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GN-1-616-ARHCM-1-98-2, 15,25 (Loose)- PA4 \*

(Spl. H.C.A.S.D.D. 47 e)

1102085-41

NO. /CIV/DD. 2704 /2010

Dtd.: 6-4-2011/11/2010.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,  
BENCH, AT AURANGABAD.

LETTER PATENT APPEAL NO. 173 2003, IN

WRIT PETITION NO. 826 1987

1. M/s; Neth Pulp & Papers Mills Ltd. and Others.

... Petitioner,

VERSUS

2. The State of Maharashtra and Others.

... Respondent.

TO,

R/1. The State of Maharashtra through the Govt. Pleader High Court of Bombay Bench, at Aurangabad.

R/2. The Member Secretary, Maharashtra Pollution Control Board, Maharashtra Army, Navy Building, Ground Floor, 148, M.G. Road, Fort, Bombay -23.

R/3. The Chairman of Maharashtra, Pollution Control Board, Maharashtra Army, Navy Building, Ground Floor, 148, M.G. Road, Fort, Bombay -23.

APPELLANT prays that the Judgment & Order dated: 01/11/2001 passed by Hon'ble Single Judge, (CORAM: Dr. Pratibha Upasani, J.) in w.p. 826/1987 Arising out of order dt: 14/1/1987 Passed by the Chairman of Maharashtra Pollution Control Board Maharashtra Army, Navy Building, Ground Floor 148, M.G. Road, Bombay -23.

P.T.O.

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IN THE HIGH COURT OF JUDICATURE OF BOMBAY  
BENCH AT AURANGABAD

Letters Patent Appeal No 173 of 2003

DISTRICT : AURANGABAD

In the matter of Clause  
15 of the Letters Patent.

AND

In the Water (Prevention  
and Control of  
Pollution), Act, 1974.

AND

In the Judgment and order  
passed by the Hon'ble  
Single Judge in Writ  
Petition No.826/1987,  
dated 1.11.2001.

M/s. Nath Pulps & Papers Mills Ltd.,  
Having its registered office at  
Adalat Road, Aurangabad,  
through its Managing Director.

..Appellant  
[Ori.Petitioner]

Versus

1. The State of Maharashtra.  
(Copy to be served Govt.  
Pleader High Court Building,  
Aurangabad).
2. Member Secretary,  
Maharashtra Pollution Control  
Board, Maharashtra Army,  
Navy Building,  
Ground Floor, 148, M.G.Road,  
Fort, Bombay- 23.
3. Chairman of Maharashtra Pollution Control  
Board, Maharashtra Army,  
Navy Building,  
Ground Floor, 148, M.G.Road,  
Fort, Bombay- 23.

..Respondents  
[Ori. Respondents]

The appellant prays that the order dt. 1-11-2001 passed by this court (Coram: Mr. Pratibha Upasani J) in W.P. \_\_\_\_\_ may be quashed and set aside, as stated in L.P.A.

W.P. No. 826/87 was rule by the Hon'ble Mr. Pratibha Upasani J under Order XLI, Rule 11 Cl. (1) of the code of Civil Procedure on the 15<sup>th</sup> day of Nov. 2001.

An appeal under the Letters Patent has been admitted in the High court from the above decision.

The grounds of objection to the decision appealed against are:-----

#### GROUNDS

- I] That the impugned judgement and order is against the facts of the case and law.
- II] That the Hon'ble Single Judge has failed to properly consider the submissions made on behalf of the appellant.
- III] That the Hon'ble Single Judge has failed to properly interpreter the provisions of the Water (Prevention and Control of Pollution) Cess Act, 1977.
- IV] That the Hon'ble Single Judge has wrongly held that water is consumed by the assessee has to be categorised in the four categories

mentioned in the Schedule II, and as such the Cess is leviable on the total consumption.

VI] That Hon'ble Single Judge has failed to consider that the Cess can be levied only on the water consumed for the four purpose mentioned in the Schedule II. The charging of the Cess on the water consumed for any other purpose is not provided.

VII] That the Hon'ble Single Judge has erroneously held that the mentioning of the water consumed for farming and loss of water by percolation and evaporation is wrongly mentioned in the Return.

VIII] The learned Single Judge has wrongly interpreted the Explanation to Section 3, the water consumed is to be taken as supplied, for the purpose as mentioned in the Schedule, but cannot be taken as supplied to the industry.

VIII] The learned Single Judge has failed to consider that tax and the cess can be levied only if there is express provision authorising to do so.

IX] The learned Single Judge has failed to consider the case law cited and relied upon.


- XI] That the Hon'ble Single Judge has erroneously held that the appellant in order to avoid the liability to pay the cess has innovated various heads.
- XII] That the Hon'ble Single Judge has failed to consider that the water loss shown by the appellant under the head of evaporation and percolation has wrongly been categorised under item no.3, which speaks about the water which gets polluted.
- XIII] That the Hon'ble Single Judge ought to have held that the appellant is entitled to the rebate claimed.
- XIII] That the Hon'ble Single Judge ought to have considered that the if the rules cannot override the provisions of the main Act.
- XIV] That the Hon'ble Single Judge has erroneously saddled the liability of interest.
- XV] That the impugned judgement and order are liable to be set aside and quashed and the levy of the cess to the extent disputed is to be quashed and is to be declared as illegal, without authority and ultra vires.

2. That, the appellant craves leave and liberty of this Honourable Court to add, amend, alter or delete any of the contentions at the time of hearing or final hearing in the interest of justice and facts and circumstances of the case.

AND for this act of kindness and justice, the appellant as bound in duty shall ever pray.

Dt.30.11.2001

Aurangabad

  
[ Anil S. Bajaj ]

Advocate for the Appellant

NOTES :

[1] The petitioner has not been served with any notice of caveat so far.

[2] The impugned judgment and order is passed on 1.11.2001. Thus, the appeal is well within the prescribed period of limitation.

[3] The Appellant has not filed any appeal and/or any other proceedings including before the Honourable Supreme Court of India, except the present Letter Patents Appeal in this Honourable Court.

[4] Fixed Court fees stamp of Rs. is paid herewith.

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L.P.A. NO. 173 / 2003

CORAM: S. B. MHASE AND A. P. DESHPANDE, JJ.

" For the reasons stated in the Judgment recorded in L.P.A.no.87/2004, the court dismisses the Letters Patent appeal as not maintainable under clause 15 of the Letters Patent of the Bombay High court with no order as to costs and vacate interim relief or ad-interim relief if any, granted.

Dt:30-6-2004

*sd/L*  
DEPUTY REGISTRAR.

**TRUE COPY**

*[Signature]*  
Section Officer  
High Court of Bombay  
Bench at Aurangabad

*[Signature]*  
27-10-2010

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