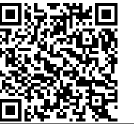

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 17719 of 2021

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE BHARGAV D. KARIA

and
HONOURABLE MR. JUSTICE NIRAL R. MEHTA

==

1	Whether Reporters of Local Papers may be allowed to see the judgment ?	YES
2	To be referred to the Reporter or not ?	YES
3	Whether their Lordships wish to see the fair copy of the judgment ?	YES
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	YES

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M/S NEPRA RESOURCES MANAGEMENT PVT. LTD. & ANR.
Versus
STATE OF GUJARAT & ANR.

==

Appearance:
MR MIHIR JOSHI SENIOR ADVOCATE WITH MR KUNTAL A PARIKH(7757) for the Petitioner(s) No. 1,2
for the Respondent(s) No. 1,2
MR RAJ TANNA AGP for the Respondent(s) No. 1
NOTICE SERVED BY DS for the Respondent(s) No. 2

==

CORAM:**HONOURABLE MR. JUSTICE BHARGAV D. KARIA**
and
HONOURABLE MR. JUSTICE NIRAL R. MEHTA

Date : 24/04/2024

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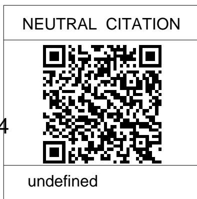

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CAV JUDGMENT

(PER : HONOURABLE MR. JUSTICE BHARGAV D. KARIA)

[1] Heard learned Senior Advocate Mr. Mihir Joshi with learned advocate Mr. Kuntal Parikh for the petitioners and learned A.G.P. Mr. Raj Tanna for the respondents.

[2] Rule returnable forthwith. Learned A.G.P. Mr. Raj Tanna waives service of notice of Rule for the respondents. Having regard to the controversy in narrow compass with the consent of the learned advocates, the matter was taken for final hearing.

[3] The petitioners have challenged the order dated 17th February 2021 in the proceedings before the Advance Ruling Authority in Appeal No.GUJ/GAAR/Appeal/2021/05 only to the extent to the limited findings of the respondent No.2 – Appellate Authority for Advance Ruling Gujarat, whereby it is held that the Notified Area Authority, Vapi is neither a “local authority” nor “governmental authority” and therefore, the petitioners

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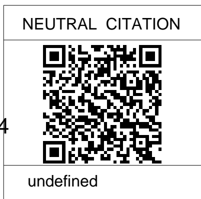

are not entitled to exemption under the Notification No.12/2017-Central Tax (Rate) dated 28th June 2017 and the Notification No.12/2017-State Tax (Rate) dated 30th June 2017.

[4] The petitioner No.1 is engaged in the business of Solid Waste Management and recycling services. The Notified Area Authority, Vapi floated a Tender inviting applications for a Request for Proposal for providing services of collection, sorting and recovery of waste and set up material recovery facility and in accordance with the Rules, Norms and Regulations of Standard of Weights and Measures Rules, 2016, Plastic Waste Management Rules, 2016, the Ministry of Environment, Forest and Climate Change, Central Pollution Control Board, Gujarat Pollution Control Board, etc. at the notified area, GIDC, Vapi.

[5] The Notified Area Authority, Vapi is constituted by the State of Gujarat by virtue of Notification No.GHU 75/45/GID 1974/4084(x)-Ch dated 6th May 1975 issued

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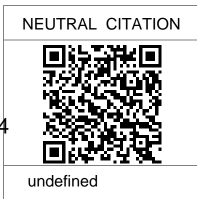

under Section 16 of the Gujarat Industrial Development Act, 1962 (for short 'GIDA'), whereby it was declared that the provisions related to the notified area contained in Chapter III of the said Act shall extend to and brought into force in the Notified Area Authority, Vapi.

[6] Under the Gujarat Industrial Development (Notified Areas) Rules, 2007 (for short, "the Notified Areas Rules"), the Notified Area Authority, Vapi has constituted the Board of Management and appointed the Chief Officer with certain functions as otherwise entrusted to the municipality under Schedule XII of the Constitution for any area in which the municipality is established under Article 243Q of the Constitution. They are also entrusted with the responsibility to recover taxes and allocate it in a way to ensure the notified area is managed and maintained in similar way as the municipality does it in any other area in its jurisdiction. Under the Notified Areas Rules, the Board of Management and Chief Officer of the Notified Area Authority, Vapi has to carry out functions as mentioned in Clause 5 of Chapter II and Chapter III of the said Rules.

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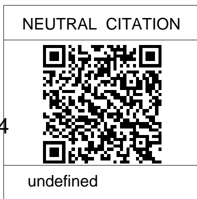

[7] The petitioner No.1 participated in the bidding process for the said Tender and was granted the Tender vide letter dated 22nd January 2019 for providing services to the Notified Area Authority, Vapi for an amount of Rs.1,71,10,000/- for a period of 5 years. An agreement was executed on 4th February 2019 between the petitioner No.1 and the Notified Area Authority, Vapi. Under the said agreement, the petitioner No.1 has to provide services for collection, sorting, recovery of solid waste management and establish and set up material recovery facility for sustainable waste management in the notified area, Vapi on Design, Build, Finance, Own, Operate and Maintain (DBFOOM) for 5 years.

[8] According to the petitioners, waste management services provided by the petitioner No.1 to the Notified Area Authority, Vapi under the said agreement is covered under the Service Accounting Code (SAC) 9994 as 'Sewage and waste collection, treatment and disposal and other environmental protection services' under the

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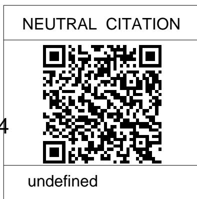

Notification No.11/2017-Central Tax (Rate) dated 28th June 2017 and the applicable rate of GST on such services is 18%. It is the case of the petitioner that the services provided by the petitioner No.1 to the Notified Area Authority, Vapi are exempted from payment of GST under Serial No.3 of the Notification No.12/2017-Central Tax (Rate) dated 28th June 2017 and the Notification No.12/2017-State Tax (Rate) dated 30th June 2017 issued for the service taxes as well as State taxes as the services provided by the petitioner No.1 would squarely fall within the purview of Serial No.3 of the said Notification.

[9] According to the petitioners, the petitioner no.1 is fulfilling the following conditions prescribed in the said Serial No.3 of the said Notifications, which are as under:

> *"(i) The petitioners must provide* ***Pure Services*** *(excluding words contract service or other composite supplies involving supply of any goods);*
>
> *(ii) Such pure services must be provided to Central Government, State Government or Union Territory, or* ***local authority*** *or a* ***Governmental Authority****;*

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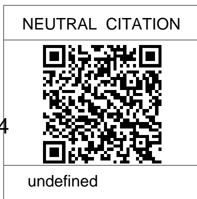

*(iii) It must be an activity in relation to any f**unction entrusted to a Municipality under Article 243G of the Constitution** or in relation to **any function entrusted to a Municipality under Article 243W of the Constitution.**"*

[10] On 8th July 2019, the petitioner No.1 filed an application before the Authority of Advance Ruling, Gujarat, praying therein to seek an advance ruling of the following question vide application filed under Section 97 of the Central/Gujarat Goods and Service Tax Act,2017 (for short 'GST Act'):

"Whether the solid waste management service provided by the appellant to NAA, Vapi under the above referred agreement is exempted under Notification No.12/2017-Central Tax (Rate) dated 28.06.2017."

[11] The Advance Ruling Authority, Gujarat passed an order dated 17th September 2020 by which it was held that the solid waste management services provided by the petitioner No.1 to the Notified Area Authority, Vapi, as per the agreement, is not exempted under Notification No.12/2017 dated 28th June 2017 because the services

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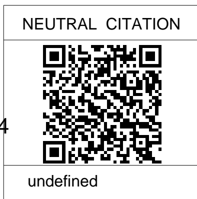

provided by the petitioner No.1 to the Notified Area Authority, Vapi are not pure services as it includes supply of goods. It was further held that since the petitioner do not fulfill the first condition of Serial No.1 of Notification No.12/2017 for claiming exemption, the applicability of other two conditions to the case of the petitioner was not decided.

[12] Being aggrieved by the order dated 17th September 2020 passed by the Advance Ruling Authority, Gujarat, the petitioner No.1 preferred an appeal before the Appellate Authority under Section 100 of the GST Act. The respondent No.2 – Appellate Authority rejected the appeal of the petitioner vide order dated 19th February 2021 and it was held that the petitioners are not entitled to the benefit of exemption available under Serial No.3 of Notification No.12/2017 as the petitioner is not a 'local authority' or 'governmental authority'.

[13] Learned Senior Advocate Mr. Mihir Joshi for the petitioners submitted that the respondent No.2, while

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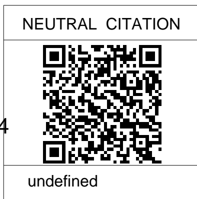

rejecting the appeal, has replaced the findings of the Advance Ruling Authority which has come to the conclusion that the petitioners are providing pure services, where no goods have been supplied by the petitioners to the Notified Area Authority, Vapi and therefore, first condition for claiming exemption under Serial No.3 of Notification No.12/2017 is complied with. Therefore, the impugned order passed by the Appellate Authority, in effect, has reversed the findings of the Advance Ruling Authority in favour of the petitioners. It was further submitted that the respondent No.2 has also come to the conclusion that the petitioners are providing services by way of an activity in relation to functions entrusted to the municipality under Article 243W of the Constitution and therefore, the condition No.3 for claiming exemption under Serial No.3 of Notification No.12/2017 is also fulfilled. However, the respondent No.2 has held that as the Notified Area Authority is not a ‘local authority’ and/or ‘governmental authority’, the petitioners are not entitled to the exemption under Serial No.3 of Notification

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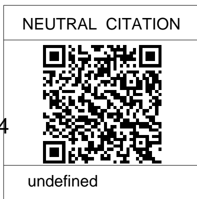

No.12/2017.

[14] It was submitted that as the Notified Area Authority, Vapi is established under the GIDA vide Notification dated 6th May 1975, it would be a "deemed to be municipality" under Section 264C of the Gujarat Municipality Act, 1963 and therefore, it is required to be considered as a 'local authority'.

[15] It was submitted that Section 16 of the GIDA starts with *non-obstante clause* and goes on to state that the provisions of the Gujarat Municipality Act, 1963 shall extend to and be brought into force in any area that is deemed to be notified area. It was, therefore, submitted that Chapter – XVIA of the Gujarat Municipality Act, 1963 (for short 'GMA,1963') dealing with the notified area shall apply to the Notified Area Authority, Vapi also and accordingly, the provisions being Sections 2(13), 266A, 266B and 266C of the Gujarat Municipality Act, 1963 came to be amended pursuant to the Gujarat Municipalities (Amendment) Act, 1993.

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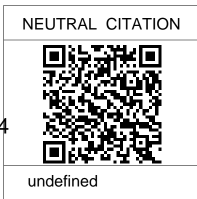

[16] It was submitted that on bare perusal of the Gujarat Municipality (Amendment) Act, 1993 published in the Extraordinary Gazette by the Gujarat Government dated 17th August 1993, the purpose of the same is “further to amend the GMA, 1963 to give effect to the Constitution (Seventy Fourth Amendment) Act, 1992 on Municipalities”. It was, therefore, submitted that the intention of the legislature for inserting the said provisions in the Act was to give the same powers and duties to an industrial area in the State of Gujarat, as those of municipalities and by amending Section 2(13) and Section 264C, the legislature intended that the said industrial area should be deemed to be a municipality and the area of a municipal borough as provided under Clause (2) of Article 243Q of the Constitution. It was, therefore, submitted that the Notified Area Authority, Vapi is deemed to be a municipality, as defined in Clause (e) of Article 243P of the Constitution and therefore, it would fall within the meaning of term “local authority”, as defined in Section 2(69)(b) of the GST Act. It was, therefore, submitted that considering the

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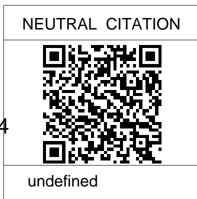

functions and powers of the Board of Management and the Chief Officer of the Notified Area Authority, Vapi equivalent to that of the powers of the Chief Officer of the Municipality, the function of the notified area is akin to that of the Municipality and therefore, the Notified Area Authority, Vapi is nothing, but a “local authority”, as defined in the GST Act. Learned Senior Advocate Mr. Joshi, referring to Section 2(69)(c) of the GST Act, submitted that the “local authority”, as defined, which means that a Municipal Committee, a Zilla Parishad, a District Board and any other authority legally entitled to, or entrusted by the Central Government or any State Government with the control or management of a municipal or local fund. It was, therefore, submitted that the Notified Area Authority, Vapi would fall in the category of ‘any other authority’ legally entitled to or entrusted by the Central Government or any State Government with the control or management of a municipal or local fund’ and therefore, would be covered by the definition of “local authority” to which Serial No.3 of Notification No.12/2017 would apply and

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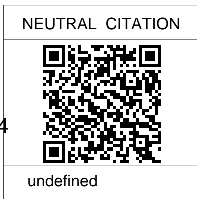

accordingly, the petitioners would be exempted from payment of GST.

[17] It was also submitted that Clause (zf) of paragraph No.2 of Notification No.12/2017 defining “governmental authority” would also be applicable to the Notified Area Authority, Vapi. It was submitted that as per Clause (zf), “governmental authority” means an authority or a Board or any other body and set up by an Act of Parliament or a State Legislature or established by any Government, with 90% or more participation by way of equity or control, to carry out any function entrusted to a Municipality under Article 243W of the Constitution. It was submitted that even if the Notified Area Authority, Vapi cannot be considered to be as “local authority” under Section 2(69)(c) of the GST Act, then, in that case, the Notified Area Authority, Vapi would be a “governmental authority”, as defined in Clause (zf) of paragraph No.2 of Notification No.12/2017 because the Notified Area Authority, Vapi is constituted under the Notification dated 6th May 1975 of the Gujarat Industrial Development Act, 1962 and

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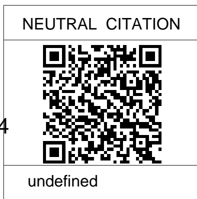

therefore, it is an authority, which is set up by the State Legislature, would be considered as "governmental authority".

[18] It was also submitted that on bare perusal of the Gujarat Industrial (Notified Areas) Rules, 2017, the Chief Officer along with the Director of the Notified area (deemed to be a municipality) has more than 90% participation by way of control to carry out the functions entrusted to a Municipality under Article 243W of the Constitution and therefore, the Notified Area Authority, Vapi would also squarely fall within the definition of the "governmental authority", as provided by way of Clause (zf) of paragraph No.2 of exemption Notification No.12/2017.

[19] It was, therefore, submitted that once the Appellate Authority has concluded that original Advance Ruling Authority has erred in deciding the issue of "pure services", could not have given any finding on the other issues as the same were not decided by the Advance

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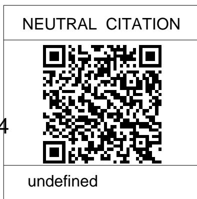

Ruling Authority. It was submitted that as per Section 101 of the GST Act, which specifically provides for powers of the Appellate Authority, the Appellate Authority has only the powers to either confirm or modify the ruling appealed from and therefore, the Appellate Authority could not have decided the other issues, which are not decided by the original authority nor the same was challenged before the Appellate Authority and therefore, the impugned order passed by the Appellate Authority is without jurisdiction, *coram non-judice* and without authority of law and therefore, liable to be quashed and set aside.

[20] Learned Senior Advocate Mr. Joshi, has referred to and relied upon the decision of the Hon’ble Bombay High Court in the case of **JSW Energy Ltd vs. Union of India** reported in **[2019] 108 taxmann.com 27 (Bombay)**, wherein it is held that the grounds, which are not raised before the Advance Ruling Authority and the assessee was to put notice regarding new grounds nor any opportunity was granted to produce the documentary evidence concerning the same, it would amount to failure of the

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principles of natural justice and the matter is required to be remanded back to the Appellate Authority for reconsideration while granting liberty to produce documentary evidence to the petitioners. It was further held in the facts of the case that the statute has provided no further appeal against the decision of the Appellate Authority and therefore, the validity of the order passed by the Appellate Authority has to be examined by applying the principles of judicial review. It was submitted that the Appellate Authority, while rejecting the appeal of the petitioner totally on a new ground, which was not even considered by the Advance Ruling Authority and therefore, the impugned order passed by the Appellate Authority is without jurisdiction.

[21] On the other hand, learned A.G.P. Mr. Raj Tanna for the respondents submitted that the challenge to the order of the Appellate Authority of Advance Ruling has a very limited scope, as held by the Hon’ble Bombay High Court in the case of **Jotun India Private Limited vs. The Union of India [Writ Petition No.12691 of 2019**

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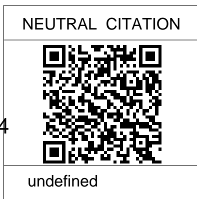

decided on 22nd December 2022], wherein it is held that the view taken by the Advance Ruling Authority and the Appellate Authority is based on the material placed before it and the petitioner cannot seek to convert the limited inquiry in respect of Advance Ruling into an appellate inquiry, which is not permissible to be undertaken in writ jurisdiction as the scrutiny of such orders in writ jurisdiction is minimal to the extent of examining the decision making process only.

[22] Reliance was also placed on the decision of the Hon'ble Supreme Court in the case of **New Okhla Industrial Development Authority vs. Chief Commissioner of Income Tax and others** reported in **(2018) 9 SCC 351**, wherein, while considering the provisions of Section 10(20) of the Income tax act,1961 as amended by the Finance At, 2002, it was held that Noida Authority is not a "local authority" and therefore, not entitled to the benefit of Section 10(20), which has replaced the provisions of Section 10(20-A) by the Finance Act, 2002 where the word "local authority" is omitted and

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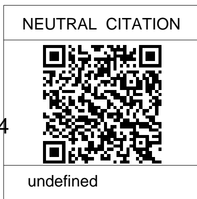

therefore, the exemption from income would not be available and New Okhla Industrial Development Authority is also not covered by the word “Municipality” in Clause (e) of Article 243-P, therefore, cannot be included in Clause (ii) of Explanation to Section 10(20-A) of the Income Tax Act, 1961. It was, therefore, submitted that the Hon’ble Apex Court, while considering the applicability of the provisions of Section 10(20), as amended by the Finance Act, 2002, the word “local authority”, as contained in Explanation to Section 10(20), has been discussed exhaustively to come to the conclusion that the appellant – New Okhla Industrial Development Authority cannot be considered as “local authority”, and therefore, not entitled to the exemption from income under the provisions of the Act. It was therefore submitted that the Notified Area Authority, Vapi also cannot be considered as ‘local authority’ or ‘governmental authority’.

[23] Having heard the learned advocates appearing for the respective parties, a short question which arises for consideration is as to whether the petitioner is entitled to

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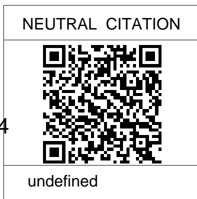

the benefit of exemption from payment of GST in respect of contract awarded to the petitioner by the Notified Area Authority, Vapi to provide services for collection, sorting, recovery of solid waste and establish/set up material recovery facility for sustainable waste management on Design, Build, Finance, Own, Operate and Maintain (DBFOOM) for 5 years or not.

[24] It is also not in dispute that the petitioner is providing pure services and there is no supply of goods whatsoever to the Notified Area Authority, Vapi.

[25] Therefore, it would be germane to refer to Serial No.3 of Notification No.12/2017-Central Tax (Rate) dated 28th June 2017 and the Notification No.12/2017-State Tax (Rate) dated 30th June 2017 which reads as under:

(1)	*(2)*	*(3)*	*(4)*	*(5)*
Sl. No.	***Chapter, Section, Heading, Group or Service Code (Tariff)***	***Description of Services***	***Rate (per cent)***	***Condition***
3	*Chapter 99*	*Pure services (excluding works contract service or*	*Nil*	*Nil*

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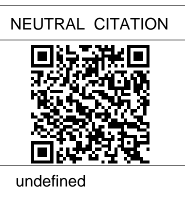

		other composite supplies involving supply of any goods) provided to the /Central Government, State Government or Union Territory or local authority or a Governmental authority by way of any activity in relation to any function entrusted to a Panchayat under Article 243G of the Constitution or in relation to any function entrusted to a Municipality under Article 243W of the Constitution.		

[26] On bare perusal of above entry at Serial No.3 granting exemption for providing services, the petitioner has to fulfill the three conditions: (i) the petitioners must provide Pure Services (excluding words contract service or other composite supplies involving supply of any goods), (ii) Such pure services must be provided to Central Government, State Government or Union Territory, or local authority or a Governmental Authority, (iii) it must be an activity in relation to any function entrusted to a Municipality under Article 243G of the Constitution or in relation to any function entrusted to a Municipality under

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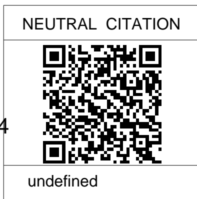

Article 243W of the Constitution.

[27] The Advance Ruling Authority, vide order dated 17 the September,2020, rejected the application of the petitioner to grant exemption from levy of GST on the ground that the services provided by the petitioner cannot be considered as pure services, because as per the agreement entered into between the appellant and the Notified Area Authority, Vapi, the rate of supply of services includes the cost of collection vehicle with license holder driver, fuel, oil, pixels, tools, plants, suction machine, machinery, gumboots, hand gloves, raincoat in the monsoon, etc., therefore, the services include supply of goods.

[28] The Appellate Authority, however, accepted the contention of the petitioner that setting up of material recovery facility and food composite facility, operation and maintenance does not involve any transfer in goods and accordingly, the Appellate Authority was of the view that use of required goods and equipment by the appellant

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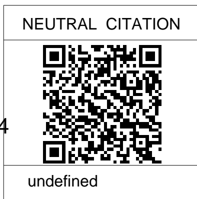

including workers deployed in order to provide services to the Notified Area Authority, Vapi would not change the nature of services from pure services to supply of services with goods.

[29] The Appellate Authority, however, examined the remaining two conditions, which the Advance Ruling Authority did not consider in view of their finding that the petitioner was not providing pure services. The Appellate Authority while examining the condition No.2 that the exemption is admissible when pure services are provided to the Central Government, State Government, or Union Territory or local authority or governmental authority or a government entity analyzed the provisions of Section 2(69) of the GST Act to hold that the Notified Area Authority, Vapi does not fall in any of the clauses of the said section, which defines “local authority which reads as under:

“2(69) ***"local authority"*** *means--*
(a) a "Panchayat**"** *as defined in clause (d) of Article 243 of the Constitution;*
(b) a "Municipality**"** *as defined in clause (e) of Article*

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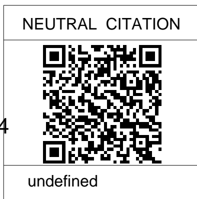

243P of the Constitution;

(c) a Municipal Committee, a Zilla Parishad, a District Board, and any other authority legally entitled to, or entrusted by the Central Government or any State Government with the control or management of a municipal or local fund;

(d) a Cantonment Board as defined in section 3 of the Cantonments Act, 2006;

(e) a Regional Council or a District Council constituted under the Sixth Schedule to the Constitution;

(f) a Development Board constituted under article 371 [and article 371J] [Inserted by Act No. 31 of 2018, dated 29.8.2018.] of the Constitution; or

(g) a Regional Council constituted under article 371A of the Constitution;"

[30] Part – IX of the Constitution refers to "panchayat" and Part IXA refers to "Municipality". Whether the Notified Area Authority, Vapi would fall in any of the clauses of Article 243 or Article 243P, which defines "panchayat" and it gives definition of "panchayat" and "municipality" respectively it would be necessary to refer to Article 243 of the Constitution of India which reads as under:

"243. Definitions- *In this Part, unless the context otherwise requires,--(a) '**district**' means a district in a State;*

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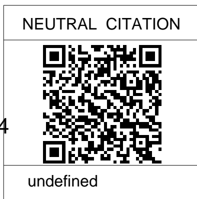

*(b) '**Gram Sabha**' means a body consisting of persons registered in the electoral rolls relating to a village comprised within the area of Panchayat at the village level;*

*(c) '**intermediate level**' means a level between the village and district levels specified by the Governor of a State by public notification to be the intermediate level for the purposes of this Part;*

*(d) '**Panchayat**' means an institution (by whatever name called) of self-government constituted under article 243B , for the rural areas;*

*(e) '**Panchayat area**' means the territorial area of a Panchayat;*

*(f) '**population**' means the population as ascertained at the last preceding census of which the relevant figures have been published;*

(g) 'village' means a village specified by the Governor by public notification to be a village for the purposes of this Part and includes a group of villages so specified."

[31] Article 243G of the Constitution reads as under:

***"243G. Powers, authority and responsibilities of Panchayats-** Subject to the provisions of this Constitution the Legislature of a State may, by law, endow the Panchayats with such powers and authority and may be necessary to enable them to function as institutions of self-government and such law may contain provisions for the devolution of powers and*

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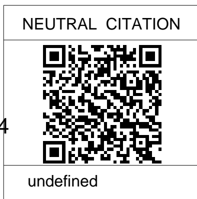

responsibilities upon Panchayats, at the appropriate level, subject to such conditions as may be specified therein, with respect to--

> *(a) the preparation of plans for economic development and social justice;*
>
> *(b) the implementation of schemes for economic development and social justice as may be entrusted to them including those in relation to the matters listed in the Eleventh Schedule."*

[32] Article 243P of the Constitution reads as under:

*"**243P. Definitions-** In this Part, unless the context otherwise requires,--*

(a) 'Committee' means a Committee constituted under article 243S;

(b) 'district' means a district in a State;

(c) 'Metropolitan area' means an area having a population of ten lakhs or more, comprised in one or more districts and consisting of two or more Municipalities or Panchayats or other contiguous areas, specified by the Governor by public notification to be Metropolitan area for the purposes of this Part;

(d) 'Municipal area' means the territorial area of a Municipality as is notified by the Governor;

(e) 'Municipality' means an institution of self-government constituted under 243Q ;

(f) 'Panchayat' means a Panchayat constituted under 243B;

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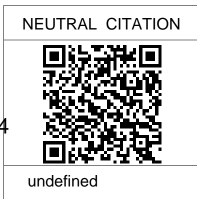

(g) 'population' means the population as ascertained at the last preceding census of which the relevant figures have been published."

[33] Article 243Q of the Constitution reads as under:

"243Q. Constitution of Municipalities*-(1) There shall be constituted in every State,--*
(a) a Nagar Panchayat (by whatever name called) for a transitional area, that is to say, an area in transition from a rural area to an urban area.
(b) a Municipal Council for a smaller urban area; and
(c) a Municipal Corporation for a larger urban area,
in accordance with the provisions of this Part:

Provided that a Municipality under this clause may not be constituted in such urban area or part thereof as the Governor may, having regard to the size of the area and the municipal services being provided or proposed to be provided by an industrial establishment in that area and such other factors as he may deem fit, by public notification, specify to be an industrial township.

(2) In this article, 'a transitional area', 'a smaller urban area' or 'a larger urban area' means such area as the Governor may, having regard to the population of the area, the density of the population therein, the revenue generated for local administration, the percentage of employment in non-agricultural activities, the economic importance or such other factors as he may deem fit, specify by public notification for the purposes of this

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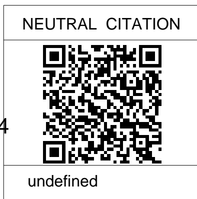

Part.”

[34] Article 243W of the Constitution reads as under:

“243W. Powers, authority and responsibilities of Municipalities, etc.- *Subject to the provisions of this Constitution, the Legislature of a State may, by law, endow--*

(a) the Municipalities with such powers and authority as may be necessary to enable them to function as institutions of self-government and such law may contain provisions for the devolution of powers and responsibilities upon Municipalities, subject to such conditions as may be specified therein, with respect to—

(i) the preparation of plans for economic development and social justice;

(ii) the performance of functions and the implementation of schemes as may be entrusted to them including those in relation to the matters listed in the Twelfth Schedule;

(b) the Committees with such powers and authority as may be necessary to enable them to carry out the responsibilities conferred upon them including those in relation to the matters listed in the Twelfth Schedule.”

[35] Clause (d) of Article 243 of the Constitution gives definition of “panchayat” means an institution by whatever name called of self-government constituted under Article 243B for the rural areas. Therefore, the Appellate

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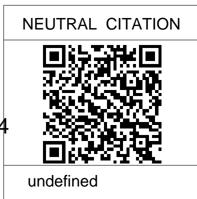

Authority held that the Notified Areas Authority, Vapi is not a “panchayat” and would not fall in any clauses of Section 2(69) of the GST Act. Whereas “Municipality” as defined in Clause (e) of Article 243P of the Constitution means an institution of self-government constituted under Article 243Q, and hence, the Notified Area Authority, Vapi is neither “Municipality” nor “Municipal Committee” nor “Jilla Parishad” nor “Development Board” nor “Cantonment Board” as per various clauses of Section 2(69) of the GST Act.

[36] The contention raised on behalf of the petitioner that the Notified Area Authority, Vapi is ‘any other authority’ legally entitled to or entrusted by the Central Government or any State Government with the control or management of a municipal or local fund as per Clause (c) of Section 2(69) of the GST Act as the Notified Area Authority, Vapi is constituted under the provisions of Section 16 of the Gujarat Industrial Development Act, 1962 vide Notification dated 6th May 1975 and, that the Appellate Authority has considered the Notification dated 1st April 2008 available

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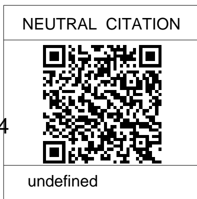

in public domain, but the Notification under which the Notified Area Authority, Vapi constituted is issued by the State Government on 6th May 1975, which is not considered by the Appellate Authority to hold that the Notified Area Authority, Vapi is not a "local authority" as per provisions of Section 2(69) of the Act, it would be necessary to revisit the Serial No.3 of the Notification no.12/2017 reproduced herein above wherein "any other authority" is not included, hence the petitioners cannot get the benefit of exemption as per the said Notification.

[37] Learned advocate for the petitioners has also contended that the Notified Area Authority, Vapi would fall within the ambit of "Governmental Authority" as stated in entry at Serial No.3 of Notification No.12/2017, which carries an activity in relation to any function entrusted to the Panchayats under Article 243G of the Constitution or in relation to any function entrusted to the Municipality under Article 243W of the Constitution. It was also pointed out that Clauses (zf) and (zfa), having been substituted by Notification No.32/2017 which provides definition of

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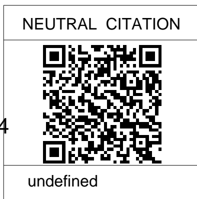

"Government Entity" but that the Notified Area Authority, Vapi is set up by the State Legislature Act and the constitution of the Board of Management and the Chief Officer is also having control over the administration of the area and therefore, the Notified Area Authority, Vapi would be a "Governmental Authority" or a "Government Entity" cannot be considered in view of Notification No.32/2017 dated 13th October 2017 issued by the Government of India, Ministry of Finance (Department of Revenue), whereby the Entry 9C is inserted in the Notification No.12/2017, which provides for exemption for supply of services by a Government Entity to the Central Government, State Government, Union Territory, local authority or any person specified by the Central Government, State Government, Union Territory or local authority against the consideration received from the Central Government, State Government, Union Territory or local authority in the form of grants. Therefore, the Notified Area Authority, Vapi cannot be considered as a "Government Entity" or "Governmental Authority".

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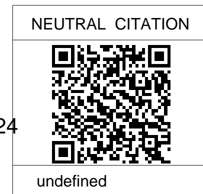

[38] Reliance was placed by the Appellate Authority as well as the learned A.G.P. on the decision of the Hon'ble Supreme Court in the case of **New Okhla Industrial Development Authority (supra),** wherein the issue as to whether the Area Development Authority can be considered as "local authority" or not has been considered by the Hon'ble Supreme Court while deciding as to whether the provisions of Section 10(20), as amended by the Finance Act, 2002 of the Income Tax Act, 1961, would be applicable to such Development Authority as a local authority or not in granting exemption from income. In that context, considering such issue, the Hon'ble Supreme Court held as under:

> *"15. The only issue which needs to be considered in these appeals is as to whether the appellant is a local authority within the meaning of Section 10(20) as amended by Finance Act, 2002 w.e.f. 01.04.2003.*

Section 10(20) prior to amendment by the Finance Act, 2002	*Section 10(20) after amendment by the Finance Act, 2002*
"10.(20) the income of a local authority which is chargeable	*"10.(20) the income of a local authority which is chargeable*

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NEUTRAL CITATION

undefined

under the head, "Income from house property", "Capital gains", or "Income from other sources" or from a trade or business carried on by it which accrues or arises from the supply of a commodity or service (not being water or electricity) within its own jurisdictional area ow from the supply of water or electricity within or outside its own jurisdictional areas;	*under the had, "Income from house property", "Capital gains", or "Income from other sources" or from a trade or business carried on by it which accrues or arises from the supply of a commodity or service (not being water or electricity) within its own jurisdictional area or from the supply of water or electricity within or outside its own jurisdictional area;* ***Explanation.-*** *For the purposes of this clause, the expression "local authority" means-* *(i) Panchayat as referred to in clause (d) of Article 243 of the Constitution; or* *(ii) Municipality as referred to in clause (e) of Article 243-P of the Constitution; or* *(iii) Municipal Committee and District Board, legally entitled to, or entrusted by the government with, the control or management of a Municipal or local fund; or* *(iv) Cantonment Board as defined in Section 3 of the Cantonments Act, 1924 92 of 1924);*
(20-A) any income of an authority constituted in India by or under any law enacted either for the purpose of	*(20-A) Omitted by the Finance Act, 2002 w.e.f. 1-4-2002."*

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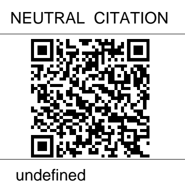

dealing with and satisfying the need for housing accommodation or for the purpose of planning, development or improvement of cities, towns and villages, or for both;"`	

16. The constitutional provisions contained in Part IXA of the Constitution of India as inserted by Constitution 74th Amendment Act, 1992 also need to be noted. Article 243P contains the definitions. Article 243P(e) defines Municipality which is to the following effect:

> ***"243P(e)"Municipality"*** *means an institution of self-government constituted under Article 243Q;"*

17. Article 243Q provides for the Constitution of Municipalities which is to the following effect:

> ***"243Q. Constitution of Municipalities.*** *- (1) There shall be constituted in every State,-*
>
> *(a) a Nagar Panchayat (by whatever name called) for a transitional area, that is to say, an area in transition from a rural area to an urban area;*
>
> *(b) a Municipal Council for a smaller urban area; and*
>
> *(c) a Municipal Corporation for a larger urban area,*
>
> *in accordance with the provisions of this Part:*
>
> *Provided that a Municipality under this clause may not be constituted in such urban area or part thereof as the Governor may, having regard to the size of tile area and the municipal services being provided or proposed to be provided by an industrial establishment in that area and such other factors as he may deem fit, by public notification,*

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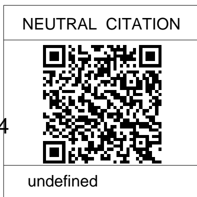

specify to be an industrial township.

(2) In this article, a transitional area, a smaller urban area or a larger urban area means such area as the Governor may, having regard to the population of the area, the density of the population therein, the revenue generated for local administration, the percentage of employment in non agricultural activities, the economic importance or such other factors as he may deem fit, specify by public notification for the purposes of this Part."

18. Article 243R pertains to Composition of Municipalities which is to the following effect:

"243R. Composition of Municipalities.-*(1) Save as provided in clause (2), all the seats in a Municipality shall be filled by persons chosen by direct election from the territorial constituencies in the Municipal area and for this purpose each Municipal area shall be divided into territorial constituencies to be known as wards.*

(2) The Legislature of a State may, by law, provide-

(a)for the representation in a Municipality of-

(i) persons having special knowledge or experience in Municipal administration;

(ii) the members of the House of the People and the members of the Legislative Assembly of the State representing constituencies which comprise wholly or partly the Municipal area;

(iii) the members of the Council of States and the members of the Legislative Council of the State registered electors within tile Municipal area;

(iv) the Chairpersons of the Committees constituted under clause (5) of article 243S:

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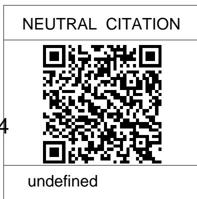

> *Provided that the persons referred to in paragraph (i) shall not have the right to vote in the meetings of the Municipality;*
>
> *(b) the manner of election of the Chairperson of a Municipality."*

19. Article 243S provides for Constitution and composition of Wards Committees, etc. Article 243T provides for reservation of seats of SC and ST for every Municipality and number of seats reserved. Article 243U provides for duration of Municipalities sub-clause(1)states that every Municipality, unless sooner dissolved under any law for the time being in force, shall continue for five years from the date appointed for its first meeting and no longer.

20. Article 243ZF provides for continuance of existing laws and Municipalities which is to the following effect:

> ***"243ZF. Continuance of existing laws and Municipalities.-*** *Notwithstanding anything in this Part, any provision of any law relating to Municipalities in force in a State immediately before the commencement of the Constitution (Seventy-fourth Amendment) Act, 1992, which is inconsistent with the provisions of this Part, shall continue to be in force until amended or repealed by a competent Legislature or other competent authority or until the expiration of one year from such commencement, whichever is earlier:*
>
> *Provided that all the Municipalities existing immediately before such commencement shall continue till the expiration of their duration, unless sooner dissolved by a resolution passed to that effect by the Legislative Assembly of that State or, in the case of a State having a Legislative Council, by each House of the Legislature of that State."*

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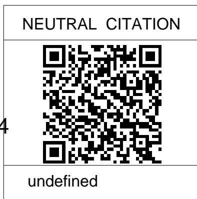

21. It is also relevant to notice certain provisions of Act, 1976, before we proceed further to examine the issue. The authority has been constituted by notification dated 17.04.1976 exercising power under Section 3 of Act, 1976. Section 3 provides for Constitution of the Authority which is to the following effect:

> *"3.(1) The State Government may, by notification, constitute for the purposes of this Act, An authority to be called (Name of the area) Industrial Development Authority, for any industrial development area.*
>
> *(2) The Authority shall be a body corporate.*
>
> *(3) The Authority shall consist of the following:– (a) The Secretary to the Government, Uttar Pradesh, Member Industries Department or his Nominee not below Chairman the rank of Joint Secretary-ex-official. Member Chairman*
>
> *(b) The Secretary to the Government, Uttar Pradesh, Member Public works Department or his nominee not below the rank of Joint Secretary ex-official. Member*
>
> *(c) The Secretary to the Government, Uttar Pradesh, Local Member Self-Government or his nominee not below the rank of joint Secretary-ex official. Member*
>
> *(d) The Secretary to the Government, Uttar Pradesh, Finance Member Department or his nominee not below the rank of Joint Secretary-ex official.*
>
> *(e) The Managing Director, U.P. State Industrial Development Member Corporation-ex official.*
>
> *(f) Five members to be nominated by the State Government Member by notification. Member*

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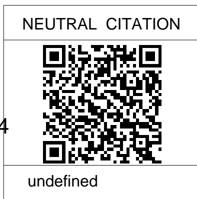

(g) Chief Executive Officer. Member Secretary

(4) The headquarters of the Authority shall be at such place as may be notified by the State Government.

(5) The procedure for the conduct of the meetings for the Authority shall be such as may be prescribed.

(6) No act or proceedings of the Authority shall be invalid by reason of the existence of any vacancy in or defect in the constitution of the Authority."

22. Section 6 provides for the function of the Authority which is to the following effect:

***"6.(1) The object of the Authority** -(1) the object of the Authority shall be to secure the planned development of the industrial development area.*

(2) Without prejudice to the generality of the objects of the Authority, the Authority shall perform the following functions :–

* * *

(b) to prepare a plan for the development of the industrial development area;

(c) to demarcate and develop sites for industrial, commercial and residential purpose according to the plan;

(d) to provide infrastructure for industrial, commercial and residential purposes;

(e) to provide amenities;

(f) to allocate and transfer either by way of sale or lease or otherwise plots of land for industrial, commercial or residential purposes;

(g) to regulate the erection of buildings and setting

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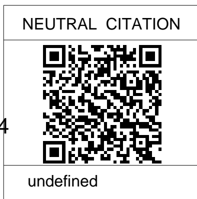

up of industries: and (h) to lay down the purpose for which a particular site or plot of land shall be used, namely for industrial or commercial or residential purpose or any other specified purpose in such area."

23. Section 7 deals with power of the Authority in respect of transfer of land. Section 8 deals with power to issue directions in respect of creation of building. Section 9 deals with ban on erection of building in contravention of regulations. Section 10 deals with power to require proper maintenance of site or building. Section 11 empowers the Authority to levy of tax. By Section 12 certain provisions of U.P. Urban Planning and Development Act, 1973 has been made applicable. Chapter VII deals Finance, Accounts and Audit.

24. We may also notice the notification dated 24.12.2001 issued by the Governor in exercise of the powers under the proviso to Clause (1) of Article 243Q. The notification is as follows:

"NOTIFICATION

No.6709/77-4-2001-56 Bha/99

In exercise of the powers under the proviso to Clause (1) of Article 243Q of the Constitution of India, the Governor, having regard to the size of the New Okhla Industrial Development Area, which has been declared as an industrial development area by Government Notification No.4157-HI/XVIII-11, dated April 17, 1976 and the municipal services being provided by the New Okhla Industrial Development Authority in that area, is pleased to specify the said New Okhla Industrial Development

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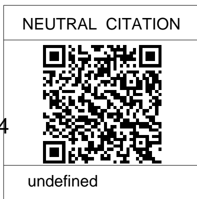

Area to be an "industrial township" with effect from the date of publication of this notification in the official gazette.

By order,
Sd/- (Anoop Mishra)
Secretary."

25. The submissions made by the parties can be dealt with in the following two heads:

> *A. The status of the Authority by virtue of notification dated 24.12.2001 issued under Clause (1) of Article 243Q.*
>
> *B. Whether the appellant is a local authority "within the meaning of Section 10 sub-section (20) as explained in Explanation added by Finance Act, 2002.*

(A) Part IXA of the Constitution:

26. The Statement of Objects and Reasons of the Constitution 74th Amendment Act, 1992, briefly outlined the object and purpose for which Constitution Amendment was brought in. It is useful to refer to the Statement of Objects and Reasons of the Constitution Amendment which is to the following effect:

"STATEMENT OF OBJECTS AND REASONS

> *1. In many States local bodies have become weak and ineffective on account of a variety of reasons, including the failure to hold regular elections, prolonged supersessions and inadequate devolution of powers and functions. As a result, Urban Local Bodies are not able to perform effectively as vibrant democratic units of self-government.*

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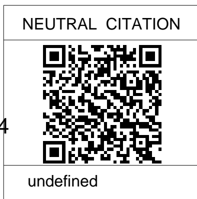

2. Having regard to these inadequacies, it is considered necessary that provisions relating to Urban Local Bodies are incorporated in the Constitution particularly for-

(i) putting on a firmer footing the relationship between the State Government and the Urban Local Bodies with respect to-

(a) the functions and taxation powers; and

(b) arrangements for revenue sharing;

(ii) Ensuring regular conduct of elections;

(iii) ensuring timely elections in the case of supersession; and

(iv) providing adequate representation for the weaker sections like Scheduled Castes, Scheduled Tribes and women."

27. The Kishansing Tomar Municipal Corporation of The City Of Ahmedabad, 2006 (8) SCC 352, noticing the object and purpose of Constitution 74th Amendment Act, 1992 stated as following:

"12. It may be noted that Part IX-A was inserted in the Constitution by virtue of the Constitution (Seventy-fourth) Amendment Act, 1992. The object of introducing these provisions was that in many States the local bodies were not working properly and the timely elections were not being held and the nominated bodies were continuing for long periods. Elections had been irregular and many times unnecessarily delayed or postponed and the elected bodies had been superseded or suspended without adequate justification at the whims and fancies of the State authorities. These views were

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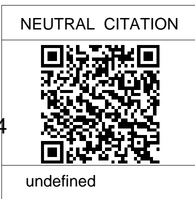

expressed by the then Minister of State for Urban Development while introducing the Constitution Amendment Bill before Parliament and thus the new provisions were added in the Constitution with a view to restore the rightful place in political governance for local bodies. It was considered necessary to provide a constitutional status to such bodies and to ensure regular and fair conduct of elections. In the Statement of Objects and Reasons in the Constitution Amendment Bill relating to urban local bodies, it was stated...”

28. The constitutional provisions as contained in Part IXA delineate that the Constitution itself provided for constitution of Municipalities, duration of Municipalities, powers of Authorities and responsibilities of the Municipalities. The Municipalities are created as vibrant democratic units of self-government. The duration of Municipality was provided for five years contemplating regular election for electing representatives to represent the Municipality. The special features of the Municipality as was contemplated by the constitutional provisions contained in Part IXA cannot be said to be present in Authority as delineated by statutory scheme of Act, 1976. It is true that various municipal functions are also being performed by the Authority as per Act, 1976 but the mere facts that certain municipal functions were also performed by the authority it cannot acquire the essential features of the Municipality which are contemplated by Part IXA of the Constitution. The main thrust of the argument of the learned counsel for the appellant that the High Court having not adverted to the notification dated 24.12.2001 issued under proviso to Article 243Q(1)

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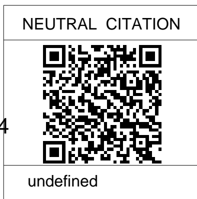

the judgments relied on by the High Court for dismissing the writ petition is not sustainable. We thus have to focus on proviso to Article 243Q(1). For the purpose and object of the industrial township referred to therein whether industrial township mentioned therein can be equated with Municipality as defined under Article 243P(e). Article 243P(e) provides that the "Municipality means an institution of self-government constituted under Article 243Q. Whether the appellant is a institution of self-government constituted under Article 243Q is the main question to be answered? Sub-clause (1) of Article 243Q provides that there shall be constituted in every State- a Nagar Panchayat, a Municipal Council and a Municipal Corporation, in accordance with the provisions of this Part. The proviso to sub-clause (1) provides that:

> *"Provided that a municipality under this clause may not be constituted in such urban area or part thereof as the Governor may, having regard to the size of the area and the municipal services being provided or proposed to be provided for an industrial establishment in that area and such other factors as he may deem fit, by public notification, specify to be an industrial township.".*

29. Thus, proviso does not contemplate constitution of an industrial establishment as a Municipality rather clarifies an exception where Municipality under clause (1) of Article 243Q may not be constituted in an urban area.

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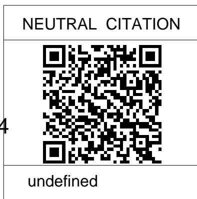

The proviso is an exception to the constitution of Municipality as contemplated by sub-clause (1) of Article 243Q. No other interpretation of the proviso conforms to the constitution scheme.

30. A Constitution Bench of this Court had noticed the principles of statutory interpretation of a proviso in ***S. Sundaram Pillai and others vs. V.R. Pattabiraman and others, 1985(1) SCC 591.*** *The following has been laid down by this Court in paragraphs 37 to 43:*

> *"37. In short, generally speaking, a proviso is intended to limit the enacted provision so as to except something which would have otherwise been within it or in some measure to modify the enacting clause. Sometimes a proviso may be embedded in the main provision and becomes an integral part of it so as to amount to a substantive provision itself.*
>
> *38. Apart from the authorities referred to above, this Court has in a long course of decisions explained and adumbrated the various shades, aspects and elements of a proviso. In State of Rajasthan v. Leela Jain,AIR 1965 SC 1296, the following observations were made:*
>
>> *"So far as a general principle of construction of a proviso is concerned, it has been broadly stated that the function of a proviso is to limit the main part of the section and carve out something which but for the proviso would have been within the operative part."*
>
> *39. In the case of STO, Circle-I, Jabalpur v. Hanuman Prasad, AIR 1967 SC 565, Bhargava, J. observed thus:*
>
>> *"5....It is well-recognised that a proviso is*

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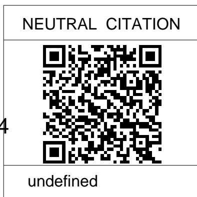

> *added to a principal clause primarily with the object of taking out of the scope of that principal clause what is included in it and what the legislature desires should be excluded."*

40. In Commissioner of Commercial Taxes v. R.S. Jhaver, AIR 1968 SC 59, this Court made the following observations:

> *"8. ...Generally speaking, it is true that the proviso is an exception to the main part of the section; but it is recognised that in exceptional cases a proviso may be a substantive provision itself."*

41. In Dwarka Prasad v. Dwarka Das Saraf, AIR 1975 SC 1758 Krishna Iyer, J. speaking for the Court observed thus: (SCC pp. 136-37, paras 16, 18) "

> *"16. There is some validity in this submission but if, on a fair construction, the principal provision is clean a proviso cannot expand or limit it. Sometimes a proviso is engrafted by an apprehensive draftsman to remove possible doubts, to make matters plain, to light up ambiguous edges. Here, such is the case.*
>
> * * *
>
> *18... If the rule of construction is that prima facie a proviso should be limited in its operation to the subject-matter of the enacting clause, the stand we have taken is sound. To expand the enacting clause, inflated by the proviso, sins against the fundamental rule of construction that a proviso must be considered in relation to the principal matter to which it stands as a proviso. A proviso ordinarily is but a proviso, although the golden rule is to read the whole section, inclusive of the proviso, in such manner that they mutually throw light on each other and result in a*

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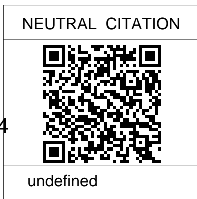

harmonious construction."

42. In Hiralal Rattanlal v. State of U.P., 1973 (1)SCC 216, this Court made the following observations: [SCC para 22, p. 224: SCC (Tax) p. 315]

"22. ... "Ordinarily a proviso to a section is intended to take out a part of the main section for special treatment. It is not expected to enlarge the scope of the main section. But cases have arisen in which this Court has held that despite the fact that a provision is called proviso, it is really a separate provision and the so-called proviso has substantially altered the main section."

43. We need not multiply authorities after authorities on this point because the legal position seems to be clearly and manifestly well established. To sum up, a proviso may serve four different purposes:

(1) qualifying or excepting certain provisions from the main enactment:
(2) it may entirely change the very concept of the intendment of the enactment by insisting on certain mandatory conditions to be fulfilled in order to make the enactment workable:
(3) it may be so embedded in the Act itself as to become an integral part of the enactment and thus acquire the tenor and colour of the substantive enactment itself; and
(4) it may be used merely to act as an optional addenda to the enactment with the sole object of explaining the real intendment of the statutory provision."

31. Applying rules of interpretation as laid down by this Court, it is clear that proviso is an exception to the constitutional provisions which provide that there shall be constituted in every State a Nagar Panchayat, a Municipal

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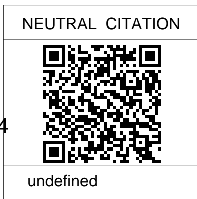

Council and a Municipal Corporation. Exception is covered by proviso that where an industrial township is providing municipal services the Governor having regard to the size of the area and the municipal services either being provided or proposed to be provided by an industrial establishment specify it to be an industrial township. The words 'industrial township' have been used in contradiction of a Nagar Panchayat, a Municipal Council and a Municipal Corporation. The object of issuance of notification is to relieve the mandatory requirement of constitution of a Municipality in a State in the circumstances as mentioned in proviso but exemption from constituting Municipality does not lead to mean that the industrial establishment which is providing municipal services to an industrial township is same as Municipality as defined in Article 243P(e). We have already noticed that Article 243P(e) defines Municipality as an institution of self-government constituted under Article 243Q, the word constituted used under Article 243P(e) read with Article 243Q clearly refers to the constitution in every State a Nagar Panchayat, a Municipal Council or a Municipal Corporation. Further, the words in proviso "a Municipality under this clause may not be constituted" clearly means that the words "may not be constituted" used in proviso are clearly in contradistinction with the word constituted as used in Article 243P(e) and Article 243Q. Thus, notification under proviso to Article 243Q(1) is not akin to constitution of Municipality. We, thus, are clear in our mind that industrial township as specified

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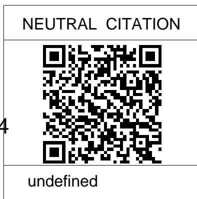

under notification dated 24.12.2001 is not akin to Municipality as contemplated under Article 243Q.

32. At this juncture, we may also notice the two judgments as relied on by the High Court and three more judgments where Article 243Q came for consideration. The first judgment which needs to be noticed is Adityapur Industrial Area Development Authority (supra). The Adityapur Industrial Development Authority was constituted under the Bihar Industrial Area Development Authority Act, 1974. In paragraph 2 of the judgment the constitution of the authority was noticed which is to the following effect:

> *"2. The appellant Authority has been constituted under the Bihar Industrial Area Development Authority Act, 1974 to provide for planned development of industrial area, for promotion of industries and matters appurtenant thereto. The appellant Authority is a body corporate having perpetual succession and a common seal with power to acquire, hold and dispose of properties, both movable and immovable, to contract, and by the said name sue or be sued. The Authority consists of a Chairman, a Managing Director and five other Directors appointed by the State Government. The Authority is responsible for the planned development of the industrial area including preparation of the master plan of the area and promotion of industries in the area and other amenities incidental thereto. The Authority has its own establishment for which it is authorised to frame regulations with prior approval of the State Government. The State Government is authorised to entrust the Authority from time to time with any work connected with planned development, or*

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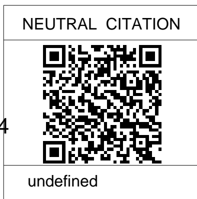

maintenance of the industrial area and its amenities and matters connected thereto. Section 7 of the Act obliges the Authority to maintain its own fund to which shall be credited moneys received by the Authority from the State Government by way of grants, loans, advances or otherwise, all fees, rents, charges, levies and fines received by the Authority under the Act, all moneys received by the Authority from disposal of its movable or immovable assets and all moneys received by the Authority by way of loan from financial and other institutions and debentures floated for the execution of a scheme or schemes of the Authority duly approved by the State Government. Unless the State Government directs otherwise, all moneys received by the Authority shall be credited to its funds which shall be kept with State Bank of India and/or one or more of the nationalised banks and drawn as and when required by the Authority."

33. On the question as to whether the Adityapur Industrial Area Development Authority was covered within the meaning of local authority as per Section 10(20) as amended by the Finance Act, 2002, the High Court held that the appellant authority could not have claimed benefit under the provisions after 01.04.2003. In paragraphs 6 and 7 following was held:

"6. It would thus be seen that the income of a local authority chargeable under the head "Income from house property", "Capital gains" or "Income from other sources" or from a trade or business carried on by it was earlier excluded in computing the total income of the Authority of a previous year. However, in view of the amendment, with effect from 1-4-2003 the Explanation "local authority" was defined to include only the authorities enumerated in the Explanation, which does not include an authority such as the appellant. At the same time

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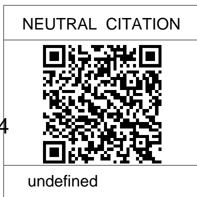

Section 10(20-A) which related to income of an authority constituted in India by or under any law enacted for the purpose of dealing with and satisfying the need for housing accommodation or for the purpose of planning, development or improvement of cities, towns and villages, which before the amendment was not included in computing the total income, was omitted. Consequently, the benefit conferred by sub-section (20-A) on such an authority was taken away.

7. The High Court by its impugned judgment and order held that in view of the fact that Section 10(20-A) was omitted and an Explanation was added to Section 10(20) enumerating the "local authorities" contemplated by Section 10(20), the appellant Authority could not claim any benefit under those provisions after 1-4-2003. It further held that the exemption under Article 289(1) was also not available to the appellant Authority as it was a distinct legal entity, and its income could not be said to be the income of the State so as to be exempt from Union taxation. The said decision of the High Court is impugned in this appeal."

34. One of the submissions which was raised before this Court was that exemption under Article 289(1), was also available to the appellant-Authority. The said submission was considered and negativated. Apart from rejecting the claim under Article 289(1), this court noticing Section 10(20) has held in paragraph 13:

"13. Applying the above test to the facts of the present case it is clear that the benefit, conferred by Section 10(20-A) of the Income Tax Act, 1961 on the assessee herein, has been expressly taken away. Moreover, the Explanation added to Section 10(20) enumerates the "local authorities" which do not cover the assessee herein. Therefore, we do not

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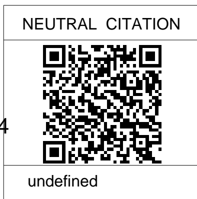

find any merit in the submission advanced on behalf of the assessee."

35. In the present case although exemption under Article 289 was not claimed or contended but the above judgment cannot be said to be not relevant to the present case since, the Court has also dwelled upon Section 10(20) as amended w.e.f. 01.04.2003. We, thus, do not accept the submission of the appellant that the above case was not relevant for the present case and was wrongly relied on by the High Court.

36. The second judgment which is relied on by the High court is Agricultural Produce Market Committee, Narela (supra). The Agricultural Produce Market Committee was constituted under the Delhi Agricultural Produce Marketing (Regulation) Act, 1998. The question arose as to whether Agricultural Market Committee is a "local authority" under the Explanation to Section 10(20) of the Income Tax Act, 1961. In the above context it was noticed that all Agricultural Market Committees at different places were enjoying exemption from income tax under Section 10(20) prior to its amendment by the Finance Act, 2002 w.e.f. 01.04.2003. The definition of 'local authority' under Section 3(31) of General Clauses Act, 1897 is as follows:

"3.(31) ***"local authority"*** *shall mean a municipal committee, district board, body or port Commissioners or other authority legally entitled to, or entrusted by the Government with, the control or*

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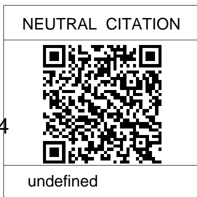

management of a municipal or local fund;"

37. In the above case this Court noticed in extenso the provisions of Delhi Agricultural Produce Marketing (Regulation) Act, 1998 and provisions of Section 10(20) of the Income Tax Act, 1961. Definition of local authority as contained in Explanation to Section 10(20) and Section 3(31) of the General Clauses Act was also noticed and discussed. This Court held that the definition of local authority in General Clauses Act under Section 3(31) is no longer applicable after the amendment of Section 10(20) by Finance Act, 2002. Following was laid down by this Court in paragraphs 31 and 32 ***(Agricultural Produce Market Committee vs. CIT (2008) 9 SCC 434)****:*

> *"31. Certain glaring features can be deciphered from the above comparative chart. Under Section 3(31) of the General Clauses Act, 1897, "local authority" was defined to mean "a Municipal Committee, District Board, Body of Port Commissioners or other authority legally entitled to … the control or management of a municipal or local fund". The words "other authority" in Section 3(31) of the 1897 Act have been omitted by Parliament in the Explanation/definition clause inserted in Section 10(20) of the 1961 Act vide the Finance Act, 2002. Therefore, in our view, it would not be correct to say that the entire definition of the word "local authority" is bodily lifted from Section 3(31) of the 1897 Act and incorporated, by Parliament, in the said Explanation to Section 10(20) of the 1961 Act. This deliberate omission is important.*
>
> *32. It may be noted that various High Courts had taken the view prior to the Finance Act, 2002 that*

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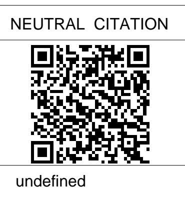

AMC(s) is a "local authority". That was because there was no definition of the word "local authority" in the 1961 Act. Those judgments proceeded primarily on the functional tests as laid down in the judgment of this Court vide para 2 in Union of India vs. R.C. Jain (1981) 2 SCC 308. We quote hereinbelow para 2 which reads as under: (SCC pp. 311-12)

> *"2. Let us, therefore, concentrate and confine our attention and enquiry to the definition of 'local authority' in Section 3(31) of the General Clauses Act. A proper and careful scrutiny of the language of Section 3(31) suggests that an authority, in order to be a local authority, must be of like nature and character as a Municipal Committee, District Board or Body of Port Commissioners, possessing, therefore, many, if not all, of the distinctive attributes and characteristics of a Municipal Committee, District Board, or Body of Port Commissioners, but, possessing one essential feature, namely, that it is legally entitled to or entrusted by the Government with, the control and management of a municipal or local fund. What then are the distinctive attributes and characteristics, all or many of which a Municipal Committee, District Board or Body of Port Commissioners shares with any other local authority? First, the authorities must have separate legal existence as corporate bodies. They must not be mere governmental agencies but must be legally independent entities. Next, they must function in a defined area and must ordinarily, wholly or partly, directly or indirectly, be elected by the inhabitants of the area. Next, they must enjoy a certain degree of autonomy, with freedom to decide for themselves questions of policy affecting the area administered by them. The autonomy may not be complete and the degree of the dependence may vary considerably but, an appreciable measure of autonomy there must be. Next, they must be entrusted by statute with such governmental functions and duties as*

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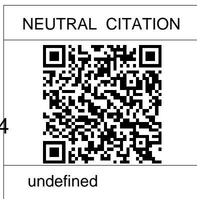

are usually entrusted to municipal bodies, such as those connected with providing amenities to the inhabitants of the locality, like health and education services, water and sewerage, town planning and development, roads, markets, transportation, social welfare services, etc. etc. Broadly we may say that they may be entrusted with the performance of civic duties and functions which would otherwise be governmental duties and functions. Finally, they must have the power to raise funds for the furtherance of their activities and the fulfilment of their projects by levying taxes, rates, charges, or fees. This may be in addition to moneys provided by Government or obtained by borrowing or otherwise. What is essential is that control or management of the fund must vest in the authority."

38. The Court further held that Explanation under Section 10(20) provides an exhaustive definition and the tests laid down by this Court in an earlier case i.e. Union of India and others vs. R.C. Jain and others, 1981 (2) SCC 308, are no longer applicable. In paragraph 35 following was stated:

"35. One more aspect needs to be mentioned. In R.C. Jain the test of "like nature" was adopted as the words "other authority" came after the words "Municipal Committee, District Board, Body of Port Commissioners". Therefore, the words "other authority" in Section 3(31) took colour from the earlier words, namely, "Municipal Committee, District Board or Body of Port Commissioners". This is how the functional test is evolved in R.C. Jain2. However, as stated earlier, Parliament in its legislative wisdom has omitted the words "other authority" from the said Explanation to Section 10(20) of the 1961 Act. The said Explanation to Section 10(20) provides a definition to the word "local authority". It is an exhaustive definition. It is

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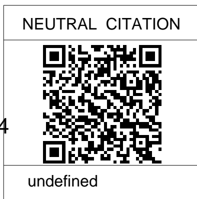

not an inclusive definition. The words "other authority" do not find place in the said Explanation. Even, according to the appellant(s), AMC(s) is neither a Municipal Committee nor a District Board nor a Municipal Committee nor a panchayat. Therefore, in our view functional test and the test of incorporation as laid down in R.C. Jain2 is no more applicable to the Explanation to Section 10(20) of the 1961 Act. Therefore, in our view the judgment of this Court in R.C. Jain2 followed by judgments of various High Courts on the status and character of AMC(s) is no more applicable to the provisions of Section 10(20) after the insertion of the Explanation/definition clause to that sub-section vide the Finance Act, 2002."

39. This Court held that Agricultural Marketing Committee is also not covered by the words "Municipal Committee, District Board, Body of Port Commissioners" as used in Explanation of Section 10(20).

40. In this context, we also refer to the judgment of this Court in Saij Gram Panchayat vs. State of Gujarat an others, 1999 (2) SCC 366. This Court had occasion to consider in the above case Gujarat Industrial Development Act, 1962, the provisions of Article 243Q and Gujarat Municipalities Act, 1963.

41. This Court held that Gujarat Industrial Development Act operates in a totally different sphere from Parts IX and IXA of the Constitution and the Gujarat Panchayats Act, 1961. In paragraph 16 of the judgment following was held:

"16.... The Gujarat Industrial Development Act operates in a totally different sphere from Parts IX

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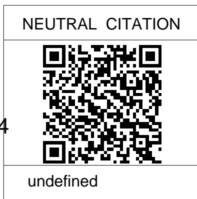

and IX-A of the Constitution as well as the Gujarat Panchayats Act, 1961 and the Gujarat Municipalities Act, 1962 — the latter being provisions dealing with local self-government, while the former being an Act for industrial development and orderly establishment and organisation of industries in a State."

42. It is, however, true that in the above case this Court was not concerned with the issue which has arisen in the present case and the Court was concerned with a different controversy.

43. We, thus, conclude that authority constituted under Act, 1976 with regard to which notification under proviso to Article 243Q(1) dated 24.12.2001 has also been issued is not akin to the Municipality constituted under Article 243Q(1)."

[39] The contention of the petitioner that the Notified Area Authority, Vapi is discharging the function that like of the municipality, is also not acceptable in view of the decision of the Hon'ble Apex Court in the case of **New Okhla Industrial Development Authority (supra).**

[40] In view of the conspectus of law, the Hon'ble Supreme Court held that the Area Development Authority is not akin to the municipality constituted under Article 243Q(1) of the Constitution of India. The Hon'ble Apex

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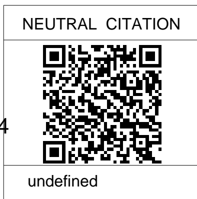

Court, in the case of **Saij Gram Panchayat vs. State of Gujarat** reported in **1992 (2) SCC 366,** held that the Gujarat Industrial Development Act operates in a totally different sphere from Parts IX and IXA of the Constitution and the Gujarat Panchayats Act, 1961.

[41] The Hon'ble Bombay High Court in the case of **Jotun India Private Limited (supra)** has considered the scope of writ jurisdiction, while examining the writ jurisdiction in a matter arising out of the order passed by the Appellate Authority of Advance Ruling, wherein it is held as under:

> *"29. Thus, the view taken by the Authority and Appellate Authority is based on the material placed before it. The Petitioner seeks to convert this limited enquiry in respect of Advance Ruling into an appellate enquiry, which is not permissible to be undertaken in writ jurisdiction. The scrutiny in writ jurisdiction of the orders passed by the Authority and the Appellate Authority is minimal. The Petitioner, who sought an advance ruling as to which entry the marine paint should fall, was given full opportunity of hearing. Both the Authorities have dealt with the issue in extenso, have considered the submissions and the law cited and have taken a view in the matter which cannot be considered as suffering from fundamental error or absurd or perverse, assuming that*

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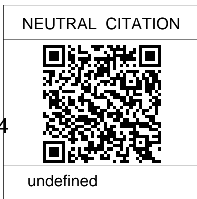

such a test can be applied and, therefore, we are not inclined to interfere with the orders passed by both the Authorities."

[42] The Hon'ble Bombay High Court in the case of **JSW Energy Ltd (supra)**, while dealing with the contention of the assessee with regard to ground of failure of principles of natural justice and consequently, the entire decision making process is vitiated, held as under:

"25. In ***Reckitt & Colman of India Ltd. vs. Collector of Central Excise - 1996 (88) ELT-641 (SC),*** *the Supreme Court was concerned with adjudicatory proceedings, which, to a great extent, are adversarial in nature. It is in that context that the Supreme Court observed that an Appellate Tribunal is not competent to make out in favour of the Revenue, a case which the Revenue never canvassed or which the assessee was never required to meet. Such observations therefore, will have to be read in the context of adjudicatory proceedings, the scope of which is not quite the same as the scope of proceedings where an assessee or a potential assessee seeks advance ruling.*

26. Therefore, we are unable to accept Mr. Dada's contention that the Appellate Authority exceeded jurisdiction in adverting to 'new grounds', in support of its decision as reflected in the impugned order dated 2nd

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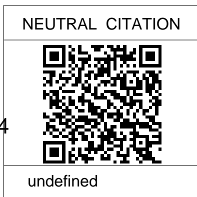

July 2018. However, the moot question which arises in this matter is whether the Appellate Authority, in relying upon the 'new grounds', has violated the principles of natural justice, by not putting the petitioner to any notice that such 'new grounds' were proposed to be considered or by not affording the petitioner opportunity to place on record the documentary evidences or clarifications in order to meet such 'new grounds' ?

27. On the moot issue as aforesaid, in the facts and circumstances as presented from the record, we are satisfied that the ground of failure of natural justice and the consequent vitiation of the decision making process, has been made out.

28. Since the Appellate Authority, in the present case, agreed with the petitioner's contention emphasized in the appeal memo that the expressions 'job work' and 'manufacture' are not mutually exclusive, the Appellate Authority, should have at least put the petitioner to notice that 'new grounds' were proposed to be considered for nevertheless upholding the conclusion of the Advance Ruling Authority. This is particularly so, because the Appellate Authority has actually faulted the petitioner for its alleged failure to submit certain agreements and documentary evidences, having a direct bearing upon the 'new grounds', upon which the Appellate Authority has finally based its decision. The absence of any indication by the Appellate Authority that

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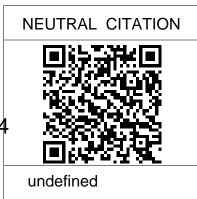

it proposed to take into consideration the 'new grounds' or the failure on the part of the Appellate Authority to afford the petitioner an opportunity to produce documents or documentary evidences having direct bearing on the 'new grounds', in our opinion, amounts to failure on the part of the Appellate Authority to adhere to the principles of natural justice. Such failure, vitiates the decision making process and affords a good ground for interference in the exercise of powers of judicial review. The prejudice to the petitioner is quite evident in the facts and circumstances of the present case.

29. For example, in paragraph 52 of the impugned order dated 2nd July 2018, the Appellate Authority has observed thus: "52. In the matter before us, the appellant have not submitted the following:

> *(i) The agreement or proposed agreement between M/s. JSL and M/s. JEL for the process of job work to understand about the quantity and value of the inputs being supplied by the principal and the amount and quantity of the inputs/material being used by the job worker to the inputs supplied by the principal to carry out the job work process.*
>
> *(ii) The detail manufacturing process of M/s JEL for production of Electricity mentioning the name, quantity and value of the inputs.*
>
> *(iii) The procedure/process for accounting for the inputs received from M/s. JSL by M/s. JEL and co-relation thereof with the goods supplied after job work.*

Though it is not possible to ascertain the quantity and value of the material being utilized by the job worker in

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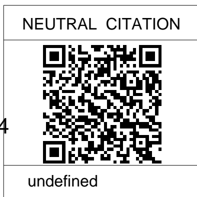

the conversion of coal provided by the principal into electricity accurately in absence of data before us, it can nevertheless be seen from the details provided by the appellant that coal is not the only input used for the production of electricity. There is large quantity of water and air being utilized in the process. The other materials being used by the job worker are not minor additions to the inputs and all inputs are not provided by the principal. Accordingly it is seen that the process cannot be considered as Job work following the ratio of the above judgment."

30. The aforesaid means that the Appellate Authority has faulted the petitioner for failure to produce on record the documents/materials referred to in sub-clauses (i),(ii)) and (iii) above. There is no dispute that the Appellate Authority, at no stage, called upon the petitioner to produce such materials and the petitioner failed to produce the same. The petitioner had no opportunity to seek time to produce such documents or complain about failure of natural justice because the Appellate Authority did not even put the petitioner to notice that 'new grounds' were proposed to be considered at appeal stage. This, according to us, amounts to denial of reasonable opportunity to the petitioner to make good its case or to at least respond to the 'new grounds' proposed to be relied upon by the Appellate Authority.

31. Similarly, in paragraph 56 of the impugned order

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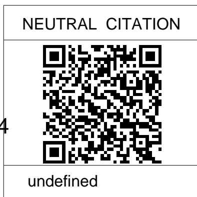

dated 2nd July 2018, the Appellate Authority has observed thus:

> *"56. Thus, the Appellant has not provided documentary evidences, during these appeal proceedings, that-*
>
> *(i) How can the steam coal, which is prime raw material of the job worker, be considered as inputs for the Principal as they are utilizing coal other than steam coal?*
>
> *(ii) How would the Principal, M/s. JSL be able to bring back the inputs (after processing the same by job worker) under Section 143(1)(a) without being regulated by a third party ?*
>
> *(iii) What are the other inputs/materials, their quantity and value, being procured/purchased by the job worker, M/s. JEL, which need to be added to the inputs supplied by the Principal for converting the same into electricity, as the Principal is not supplying all the inputs and in terms of the Judgment of Apex Court, as referred above, the job worker can not make substantial addition to the inputs of the Principal to qualify for the process as job work.*

In light of above, we have no doubt to conclude that the activity undertaken by M/s. JEL to convert Coal, to be supplied by M/s. JSL, in electricity is not covered under the definition of Job work in terms of the CGST Act. Since goods supplied by M/s. JSL will be utilized by M/s. JEL in manufacture of new commodity i.e. electricity (though attracting NIL rate of duty), the process is manufacture and the same will be considered as supply of goods and

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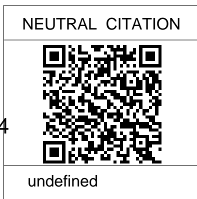

not service."

32. Again, from the aforesaid it is apparent that the petitioner has been faulted for not providing documentary evidences during the appeal proceedings, on the aspects set out in clauses (i),(ii) and (iii) above. There is again, no dispute, that the petitioner was never called upon to produce such documentary evidences in the course of appeal proceedings. In effect, this means that an order adverse to the interests of the petitioner has been made by the Appellate Authority, even after agreeing the petitioner that the primary reasoning of the Advance Ruling Authority was not proper, without affording the petitioner opportunity to meet with or to clarify or to produce materials or documentary evidences which might have had a bearing on the 'new grounds' ultimately relied upon by the Appellate Authority. This, according to us, involves failure of natural justice, thereby vitiating the decision making process leading to the making of the impugned order dated 2nd July 2018.

33. The fact that the proceedings before the Appellate Authority partake a judicial or a quasi judicial character was not seriously disputed at the bar. Accordingly, there can be no serious dispute that the Appellate Authority was required to adhere to the principles of natural justice in arriving at its decision. This requirement of adhering to the principles of natural justice is in fact required to be read into, in the absence of any specific stipulations in

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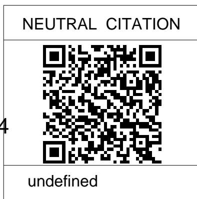

the Statute to the contrary.

34. In the context of the provisions of Section 100 of CPC, the Supreme Court in case of ***Kshitish C. Purkait vs. Santosh Kumar Purkait and ors. - 1997 (5) SCC 438,*** *has held that though the second Appellate Court has ample powers to formulate substantial questions of law, other than those already formulated at the stage of admission of the appeal, the second Appellate court, before proceeding to decide the second appeal on the basis of such other and further substantial questions of law, must afford a fair opportunity to the opposite party to meet the same. This means that the second Appeal Court must not, in the course of final hearing of the second appeal formulate other and further substantial question of law and thereafter straightway proceed to dispose of the second appeal without putting the parties to notice and affording the parties reasonable opportunity to respond to such other and further substantial questions of law. All this is despite the fact that the provisions of Section 100 of CPC do not make any express stipulation regards compliance with principles of natural justice at the stage of formulation of other and further substantial questions of law and disposal of the second appeal on the basis of the same.*

35. Similarly, in ***U.R. Virupakshappa vs. Sarvamangala and anr. - 2009 (2) SCC 177****, the High Court, at the time of dictating the judgment in the second*

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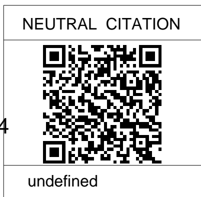

appeal framed a new question of law as to whether the Courts below were justified in holding that there existed a joint family and the suit properties were joint family properties. No sufficient opportunity was granted to the parties to make their submissions on this new question framed at the stage of disposal of the second appeal. In such circumstances, the Supreme Court ruled that the procedure adopted by the High Court was improper and the High Court was duty bound to give a reasonable opportunity of hearing the parties on the new question of law formulated in the second appeal. The Supreme Court held that the High Court was duty bound to put the parties to notice that the new question of law was proposed to be considered and grant time to the parties to respond such question of law so formulated. The Supreme Court held that failure to do so would constitute failure of natural justice and therefore, remand to the second Appellate Court, was in order.

36. Applying the aforesaid principles to the facts and circumstances of the present case, we are satisfied that the Appellate Authority should have at least indicated to the petitioner that it proposed to take into consideration the 'new grounds' and further, afford an opportunity to the petitioner to place on record agreements or other documentary evidences referred to in paragraphs 52 and 56 of the impugned order dated 2nd July 2018, in order to meet these 'new grounds'. The failure to do so has not only resulted in violation of principles of natural justice,

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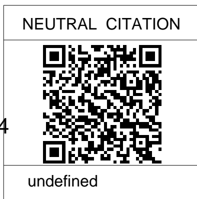

but also occasioned serious prejudice to the petitioner.

37. Accordingly, on the aforesaid ground, we set aside the impugned order dated 2 July 2018 made by the Appellate Authority and remand the petitioner's appeal to the Appellate Authority for reconsideration on its own merits and in accordance with law. On this occasion, however, we grant the petitioner liberty to produce before the Appellate Authority additional material or documentary evidences which might have bearing upon the new or additional grounds relied upon by the Appellate Authority whilst making the impugned order dated 2 July 2018."

[43] However, in the facts of the case, the petitioners have made submissions regarding remaining two conditions, which were not considered by the authority of Advance Ruling. Therefore, the Appellate Authority has given an opportunity to the petitioner and it cannot be said that there is any breach of the principles of natural justice.

[44] In view of the foregoing reasons and more particularly in view of the decision of the Hon'ble Apex Court and considering the conspectus of law laid down by the Hon'ble Apex Court in the case of **New Okhla**

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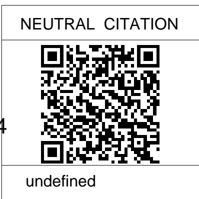

Industrial Development Authority (supra), the Notified Area Authority, Vapi cannot be considered as “local authority” or “Governmental Authority”. Therefore, the Notified Area Authority,Vapi is neither a “local authority” nor a “Governmental Authority” carrying out any activity in relation to any function entrusted to Panchayat under Article 243G of the Constitution or in relation to any function entrusted to Municipality under Article 243W of the Constitution. Therefore, this petition fails and is, accordingly, dismissed. Rule is discharged.

(BHARGAV D. KARIA, J)

(NIRAL R. MEHTA,J)

CHANDRESH

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