

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****SPECIAL CIVIL APPLICATION NO. 13205 of 2013****With****SPECIAL CIVIL APPLICATION NO. 15236 of 2013****TO****SPECIAL CIVIL APPLICATION NO. 15240 of 2013****With****SPECIAL CIVIL APPLICATION NO. 14644 of 2013****TO****SPECIAL CIVIL APPLICATION NO. 14662 of 2013****With****SPECIAL CIVIL APPLICATION NO. 14766 of 2013****TO****SPECIAL CIVIL APPLICATION NO. 14776 of 2013****With****SPECIAL CIVIL APPLICATION NO. 14781 of 2013****TO****SPECIAL CIVIL APPLICATION NO. 14788 of 2013****With****SPECIAL CIVIL APPLICATION NO. 14824 of 2013****TO****SPECIAL CIVIL APPLICATION NO. 14827 of 2013****With****SPECIAL CIVIL APPLICATION NO. 14938 of 2013****TO****SPECIAL CIVIL APPLICATION NO. 14941 of 2013****With****SPECIAL CIVIL APPLICATION NO. 14454 of 2013****TO****SPECIAL CIVIL APPLICATION NO. 14494 of 2013****With****SPECIAL CIVIL APPLICATION NO. 16118 of 2013****TO****SPECIAL CIVIL APPLICATION NO. 16123 of 2013****With****SPECIAL CIVIL APPLICATION NO. 15932 of 2013**

**TO**  
**SPECIAL CIVIL APPLICATION NO. 15936 of 2013**  
**With**  
**SPECIAL CIVIL APPLICATION NO. 17167 of 2013**  
**With**  
**SPECIAL CIVIL APPLICATION NO. 17169 of 2013**  
**FOR APPROVAL AND SIGNATURE:**

**HONOURABLE MR.JUSTICE M.R. SHAH**

**and**

**HONOURABLE MR.JUSTICE R.P.DHOLARIA**

- =====
- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
  - 2 To be referred to the Reporter or not ?
  - 3 Whether their Lordships wish to see the fair copy of the judgment ?
  - 4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder ?
  - 5 Whether it is to be circulated to the civil judge ?
- =====

SHIP RECYCLING INDUSTRIES ASSOCIATION

Versus

UNDER SECRETARY & 4

=====

**Common Appearance in all matters:**

MR HARSHIT S TOLIA, ADVOCATE for the Petitioner No. 1

MR PARTH S TOLIA, ADVOCATE for the Petitioner No. 1

MR JAIMIN GANDHI, AGP for the Respondents No.1, 2 , 5

MR PR NANAVATI, ADVOCATE for the Respondent No. 4

MR RITURAJ M MEENA, ADVOCATE for the Respondent No. 3

=====

CORAM: **HONOURABLE MR.JUSTICE M.R. SHAH**  
and  
**HONOURABLE MR.JUSTICE R.P.DHOLARIA**

**Date : 27/12/2013**

**ORAL JUDGMENT**  
**(PER : HONOURABLE MR.JUSTICE M.R. SHAH)**

[1] As common questions of law and facts arise in this group of petitions and as such, Special Civil Application No.13205/2013 is lead / main petition and other Special Civil Applications are one page petitions, all these petitions are disposed of by this common judgment and order.

[1.1] In all these petitions under Article 226 of the Constitution of India, the respective petitioners, inclusive of the petitioner – Ship Recycling Industries Association, of Special Civil Application No.13205/2013, have prayed for appropriate writ, order or direction, quashing and setting aside the impugned demand notices and/or bills issued by the Notified Area Officer, Alang-Sosiya Notified Area, issued under the provisions of Alang-Sosiya Notified Area Consolidated Tax Rules, 2003 (hereinafter referred to as “Rules, 2003”) with retrospective effect from the year 2002-2003 has been ultra vires, illegal and without authority of law. It is further prayed to declare the impugned notification dated 31.08.2005 / taxation rules issued by respondent No.1 to the extent, it includes the persons other than

allottee of respondent No.3 Corporation within the meaning of “occupier” as defined under Rule 2(n) of the Rules, 2003 as ultra virus, illegal, arbitrary and violative of Articles 265, 14 and 19(1)(g) of the Constitution of India.

[1.2] That the respective two petitioners, the members of the petitioner of Special Civil Application No.13205/2013 i.e. Ship Recycling Industries Association (formerly known as Gujarat Ship Breakers’ Association) have established their industries in Alang-Sosiya Notified Area and Gujarat Maritime Board are regulating the affairs of ship recycling.

[1.3] That by Notification dated 07.11.1998, the respondent No.1 declared Alang-Sosiya Industrial Area as Specified Area while exercising the power under clause (g) of section 2 of the Gujarat Industrial Development Act, 1962. That vide Notification dated 08.02.2000, the respondent No.1 issued draft rules called Alang Sosiya Notified Area Consolidated Tax Rules, 2000. That such draft Notification came to be finalized and the final Notification dated 05.07.2000 was published by the respondent No.1 in exercise of powers conferred under section 264(B) read with section 267 of the Gujarat Municipalities Act. It appears that thereafter, one another draft Notification in respect of the above Rules came to be published on 17.12.2003. Thereafter, final Notification has been issued by the respondent No.1 and the same came to be published in the Government Gazette on 31.08.2005 under which the definition of

“occupier” in section 2(n) is widened to include the allottee of Government of Gujarat and Gujarat Maritime Board also over and above allottees of GIDC. Thus, under the final Notification, all the petitioners can be said to be occupiers and are liable to pay the consolidated tax under Rules 2003. At this stage, it is required to be noted that though in the present petitions, the respective petitioners have challenged the Notification dated 31.08.2005 under which the petitioners are treated as “occupiers” and are liable to pay consolidated tax under Rules 2003. However, Mr. Harshit Tolia, learned advocate appearing on behalf of the respective petitioners has fairly conceded and has stated at the bar that their respective petitioners / owners of the properties in the Notified Area are not disputing that they cannot be said to be “occupiers” and that they are not liable to pay consolidated tax under Rules 2003.

[1.4] That by impugned notices / demands / bills, the respective petitioners are called upon to pay consolidated tax under Rules 2003 retrospectively w.e.f. 2002-2003.

Hence, the petitioners have preferred present Special Civil Applications challenging levy / demand of consolidated tax that too retrospectively w.e.f. 2002-2003.

[2] Learned advocate appearing on behalf of the respective petitioners has vehemently submitted that the impugned levy / demand of consolidated tax and that too retrospectively w.e.f. 2002-

2003 is absolutely illegal and without following due procedure as required under sections 102 to 111 of the Act.

[2.1] It is submitted by the learned advocate appearing on behalf of the respective petitioners that as per Rule 2003, the consolidated tax shall be assessed and recovered so far as applicable to, in accordance with the provisions of the Act. It is submitted that as per Rule 2(a) of Rule 2003, the “Act” means the Gujarat Municipalities Act, 1963. It is submitted by the learned advocate appearing on behalf of the respective petitioners that while levying and/or demanding the consolidated tax, authority was required to follow, the procedure as per sections 105 to 111 of the Gujarat Municipalities Act, 1963. It is submitted that section 105 of the Gujarat Municipalities Act provides for preparation of an assessment list; section 107 of the Gujarat Municipalities Act provides for publication of notice of assessment; section 108 of the Gujarat Municipalities Act provides for public notice of time fixed for lodging objections; sub-section (3) of section 108 of the Gujarat Municipalities Act provides for hearing of objections; sub-section (4) of section 108 of the Gujarat Municipalities Act provides for authentication of list. It is submitted that section 109 of the Gujarat Municipalities Act provides for amendment of assessment list. It is submitted that section 111 of the Gujarat Municipalities Act provides that new assessment need not be prepared every year. However, the said assessment list shall be completely revised every four years. It is submitted that in the

present case before levying / demanding of consolidated tax by impugned bills / demand notices, no procedure as required under sections 107 to 111 of the Gujarat Municipalities Act has been followed. It is submitted that neither any assessment list has been published nor any authenticated assessment list has been prepared and published. It is submitted that no opportunity has been given to the occupiers / petitioners to raise objections against the assessment list and as such, no authenticated list has been prepared and published, which is mandatory requirement before imposing / levying any tax. It is submitted that therefore, the impugned levy / consolidated tax and that too retrospectively w.e.f. 2002-2003 is absolutely illegal, without authority of law and without following any procedure which is required under the Gujarat Municipalities Act, and, therefore, the same deserves to be quashed and set aside.

[2.2] Learned advocate appearing on behalf of the respective petitioners has heavily relied upon the following decisions of the Hon'ble Supreme Court as well as this Court in support of his above submissions and requested to allow the present Special Civil Applications and to quash and set aside the levy of the impugned demand / bill.

- (1) Kalyan Municipal Council and others Vs. Usha Paper Products (P) Ltd & Ors., reported in (1988) 3 SCC 306, para-5;
- (2) Municipal Corporation of City of Hubli Vs. Subha Rao Hanumatharao Prayag and others, reported in (1976) 4 SCC

830, para-7;

- (3) Kanaiya Prints Pvt. Ltd. Vs. Assessment and Recovery Officer and Anr., reported in 2003 (1) G.L.H. 449 (Gujarat High Court decision);
- (4) The Municipal Corporation of the City of Ahmedabad Vs. Jhaveri Keshavlal Lallubhai, reported in 1965 (6) G.L.R. 228 ( Gujarat High Court decision);
- (5) L. M. Patel and others Vs. Baroda Municipal Corporation, reported in 1995 (1) G.L.H. 1198 (Gujarat High Court decision);
- (6) (The) Anant Mills Co. Ltd. Vs. Municipal Corporation for the city of Ahmedabad and others, reported in 1993 (2) G.L.H. 897;

Relying upon the above decisions and making submissions, it is requested to allow the present Special Civil Applications.

[3] All these petitions are opposed by Mr.Jaimin Gandhi, learned AGP appearing on behalf of respondents No.1, 2 and 5, Mr.Rituraj Meena, learned advocate appearing on behalf of respondent No.3 and Mr.Premal Nanavati, learned advocate appearing on behalf of respondent No.4.

[3.1] An affidavit-in-reply has filed on behalf of respondent No.1 and respondent No.2 and additional affidavit-in-reply is also filed on behalf of respondent No.2 – Notified Area Officer dated 16.12.2013. It is the case on behalf of the respondents more particularly respondent No.2 – Notified Area Officer that respondent No.2 appointed a valuer in the year 2003 for the purpose of valuation of the respective



properties falling under the respondents. That thereafter, assessment register was formed / prepared and the details of the respective parties were entered into the assessment register. However, no bill was issued till 2013. That thereafter, in 2013, a new assessment register was formed / prepared. For the purpose of assessment, the value as per the valuation report of 2004 are adopted. It is further submitted that after formation of the assessment register in 2013, assessment bills have been issued for GMB's plot areas in 2013. It is further submitted that section 105 of the Gujarat Municipalities Act shall apply with appropriate modification in the case of the respondent. It is further submitted that as per clause (d) of sub section (1) of section 105, the carpet area and the area of land shall be mentioned in the assessment list. However, as per the consolidated Tax Rule, 2005 the taxes have been levied on the basis of net realizable value and not the size of the area. It is submitted that therefore, as before levy of consolidated tax, assessment list has been prepared and the bills are issued as per the provisions of the Rules 2003 / 2005, it is requested to dismiss the present Special Civil Applications.

[3.2] It is further submitted on behalf of the respondents that now the Regional Manager has been appointed as Appellate Authority to consider such grievances which are raised in the present Special Civil Applications and, therefore, the petitioners may be relegated to file the appeals before the Appellate Authority under the provisions of the

Gujarat Industrial Development (Notified Areas) Rules, 2007.

[3.3] However, learned advocate appearing on behalf of the respondents are not in a position to satisfy that before impugned levy / demand of consolidated tax, any procedure under sections 107 to 111 of the Gujarat Municipalities Act has been followed.

[4] Heard learned advocates appearing on behalf of the respective parties at length.

[4.1] At the outset, it is required to be noted that by impugned levy / demand / bills, the respective petitioners are called upon to pay consolidated tax under Rules 2003 retrospectively w.e.f. 2002-2003 i.e. for approximately 10 years. That the Gujarat Government in exercise of the powers conferred by section 16 of the Gujarat Industrial Development Act, 1962 has declared under the Notification, Industries and Mines Department No.GHU / 2000 (1) GID / 1099 / 1594 / G dated 07.02.2000, that the provisions relating to the notified area contained in Chapter XVI – A of the Gujarat Municipalities Act, 1963 shall extend to and brought into force in the Alang – Sosiya Industrial Area. Under the aforesaid Notification, it was provided that the powers to make rules under clause (l) and clause (m) of section 271 of the Gujarat Municipalities Act, 1963 shall be exercised by the State Government under section 277 of the Municipalities Act. That thereafter, final Notification has been issued on 31.08.2005, in exercise of powers conferred by section 277 of the Gujarat

Municipalities Act r/w. sections 264(B) and 271 thereof, called Alang – Sosiya Notified Area Consolidated Tax Rules, 2003. That the impugned levy / demand / bills for consolidated tax are issued under the aforesaid Rules, 2003. That the relevant provisions of Rules, 2003 are as under:-

- 2(a) **'the Act'** means the Gujarat Municipalities Act, 1963;
- (b) xxxxx xxxxx
- (c) **'building'** means a building as defined in clause (2) of section 2 of the Act;
- (d) xxxxx xxxxx
- (e) xxxxx xxxxx
- (f) xxxxx xxxxx
- (g) xxxxx xxxxx
- (h) **'Consolidated tax'** means the tax imposed in the notified area under these rules;
- (i) **'land'** means the land as defined in clause (11) of section 2 of the Act;
- (j) xxxxx xxxxx
- (k) xxxxx xxxxx
- (l) xxxxx xxxxx
- (m) xxxxx xxxxx

- (n) **'occupier'** means an allottee of the Corporation as a licensee, a lessee or an owner of property by virtue of conveyance deed as the case may be, or a person in possession of property by virtue of rent, lease or as a caretaker, trustee or otherwise or other owners of property situated within the Notified Area for the time being receiving the rent of any land or building whether on his own account or as an agent or trustee for any other person or for any other society or for any religious or charitable purpose or who would so receive the rent if such land or building were let to a tenant.

*Explanation: Lessee means a person in possession of property by virtue of conveyance deed, rent lease shall have the same meaning as defined in the Disposal of Property Regulations, 1967 of the Corporation or Disposal of Land Regulations, 1968 of the Corporation or Rent Regulations, 1971, as the case may be;*

- (o) **'owner'** means an owner as defined in clause (18) of section 2 of the Act.

**5. Assessment and liability of the Consolidated Tax:-**

- (a) The tax shall be assessed and recovered so far as applicable to, in accordance with the provisions of the Act.

**(b) An owner or occupier shall be jointly and severally liable for the payment of tax under these rules,**

**(c) The owner or occupier of the superstructure of the building be jointly and severally liable for the payment of tax under these rules,**

- (d) When any owner / occupier transfers his property in

*favour of other person by sale, lease or mortgage, the new owner or occupier of the property shall have to pay tax as per the prevailing market rate of land and building at the time of transfer.*

*(e) The tax shall be payable in advance in two installments on or before the first day of April and first day of October in each year. After expiry of thirty days of service of bill, penal interest at the rate of 15% per annum shall be levied in addition to amount of consolidated tax payable.*

**(f) Coercive measures for recovery of Consolidated Tax.** - *The Notified Area Officer shall take coercive measures for the recovery of Consolidated Tax from the defaulter under section 133 and 134 of the Act.*

**7. Notice in writing to be given :-** *It shall be the duty of the owner or occupier of a building or land to give a notice in writing to the Notified Area Officer within one month, when -*

*(a) a building is newly erected or constructed;*

*(b) a building, which has been already assessed, is either extended, rebuilt, reconstructed or additions and alterations are made thereto or improvement has been made so as to raise its capital value.*

*(c) a building or land which has already been assessed is divided;*

*(d) a building is wholly or in part demolished or otherwise is in such state that it decreases its letting value.*

**Explanation.** - *The period of one month shall be counted from the date of completion or occupation of the building whichever*

*is earlier in case of (a), (b) and (c) and from the date of occurrence of the event in case of (d) above.*

**8. Assessment on receipt of notice:-** *(1) When a notice in writing under rule 7 is received, the Notified Area Officer, after making such inquiry as he deems necessary, shall cause the building to be assessed.*

*(2) After such assessment is made, the Notified Area Officer shall enter such valuation in a separate list and at the end of the year; such change made in the assessment, shall be entered in the authenticated assessment list.*

[4.2] Thus, considering the provisions of Rules 2003 and even considering Rule 5, the consolidated tax shall be assessed and recovered so far as applicable to in accordance with the provisions of the Act i.e. Gujarat Municipalities Act.

[4.3] The relevant provisions under the Gujarat Municipalities Act, 1963 for assessment of any liability to pay tax on building and on land are as under:-

**S.105. Preparation of an assessment list :-** *(1) When a tax on building or land or both is imposed, the Chief Officer shall cause an assessment list of all buildings or lands or lands and buildings in the municipal borough to be prepared containing –*

- (a) the name of the street or division in which the property is situate;*
- (b) a description of the property sufficient for identification;*
- (c) the names of the owner and occupier, if known;*

- [(d) the assessment based on the carpet area and of the area of land of the property made in accordance with sub-section (1) of section 99A]; and*
- (e) the amount of tax assessed thereon.*

*(2) In assessing a tax on buildings or lands, [where the assessment is determined under clause (d) of sub-section (1), a sum equal to ten percentum of the said assessment] shall be deducted there from in lieu of all allowances for repairs or on any other account whatsoever.*

*(3) **Power to inspect and require returns** : For the purpose of preparing such assessment list the Chief Officer or any person acting under his authority may inspect any building or land in the municipal borough and on the requisition of the Chief Officer the owner or occupier of any such building or land shall, within such reasonable period as shall be specified in the requisition, be bound to furnish a true return, to the best of his knowledge or belief and subscribed with his signature, of the name, and place of abode of the owner or occupier or of both and [the carpet area of such building and of the area of land].*

**S.106. Person primarily liable of a tax on buildings or lands or both how to be designated if his name cannot be ascertained :-** *(1) When the name of the person primarily liable for the payment of a tax on building or land or both in respect of any premises cannot be ascertained it shall be sufficient to designate him in the assessment book, and in any notice which it may be necessary to serve upon the said person under this Act, "the holder", of such premises, without further description.*

**(2) Occupier liable for tax on buildings or lands or both until he gives information:-** If, in any such case, any person in occupation of the premises shall refuse to give such information as may be requisite for determining who is primarily liable as aforesaid, such person shall himself be liable, until such information is obtained, for all taxes on buildings or lands or both leviable on the premises of which he is in occupation.

**S.107. Publication of notice of assessment:-** When the assessment list has been completed, the Chief Officer shall give public notice thereof and of the place where the list or a copy thereof may be inspected; and every person claiming to be either the owner or occupier of property included in the list, and any agent of such person, shall be at liberty to inspect the list and make extracts therefrom without charge.

**S.108. Public notice of time fixed for lodging objections:-** (1) The Chief Officer, shall at the time of the publication of the assessment list under section 107, give public notice of a date not less than one month after such publication, before which objection to the assessment in such list shall be made; and in all cases in which any property is for the first time assessed or the assessment is increased on account of a change in the [carpet area] he shall also give notice thereof to the owner or occupier of the property if known, and if the owner or occupier of the property is not known, he shall affix the notice in a conspicuous position on the property.

**(2) Objection how to be made:-** Objections to the assessment of any property in such list shall, if the owner or occupier of such property desires to make a objection, be made by such owner or occupier or any agent of such owner



*or occupier to the executive committee before the time fixed in the aforesaid public notice, by application in writing, stating the grounds on which the assessment is disputed; all applications so made shall be registered in a book to be kept by the executive committee for the purpose.*

**(3) *Hearing of objections:-*** *The executive committee, after allowing the applicant an opportunity of being heard in person or by agent, shall –*

- (a) investigate and dispose of the objections,*
- (b) cause the result thereof to be noted in the book kept under sub-section (2) and*
- (c) cause any amendment necessary in accordance with such result to be made in the assessment list:*

*Provided that before any such amendment is made the reasons thereof shall be recorded in the book kept under sub-section (2);*

*Provided further that powers and duties of the executive committee under this sub-section may be transferred to any other committee appointed by the municipality or with the permission of the Development Commissioner, to any officer or pensioner of the Government.*

**(4) *Authentication of list :-*** *As and when in respect of any property the objections made under this section have been disposed of and the amendments required by sub-section (3) have been made in the assessment list, the said list so far as such property is concerned shall be authenticated by the signature of the chairman and at least one other member of the executive committee, or if the executive committee's powers and functions under sub-section (3) have been*

*transferred to any other committee or to an officer or pensioner of the Government, by the signatures of not less than two members of such committee or of the officer or pensioner aforesaid; the person or persons so authenticating the list shall certify that no valid objection has been made to the assessment of the property contained in the list except in the cases in which amendments have been made therein.*

**(5) Custody and inspection of list :-** *The list so authenticated shall be deposited in the municipal office, and shall there be open to inspection during office hours to all owners and occupiers of property entered therein or to the agents of such persons, and a notice that it is so open shall be forthwith published.*

**(6) Authenticated list how far conclusive:-** *Subject to such alteration as may be made therein under the provisions of section 109 and to the result of any appeal or revision made under section 138 the entries in the assessment list so authenticated and deposited and the entries, if any, inserted in the said list under the provisions of section 109 shall be accepted as conclusive evidence –*

*(i) for the purposes of all municipal taxes, [of the assessment under clause (d) of sub-section (1) of section 105] regulating the tax on buildings, lands and both the buildings and lands to which such entries respectively refer, and*

*(ii) for the purpose of the tax for which such assessment list has been prepared, of the amount of the tax leviable on such buildings or lands or both buildings and lands in any official year in which such list in force.*

**S.109. Amendment of assessment list. Notice of new**

**buildings:-** (1) *The executive committee may at any time alter the assessment list by inserting or altering an entry in respect of any property, such entry having been omitted from or erroneously made in the assessment list through fraud, accident or mistake or in respect of any building constructed, altered, added to or reconstructed in whole or in part where such construction, alteration, addition or reconstruction has been completed after the preparation of the assessment list after giving notice to any person interested in the alteration of the list of a date not less than one month from the date of service of such notice, before which any objection to the alteration should be made.*

(2) **Objection how dealt with:-** *An objection made by any person interested in any such alteration before the time fixed in such notice and in the manner provided by sub-section (2) of section 108 shall be dealt with in all respects as if it were an application under the said section.*

(3) **Effect of amendment :-** *An entry or alteration made under this section shall, subject to the provisions of section 138, have the same effect as if it had been made in the case of a building constructed, altered, added to or reconstructed on the day on which such construction, alteration, addition or reconstruction was completed or on the day on which the new construction, alteration addition or reconstruction was first occupied whichever first occurs, or in other cases on the earliest day in the current official year on which the circumstances justifying the entry or alteration existed; and the tax or the enhanced tax, as the case may be, shall be levied in such year in the proportion which the remainder of the year after such day bears to the whole year.*

**S.110. Notice to be given to the executive committee of demolition of or removal of building:-** (1) When any building or any portion of a building which is liable to the payment of a tax on a building or lands or both is demolished or removed, otherwise than by order of the executive committee, the person primarily liable for the said payment of the tax shall give notice thereof in writing to the Chief Officer.

(2) Until such notice is given the person aforesaid shall continue to be liable to pay every such tax as he would have been liable to pay in respect of such building, if the same, or any portion thereof, had not been demolished or removed.

(3) Nothing in this section shall apply in respect of a building or portion of a building which has fallen down or been burnt down.

**S.111. New assessment need not be prepared every year:-** (1) It shall not be necessary to prepare a new assessment list every year. Subject to the condition that the assessment list shall be completely revised every four years, the Chief Officer may adopt the assessment contained in the list for any year, with such alteration as may be deemed necessary, for the year immediately following.

(2) But the provisions of sections 107, 108 and 109 shall be applicable every year as if a new assessment list had been completed at the commencement of the official year.

[4.4] Thus, considering the provisions of the Gujarat Municipalities Act referred to hereinabove, as per section 105 of the Gujarat Municipalities Act, when a tax on building or land or both is imposed,

the Chief Officer shall cause an assessment list of all buildings or lands or lands and buildings in the municipal borough to be prepared containing particulars as mentioned under sub-section (1) of section 105. Section 106 of the Gujarat Municipalities Act provides for person primarily liable of a tax on buildings or lands or both. As per section 107 of the Gujarat Municipalities Act, when the assessment list has been completed, the Chief Officer shall give public notice thereof and of the place where the list or a copy thereof may be inspected; and every person claiming to be either the owner or occupier of property included in the list, and any agent of such person, shall be at liberty to inspect the list and make extracts therefrom without charge. As per section 108 of the Gujarat Municipalities Act, the Chief Officer, shall at the time of publication of the assessment list under section 107, give public notice of a date not less than one month after such publication, before which objection to the assessment in such list shall be made; and in all cases in which any property is for the first time assessed or the assessment is increased on account of a change, he shall also give notice thereof to the owner or occupier of the property if known, and if the owner or occupier of the property is not known, he shall affix the notice in a conspicuous position on the property. Sub-section (2) of section 108 of the Gujarat Municipalities Act provides for objections how to be made. Sub-section (3) of section 108 of the Gujarat Municipalities Act provides for hearing of objections and sub-section (4) of section 108 of the Gujarat Municipalities Act provides for preparation of authentication of list. As

per sub-section (6) of section 108 of the Gujarat Municipalities Act provides for authenticated list how for conclusive. Section 109 of the Gujarat Municipalities Act provides for amendment of assessment list and provides for notice of new buildings and/or change. As per section 111 of the Gujarat Municipalities Act, it shall not be necessary to prepare a new assessment list every year. It also provides for subject to the condition that the assessment list shall be completely revised every four years, the Chief Officer may adopt the assessment contained in the list for any year, with such alteration as may be deemed necessary, for the year immediately following. Section (2) of section 111 of the Gujarat Municipalities Act provides that the provision of sections 107, 108 and 109 shall be applicable every year as if a new assessment list had been completed at the commencement of the official year.

[4.5] Considering the aforesaid provisions of the Gujarat Municipalities Act, before levy and/or demand of the consolidated tax, the assessment list is required to be authenticated after giving an opportunity to the concerned occupiers to raise objections against the same. In the present case, admittedly, there is no authenticated assessment list prepared and published before levy / demand of consolidated tax. It might be that the assessment list might have been prepared by the authority but it is neither here nor there. The authenticated list is to be prepared and published after inviting objections and after following due procedure which is required under

section 107 onwards to section 111 of the Gujarat Municipalities Act.

[4.6] In the case of **Kalyan Municipal Council** (supra), it is observed and held that the process of levying of tax is complete only when assessment list is authenticated and it is only then that the tax is levied on the rate payers.

[4.7] While considering the *pari materia* provisions under the Bombay Municipal Boroughs Act, the Division Bench of this Court in the case of **Municipal Corporation of The City of Ahmedabad** (supra) has held that no liability to pay the municipal tax arises until the assessment list is authenticated. It is further observed and held that there can be no taxation unless procedure set out in sections 78 to 81 read with sections 82 to 84 of the Bombay Municipal Boroughs Act is complied with and it is only when the assessment list is authenticated and the final step in this procedure is taken that the tax is imposed or levied and the liability of the tax-payer arises.

[4.8] Applying the ratio laid down by the Hon'ble Supreme Court in the case of **Kalyan Municipal Council** (supra) as well as this Court in the case of **Municipal Corporation of The City of Ahmedabad** (supra) and the provisions of the Gujarat Municipalities Act more particularly sections 107 to 111 and considering the fact that before impugned levy/demand of the consolidated tax under Rules 2003, there is no authenticated assessment list prepared / published, the

impugned levy/demand of consolidated tax under Rules 2003 is illegal which deserves to be quashed and set aside only on the aforesaid ground. In the present case, admittedly, except preparation of the assessment list, there is no authentication of the assessment list after following due procedure as required under the provisions of the Gujarat Municipalities Act more particularly after giving an opportunity to the occupiers to raise objections, if any.

[5] In view of the aforesaid facts and circumstances and for the foregoing reasons, all these petitions succeed on the aforesaid ground alone. The impugned levy/demand of consolidated tax under Rules 2003 and the impugned bills are hereby quashed and set aside. However, it will be open for the appropriate authority to levy/demand/raise the bills for consolidated tax under Rules 2003 after following due procedure as required under the provisions of the Gujarat Municipalities Act more particularly sections 107 to 111 in accordance with law. Rule is made absolute to the aforesaid extent in all the petitions. There shall be no order as to costs.

**(M.R.SHAH, J.)**

**(R.P.DHOLARIA, J.)**

vijay