly, disputed tax is not defined under the Act.

3. The short issue which arises for our consideration is the interpretation of the phrase “disputed tax” as appearing in Section 406(8) of the Act. Sub-Section (8) of Section 406 of the Act reads as under:-

“(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.”

4. In the instant case, the issue involved in the assessment order was whether Petitioner is liable to pay Local Body Tax (LBT). Respondents have passed an order levying LBT of Rs.28,861,674/-, interest of Rs.28,861,674/- for the period June 2015 to June 2017 and penalty of Rs.15,000/-. Petitioners have deposited the LBT but have not deposited the interest and penalty amount while filing the appeal. It is the contention of Petitioner that on a true and proper construction of Section 406(8) of the Act, for entertaining an appeal it is only the amount of “disputed tax” claimed from Petitioner which has to be deposited, whereas it is the contention of Respondents that for entertaining the appeal under the said section,

Petitioner is required to deposit not only the disputed tax but also the interest and penalty. Therefore, the issue that arises for our consideration is :

(i) Whether on true and proper construction Section 406(8) of the Maharashtra Municipal Corporations Act, the phrase “disputed tax” used in the said section would include interest and penalty also?

5. To answer this question, it is relevant to analyse the scheme of levy of LBT. Section 127 of the Act deals with taxes to be imposed and Section 127(2)(aaa) provides for levy of LBT on the entry of the goods into the limits of the city for consumption, use or sale therein, in lieu of octroi or cess, if so directed by the State Government by notification in the official gazette. Sub-section (3) provides that the tax shall be levied in accordance with the provisions of the Act and the Rules. Pursuant to the said provision, the levy of LBT is regulated by Rules.

6. The scheme of levy of LBT makes a distinction between levy of tax and interest and penalty. Rule 5 of the said rules provides for liability to pay LBT in certain cases and various sub-rules therein prescribes liability to pay LBT including any interest and penalty. Rule 27 of the said Rules provides for lump sum payment of LBT in case of registered dealer having small turnover and the LBT based on the turnover ranges from Rs.2,000/- to Rs.5,000/-.

7. We also note that Rule 33 of the Maharashtra Municipal Corporation (Local Body Tax) Rules distinguishes between the local body tax and interest and penalty. Sub Rule (1) of Rule 33 of the said Rules

provides that the amount of local body tax due from a registered dealer liable to pay shall be assessed separately for each period. Sub Rule (9) of Rule 33 provides the order of assessment shall be in Form I. Sub Rule (10) of Rule 33 says an order imposing a penalty or interest under Rule 48 or an order of forfeiture with or without 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. So therefore, the order of assessment would only contain local body tax due and to the order of assessment, order imposing penalty or interest may be incorporated. Therefore, the tax due, interest and penalty are distinct.

Sub Rule (3) of Rule 40 says “Any local body tax, penalty, interest, sum forfeited which remains unpaid shall be recoverable as an arrears of property tax, by service of notice in Form L’.

Rule 41(1) provides “Where any notice in respect of any local body tax, penalty, interest, sum forfeited or fine (hereinafter referred to as “Corporation dues”)

Rule 48 which provides for imposition of penalty and interest in certain cases also, under Sub Rule (3)(a) provides “If a dealer or a person does not pay the LBT within the time then he shall, be liable to pay by way of simple interest in addition to the amount of local body tax, a sum equal to”. Even in Sub Rule (4) of Rule 48 it says “.....in addition to any local body tax payable a sum by way of penalty equal

to the amount of local body tax due and in the case of second or a sum by way of penalty or not exceeding two times amount of local body tax due”.

8. The said Rules also prescribes various Forms for the purpose of administration of the levy and collection of the said taxes. Form E-I is Return-cum-Challan Form of half-yearly return and Item Nos.9 and 10 therein prescribes total LBT payable and interest for delayed payment, respectively. Similarly, the bank challan for paying the tax requires LBT, interest and penalty to be specified separately. Form E-II is a Form of Annual Return and Part-VI of the said Form provides for claim for refund of LBT and even there the amount of refundable is to be classified between tax, interest and penalty separately. Form-J is a notice of demand which again requires the LBT and penalty and interest to be separately mentioned. Form-S is a form prescribed for appeal under Section 406 against demand raised under LBT Rules 2010 and even there the tax, interest and penalty has to be specified separately.

9. Therefore, provisions in the Act, the said Rules and Forms point to the fact that even the law makers wanted to indicate that tax, interest and penalty are distinct. If the legislature intended to make tax, interest and penalty as a pre-condition they would have simply stated “disputed demand” and not “disputed tax”.

Since Sub Section (8) of Section 406 of the Act only provides for deposit of the “disputed tax”, petitioner need not deposit the interest or penalty amount. Petitioner admittedly has deposited the entire disputed tax amount.

10. This Court after hearing was concluded on 20th August 2024, came upon the following decisions which it felt may have a bearing on the issue under consideration : -

- (a) *Chennai Network Infrastructure Ltd. Vs. Kalyan Dombivli Municipal Corporation & Ors.*¹; and
- (b) *Reliance Communications Ltd. & Ors. Vs. Thane Municipal Corporation & Ors.*²; and
- (c) *C. G. International P Ltd. Vs. State of Maharashtra*³.

Therefore, the petition was listed again on 22nd August 2024 and the counsel were called upon to address the issues.

11. Petitioner tendered a written note in which it was submitted the aforesaid three decisions were not applicable to the fact of this case but on the contrary decision in the case of *C.G. International P Ltd.* (supra) supports petitioner’s case. Counsel for respondents stated that he did not wish to make any submission on these judgments but would leave it to the court.

1 2017 (3) Mh.L.J. 874

2 2019 (1) Mh.L.J. 71

3 2010 (2) Mh.L.J. 693.

We deal with the three decisions referred to above for sake of completeness.

12. It is well settled that the judgment of a Court has to be read in the context of the facts of that particular case. If the facts are different then the precedent value of a decision cannot be made binding. When a Court lays down the law it is based on the facts of a particular case. Keeping in mind this well settled position we now propose to deal with the decisions referred to above.

13. In *Chennai Network Infrastructure Limited* (supra) the issue that arose before Co-ordinate Bench of this Court was for filing an appeal under Section 406 of the Act for challenging the penalty imposed under Section 267-A of the said Act, whether the appellant is required to pay the said penalty as a condition precedent for entertaining appeal. It was the contention of the appellant therein that penalty is not a tax and Section 406 requires, as a condition precedent for entertaining appeal, payment of disputed tax and since the penalty imposed was not a tax, no amount is required to be paid. This Court rejected the contention of the appellant after analysing the provisions of Sections 128-A, 129 and 267-A which dealt with property taxes. The Court observed that Section 128-A and 129 provides for property taxes on structures which are legally erected, whereas Section 267-A provides for penalty on structures which are unauthorisedly

erected and both are compulsory exactions. The Court observed that the statute meant to tax both properties (legal as well as illegal) and, therefore, amount of penalty imposed under Section 267-A although described as penalty is to be treated as “tax.” Therefore, the Court came to a conclusion that an appellant has to pay penalty amount for entertaining the appeal. Secondly, the Co-ordinate Bench also drew support from Section 406(2) of the Act which provided that no appeal shall be entertained in the case of an appeal against any tax including interest and penalty imposed in respect of which provisions exists under the Act for a complaint to be made to the Commissioner against the demand. The Court further observed that this provision shows the intention of the legislature to treat penalty as tax for the purposes of Section 406 and make any fixation or charge of penalty appellable. It was on the basis of these facts that the Court came to the conclusion that interest or penalty charged is included in the expression “tax” used in Section 406(1).

14. In the facts before us, the issue does not relate to property tax under Sections 128-A, 129 and 267-A of the Act nor it is the case made out by respondent in the impugned order that Section 406(2) of the Act is applicable to petitioner. The issue raised in the appeal by petitioner is with respect to levy of LBT on entry of goods within the Municipal limits of respondents and the interest is charged on the premise that the demand made for the period 2015 to 2017 has not been paid and further penalty of

Rs.15,000/- is imposed under Rule 48 of the said Rules. The levy of LBT is governed by Section 127 of the Act read with the said Rules. Therefore, the provisions of Sections 128-A, 129 and 267-A are not applicable and are also not the subject matter of the appeal filed by petitioner.

An appeal to challenge the demand raised on account of LBT is provided by Section 406(6) read with Section 406(8).

Therefore, even on this count, since we are not concerned with the provisions of Section 406(2), the decision of the Co-ordinate Bench of this Court in the case of *Chennai Network Infrastructure Limited* (supra) is not applicable.

15. Decision in case of *Reliance Communications Ltd.* (supra) follows *Chennai Network Infrastructure Ltd.* which we have already observed is not applicable to the facts of the present case.

16. We are in agreement with petitioner that decision of learned single Judge in the case of *C.G. International P. Ltd.* (supra) support its submissions. The issue before the court was whether to challenge levy of “cess”, interest and penalty is also to be deposited as pre-condition for entertaining the appeal. The learned single Judge after analysing the scheme of levy of “cess” and appeal provisions held that the Bombay Provincial Municipal Corporation Act recognises distinction between tax,

interest and penalty and since what is required to be deposited is “disputed tax”, interest and penalty is not required to be deposited for entertaining the appeal.

17. In the circumstances, the impugned order dated 22nd February 2024 is hereby quashed and set aside and the matter is remanded for *denovo* consideration. The appellate authority shall dispose the appeal in accordance with law by giving a personal hearing, notice whereof shall be communicated atleast 5 working days in advance. If the Assessing Officer is going to rely on any judgment/order of any Court or Tribunal, a list thereof shall be made available to petitioner in advance before the personal hearing so that petitioner will be able to deal with the same/distinguish the same during the personal hearing. Should, petitioner wish to file written submission to record what transpired during the personal hearing, petitioner may file the written submission within four working days of the completion of personal hearing. Any order passed shall be a reasoned and detailed order dealing with all the submissions of petitioner.

18. Petition disposed.

(JITENDRA JAIN, J.)

(K. R. SHRIRAM, J.)