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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

BEFORE

HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

\+ **W.P.(C) 9986/2021 & CM APPLs. 30821/2021, 2615/2022**

SOUTH DELHI MUNICIPAL CORPORATION
THROUGH: COMMISSIONER SDMC,
DR. S.P. MUKHERJEE CIVIC CENTRE
MINTO ROAD, NEW DELHI-110002. ……PETITIONER

Versus

MOON STEELAND GENERAL INDUSTRIES PVT. LTD.
THROUGH ITS DIRECTOR
RAKESH KAPOOR
M-39, 2ND FLOOR GREATER KAILASH-II
NEW DELHI-110048 …RESPONDENT

With

\+ **W.P.(C) 9988/2021 & CMAPPL.30824/2021**
\+ **W.P.(C) 9990/2021 & CMAPPLs. 30828/2021, 2590/2022**
\+ **W.P.(C) 9991/2021&CMAPPL.30831/2021**
\+ **W.P.(C) 9992/2021& CMAPPLs. 30834/2021, 2633/2022**
\+ **W.P.(C) 9994/2021&CMAPPLs. 30841/2021, 2601/2022**
\+ **W.P.(C) 9995/2021& CMAPPLs.30845/2021, 2588/2022**
\+ **W.P.(C) 9996/2021& CMAPPLs.30849/2021, 2631/2022**
\+ **W.P.(C) 9998/2021& CMAPPL.30851/2021**
\+ **W.P.(C) 9999/2021& CMAPPLs.30854/2021, 2586/2022**
\+ **W.P.(C) 10000/2021& CMAPPLs. 30856/2021, 2610/2022**
\+ **W.P.(C) 10001/2021& CMAPPLs. 30858/2021, 2592/2022**
\+ **W.P.(C) 10002/2021& CMAPPL.30861/2021**
\+ **W.P.(C) 10003/2021& CMAPPL.30863/2021**
\+ **W.P.(C) 10004/2021& CMAPPL.30866/2021**
\+ **W.P.(C) 10005/2021& CMAPPL.30868/2021**

+ **W.P.(C) 10006/2021& CMAPPL.30870/2021**
+ **W.P.(C) 10007/2021& CMAPPL.30872/2021**
+ **W.P.(C) 10008/2021&CMAPPL.30874/2021**
+ **W.P.(C) 10009/2021& CMAPPL.30876/2021**
+ **W.P.(C) 10027/2021& CMAPPL.30942/2021**
+ **W.P.(C) 10091/2021& CMAPPL.31152/2021**
+ **W.P.(C) 10126/2021& CMAPPL.31238/2021**
+ **W.P.(C) 10187/2021& CMAPPL.31436/2021**
+ **W.P.(C) 10188/2021& CMAPPL.31438/2021**
+ **W.P.(C) 10189/2021& CMAPPL.31440/2021**
+ **W.P.(C) 10190/2021& CMAPPL.31442/2021**
+ **W.P.(C) 10191/2021& CMAPPL.31444/2021**
+ **W.P.(C) 10230/2021& CMAPPL.1490/2022**
+ **W.P.(C) 10231/2021& CMAPPL.31540/2021**
+ **W.P.(C) 10233/2021& CMAPPL.31545/2021**
+ **W.P.(C) 10237/2021& CMAPPL.31561/2021**
+ **W.P.(C) 10238/2021& CMAPPL.31565/2021**
+ **W.P.(C) 10239/2021& CMAPPL.31567/2021**
+ **W.P.(C) 10240/2021& CMAPPL.31569/2021**
+ **W.P.(C) 10241/2021& CMAPPL.31571/2021**
+ **W.P.(C) 10242/2021& CMAPPL.31573/2021**
+ **W.P.(C) 10243/2021& CMAPPLs.31575/2021, 2637/2022**
+ **W.P.(C) 10244/2021& CMAPPL.31577/2021**
+ **W.P.(C) 10245/2021& CMAPPL.31579/2021**
+ **W.P.(C) 10246/2021& CMAPPL.31581/2021**
+ **W.P.(C) 10247/2021& CMAPPL.31583/2021**
+ **W.P.(C) 10249/2021& CMAPPL.31587/2021**
+ **W.P.(C) 10250/2021& CMAPPL.31589/2021**
+ **W.P.(C) 10252/2021& CMAPPL.31592/2021**
+ **W.P.(C) 10253/2021&CMAPPL.31594/2021**
+ **W.P.(C) 10254/2021& CMAPPL.31596/2021**
+ **W.P.(C)10255/2021& CMAPPL.31600/2021**
+ **W.P.(C) 10256/2021& CMAPPLs.31605/2021, 2604/2022**
+ **W.P.(C) 10257/2021& CMAPPL.31610/2021**
+ **W.P.(C) 10258/2021& CMAPPL.31613/2021**

+ **W.P.(C) 10259/2021& CMAPPL.31615/2021**
+ **W.P.(C) 10260/2021& CMAPPLs.31617/2021, 2607/2022**
+ **W.P.(C) 10261/2021& CMAPPL.31619/2021**
+ **W.P.(C) 10262/2021& CMAPPL.31621/2021**
+ **W.P.(C) 10264/2021& CMAPPL.31625/2021**
+ **W.P.(C) 10266/2021& CMAPPL.31628/2021**
+ **W.P.(C) 10270/2021& CMAPPL.31636/2021**
+ **W.P.(C) 10273/2021& CMAPPL.31642/2021**
+ **W.P.(C) 10275/2021& CMAPPL.31646/2021**
+ **W.P.(C) 10282/2021& CMAPPL.31658/2021**
+ **W.P.(C) 10287/2021& CMAPPL.31683/2021**
+ **W.P.(C) 10294/2021& CMAPPL.31692/2021**
+ **W.P.(C) 10296/2021& CMAPPL.31701/2021**

APPEARANCES

Ms. Sunieta Ojha, Ms. Divita Vashisht and Ms. Vasudha Priyansha, Advocates for petitioner MCD .

Mr. Attin Shankar Rastogi and Mr. Adit Vasudeva, Advocates for petitioner SDMC in W.P.(C) 10004/2021.

Mr. Manik Dogra, Sr. Adv with Mr. Druv Pande, Mr. Randeep Sachdeva and Mr. Shivaang Gupta, Advs for respondents in W.P.(C) 9986/2021, W.P.(C) 9990/2021, W.P.(C) 9992/2021, W.P.(C) 9994/2021, W.P.(C) 9995/2021, W.P.(C) 9996/2021, W.P.(C) 9999/2021, W.P.(C) 10000/2021, W.P.(C) 10001/2021, W.P.(C) 10243/2021, W.P.(C) 10256/2021, W.P.(C) 10260/2021, W.P.(C) 10187/2021, W.P.(C) 10230/2021, W.P.(C) 10238/2021, W.P.(C) 10239/2021, W.P.(C) 10244/2021, W.P.(C) 10249/2021, W.P.(C) 10250/2021, W.P.(C) 10258/2021, W.P.(C) 10259/2021, W.P.(C) 10270/2021, W.P.(C) 10287/2021& W.P.(C) 10294/2021.

Mr. Lalit Bhardwaj, Mr. Rajesh Saxena Mr. Chaan Alam Kazi, and Mr. Jatin Anand Dwivedi, Advs. for respondents W.P.(C) 10091/2021, W.P.(C) 10126/2021, W.P.(C) 10188/2021, W.P.(C) 10241/2021& W.P.(C) 10262/2021.

Mr. Deepak Vohra, Mr. Nishant Gupta, Advs. for respondent-M/s. Chirag Associates Pvt. Ltd in W.P.(C) 10189/2021, W.P.(C) 10190/2021, W.P.(C) 10237/2021, W.P.(C) 10240/2021, W.P.(C) 10245/2021, W.P.(C) 10252/2021, W.P.(C) 10253/2021, W.P.(C) 10257/2021, W.P.(C)

10261/2021, W.P.(C) 10266/2021, W.P.(C) 10273/2021and W.P.(C) 10282/2021.
Mr.Ghanshyam Sharma, Advocate for R-R.C. Gupta and Brothers and Happy Sound Industris in W.P.(C) 9988/2021, W.P.(C) 9991/2021, W.P.(C) 10004/2021, W.P.(C) 10006/2021, W.P.(C) 10007/2021, W.P.(C) 10008/2021, W.P.(C) 10009/2021, W.P.(C) 10191/2021, W.P.(C) 10254/2021, W.P.(C) 10275/2021, W.P.(C) 10296/2021, W.P.(C) 9998/2021, W.P.(C) 10002/2021, W.P.(C) 10003/2021, W.P.(C) 10005/2021, W.P.(C) 10027/2021, W.P.(C) 10231/2021, W.P.(C) 10233/2021, W.P.(C) 10242/2021, W.P.(C) 10246/2021, W.P.(C) 10247/2021, W.P.(C) 10255/2021 and W.P.(C) 10264/2021.

% Reserved on: 02.05.2025
Pronounced on: 20.05.2025

J U D G M E N T

The instant batch of writ petitions under Article 227 of the Constitution of India are filed by the Municipal Corporation of Delhi (Corporation) seeking to assail the impugned orders passed by Municipal Tax Tribunal (MTT) with respect to six different properties, whereby, the MTT allowed the appeals filed by the respondents-assesses and quashed the property tax assessment orders/rectification orders for respective financial years.

2. As per the compilation furnished on behalf of the Corporation, the names of the respondents-assesses, their property details, assessment orders, names of the tenants and demands raised by the Corporation are extracted as under:-

S.No.	Property details	Assessment Order	Property rented out to	Demand raised
1)	A-23, Mohan Cooperative Industrial Area, New Delhi, 110044 Comprising of- Basement, Ground Floor, First Floor and Second Floor	Assessment Order dated- 21.10.2015 Rectification Order dated- 19.02.2016 For year 2004-05 to 2015-16	M/s Wipro Pvt Ltd - Lease deed dated 01.02.2012, registered- 17.02.2012	Rs. 1,24,67,652
2)	50% of A-27, Mohan Cooperative Industrial Estate Mathura Road, New Delhi-110044	02.02.2017	TCS Consultancy Services Ltd, Safari Digital education Initiatives Pvt. Ltd. & HBA International.	Rs. 27,46,734
3)	232A Okhla Industrial Estate, New Delhi Consists of GF, MF cum FF & SF	29.03.2016 For FY- 2004-05 to 2015-16	M/s OKS Group	Rs. 1333231
4)	219, Okhla Industrial Estate, Phase III New Delhi Consists of GF, MF cum FF & SF	Assessment Order dated : 24.03.2015 Revised Assessment Order dated 14.03.2016 For FY 2004-05 to 2015-16	M/s SERCO BPO Pvt. Ltd. Lease Deed dated 25.10.2013	Rs. 38, 76,635
5)	221, Okhla Industrial Estate, New Delhi	04.01.2016 For FY 2004-05 to 2012-13	GF Unit-I- Eco Car Rental Company	Rs. 36,92,079

	GF, FF & SF having Covered Area 3882.45 sqm		Unit-II- GMO Research India Working Global Sign Unit-III- Winfort FF- Unit-I- Self use Unit-II- M/s Videocon Company Unit Unit-III- Vacant Unit-IV- M/s. ETA Gen (P) Ltd. SF- Japaico Corporation	
6)	235, Okhla Industrial Estate New Delhi Consists of GF, MF cum FF & SF	15.03.2016 For FY 2004-05 to 2015-16	Basement, GF, FF- M/s Bharti Airtel Ltd. (Till 2008-09) Front portion of F- AirCel Basement, GF, FF- M/s Moser Baer India Ltd. (Since 2009 onwards)	Rs.37,29,583

3. Since the issue canvassed before this Court and the facts to some extent are similar, therefore, for the sake of brevity, the facts are mainly taken from W.P.(C) 9986 of 2021, which relates to properties of Moon Steel and General Industries Pvt. Ltd., however, the facts of individual cases will also be discussed as and when the same becomes necessary.

Brief factual matrix

4. The facts of the case would indicate that *vide* perpetual sub-lease

dated 27.05.1974, the respondent-assessee was allotted an industrial plot by the President of India and a conveyance deed was executed by the Delhi Development Authority (DDA) in its favour on 14.09.2007. Thereafter, the respondent-assessee applied for sanction of building plans for reconstruction and the said sanction was granted on 26.05.2008. After completion of the same, the respondent-assessee was issued a completion certificate on 23.08.2011 by the Corporation.

5. Thereafter, on 01.09.2011, the respondent-assessee then rented out the entire building comprising of the basement, ground floor, first floor and second floor of the property in question to M/s Wipro Ltd., an Information Technology/Information Technology Enabled Services (IT/ITeS) Company. In furtherance of the same, the respondent-assessee executed a lease deed dated 01.02.2012, and the same was registered on 17.02.2012.

6. The tenant was also granted a licence under Section 416/417 of the Delhi Municipal Corporation Act, 1957 (DMC Act), *vide* Factory Licence Certificate dated 16.08.2012 to run ITeS from the property in question.

7. The respondent-assessee paid property tax in respect of the subject property on the basis of self-assessment regularly for 'industrial use'. The Corporation then served a notice dated 19.11.2013, under Section 123D of the DMC Act, intimating the respondent-assessee that the property is being used for non-industrial activities and asked the respondent-assessee to appear before the Corporation through its Authorised Representative, on 06.12.2013.

8. The respondent-assessee responded to the said notice, *vide* letter dated

02.12.2013, informing that it had leased out the subject property to M/s Wipro Ltd., which has been using the same for IT/ITeS, which, according to the respondent-assessee, was classified as 'industrial building'. It was the case of the respondent-assessee that no commercial activity was being carried out and certain documents were also filed. The respondent-assessee reiterated its stand with respect to the subject property in its letter dated 16.02.2015.

9. Thereafter, *vide* an *ex-parte* assessment order dated 21.10.2015, the assessor and Collector/SDMC, held that IT/ITeS did not qualify as "Industry" and the definition of "Industry" under the Master Plan for Delhi, 2021 (MPD, 2021) has no bearing on the definition of "industrial building" under the DMC Act. The assessor and Collector rejected all the contentions of the respondent-assessee and assessed the building as a "business building" and consequently, raised the property tax demand to the tune of Rs.1,91,90,627/-

10. The respondent-assessee, aggrieved by the said assessment order, sought correction of the said assessment, *vide* letter dated 09.11.2015 on various grounds. The Corporation then issued a notice dated 01.12.2015 under Section 123B(9)/123D(d) of the DMC Act and directed the respondent to appear before the Assessing Authority on 11.12.2015 to show cause why a penalty should not be imposed.

11. The respondent-assessee, *vide* letter dated 10.12.2015, again contended that the subject property being used for IT/ITeS will fall under the definition of 'industrial building' and not under the definition of

"business building". The Assessor and Collector, on considering the said stand, granted a rehearing of the matter.

12. On rehearing, the Assessing Authority passed a rectification assessment order dated 19.02.2016, thereby, partly allowing the contention of the respondent-assessee, with respect to the payment of the property tax prior to 20.07.2011 with Use Factor '4'. The Assessing Authority fixed the annual value at Rs 1,79,52,870/- and also levied a penalty at the rate of 30%. Aggrieved by the same, the respondent-assessee preferred appeals under Section 169 of the DMC Act before the MTT.

13. The MTT *vide impugned* order dated 21.02.2021 found substance in the submissions made by the respondent-assessee and came to the conclusion that IT/ITeS would fall within the definition of 'Industrial Building' and therefore, the appeals were allowed. The order of assessment, rectification order and the consequent demand/distress warrant etc. came to be set aside.

14. Aggrieved by the same, the Corporation has approached this Court by way of present writ petitions under Article 227 of the Constitution of India.

15. *Ms. Sunieta Ojha*, learned counsel for the Corporation, made the following broad submissions:-

i. The impugned orders passed by the MTT are illegal and improper as they suffer from material perversity inasmuch as the MTT has failed to consider that the property tax is exclusively governed by the provisions of the DMC Act and the provisions of the Delhi

Development Authority Act, 1957 will have to operate in a different sphere.

ii. She submits that as per Section 116 A (1)(f) of the DMC Act, 'business building' and 'industrial building' are two distinct Use-Wise categories and according to her, the activity would constitute 'business building' and therefore, Use Factor-4 would be attracted, whereas, had it been 'industrial building', Use Factor-3 would have been attracted. The respondent-assessee in their self-assessment wrongly applied Use Factor-3, resulting in a significant loss of revenue to the petitioner.

iii. She further submits that the properties in question are occupied and used by companies providing IT/ITeS, Business Processing Outsourcing/ Knowledge Process Outsourcing, which are essentially office premises having workstations from which employees are working, conference halls, cafeterias, parking facilities therefore, it would squarely fall under the definition of 'business building' given in the bye laws. By relying on Section 9(b)(i) of the DMC (Property Taxes) Bye Laws, 2004, she contends that the activities of the respondent-assessee would squarely be covered under the definition of 'business building'.

iv. She further asserts that the taxing statute should be interpreted strictly and a greater latitude to be conferred to the legislature in formulating its tax policy either directly or by delegated legislation. By placing on record a detailed affidavit encapsulating the nature of activities undertaken by the respondent-assessee on the premises of the property in question, she contends that the same would be

covered under the definition of 'business building' and not 'industrial building'.

v. She further contends that the MTT wrongly placed reliance on the MPD 2021 and the Industrial Policy of GNCTD, in as much, as the scope of the same is limited to 'permitting' such industries to operate from Industrial Areas. According to her, it does not amount to giving any concession or exemption from the payment of property tax, which is a matter governed by the DMC Act.

vi. In order to buttress her submissions, she has placed reliance on the decisions of ***Harsh Vardhan Bansal Vs. East Delhi Municipal Corporation and Anr.*** [1]***, Delhi International Airport (P) Ltd., Vs. South Delhi Municipal Corporation***[2]***, M/s Saraswati Sugar Mills and Ors. Vs. Haryana State Board and Ors***[3] and ***Municipal Corporation of Hyderabad Vs. P.N. Murthy and Ors.***[4]***.***

16. *Per contra*, *Mr. Manik Dogra*, learned senior counsel, *Mr. Deepak Vohra* and *Mr. Nishant Gupta*, learned counsel, appearing for the respondents-assesses in various writ petitions, vehemently oppose the submissions made by the petitioner. They jointly made the following broad submissions:-

i) At the outset, they submit that the scope of this Court under Article 227 of the Constitution of India is highly circumscribed to keep the subordinate Courts and Tribunals within the bounds of their

[1]2024 SCC OnLine Del 7926
[2] 2020:DHC:3102-DB
[3]1991 SCC OnLine SC 279
[4]1987 SCC OnLine SC 86

authority and to see that they do the duty expected or required by them in a legal manner. To buttress their submissions, they relied on the decision of ***Estralla Rubber Vs. Dass Estate (P) Ltd.***[5] and ***Garmet Craft Vs. Prakash Chand Goel***[6]**.**

ii) According to them, so long as the findings of the subordinate Courts/Tribunals are shown to be palpably wrong or demonstrably perverse, this Court under Article 227 of the Constitution of India does not exercise supervisory jurisdiction. According to them, there is no such perversity or illegality, much less palpable illegality.

iii) According to them, bye-law 9(e) of the DMC (Property-Taxes) Bye-Laws, 2004 is inclusive in nature, and the use of the word "include" would demonstrate that the definition is 'inclusive' and not 'exhaustive'. With respect to the definition as to whether the same is 'inclusive' or 'exhaustive', reliance is placed by the respondent on a decision ***ESI Corporation Vs. High Land Coffee Works***[7]**, *RamalaSahkari Chini Mills Limited Uttar Pradesh Vs. Commissioner, Central Excise, Meerut-1 Meerut***[8]**.** In order to substantiate the argument that IT/ITeS companies are to be treated as an industry, reliance is placed on a decision of this Court in the case of ***Panacea Biotec Ltd. Vs. D.D.A. Anr.***[9]**.**The classification of the term "professional activity" is sought to be justified on the basis of the law laid down in the case of ***B.N. Magon Vs. South Delhi***

[5](2001) 8 SSC 97
[6](2022) 4 SCC 181
[7](1991) 3 SCC 617
[8](2016) 7 SCC 585
[9]2008 SCC OnLine Del 497

Municipal Corporation[10] and ***South Delhi Municipal Corporation Vs. B.N. Magon***[11]**.** Reliance is also placed on a decision of the Supreme Court in the case of ***Tata Consultancy Services Vs. State of A.P.*** [12] to argue that the sale of computer software has been treated as a sale of goods.

iv) With respect to W.P.(C) 9986 of 2021, reference is made to the factory licence dated 27.04.2022 and with respect to W.P.(C) 10294 of 2021, reference is made to the letter dated 22.08.2014 of the concerned department for setting up a 100% Export Oriented Unit. It is, thus, contended that since the respondent-assessee has been issued a factory license, and further, that the Assessing Authority has held the definition to be illustrative, coupled with the fact that the Corporation itself has classified IT/ITeS as an industry, therefore the Corporation should not be allowed to challenge the impugned order. Reliance is also placed on the Industrial Policy of Delhi 2010-21 issued by the Department of Industries GNCTD, providing IT/ITeS as an industrial activity.

v) He also submits that as per Clause 7.7 of MPD 2021, computer hardware and software industry and industries doing system integration with computer hardware and software have been regarded as an 'industrial activity. Further, the Central Government *vide* its Notification dated 29.10.2020, modifying Clause 7.7 of MPD-2021 has now specifically included IT/ITeS industries.

vi) Separate written submissions have been filed by the respondent in

[10]2015 SCC OnLine Del 6819
[11]2023 SCC OnLine Del 8684

W.P.(C) 9998 of 2021 and W.P.(C) 9991 of 2021 reiterating and rephrasing the broad submissions as under – a) Impugned assessment orders under Section 123D of the DMC Act were time-barred, b) The assessment orders were bad in law as were issued on the basis of defects to notice, c) The same were passed without notice or no notice, d) IT/ITeS are classified as industrial activities under MPD2021, e) the Corporation is stopped from claiming industrial properties as business building and f) the respondents were in possession of various licence/certificates demonstrating industrial activities.

17. In rejoinder submissions, *Ms. Ojha*, emphasized that there is no evidence led by any of the parties to show fabrication, assembly or processing of product or material on the subject properties. On the contrary, according to her, the evidence available on record would indicate that travel, tourism education, architecture, knowledge-based operations etc. operate in the subject property and therefore, cannot be treated to be industry. According to her, the finding arrived at by the MTT that IT/ITeS services constitute an industry is based on surmises and conjectures. The definition of 'industrial building' would not encompass within itself, the activities/buildings, which otherwise are defined in the category of 'business building'. She submits that the MTT has exceeded its jurisdiction as has been enshrined in the Constitutional Bench decision of the Supreme Court in the case of ***L. Chandra Kumar v. Union of India***[13]. She further submits that the intention of the Legislature in defining 'industrial building' is evidently

[12](2005) 1 SCC 308
[13](1995) 1 SCC 400

clear and cannot be expanded beyond the activity, which strictly falls within the said definition, and any expansion would amount to tinkering with the legislative intent.

18. I have considered the submissions made by learned counsel and have perused the record.

19. A bare perusal of the facts and submissions canvassed before this Court would indicate that the fundamental issue that requires deliberation in present writ petitions is – "***Whether IT/ITeS services would fall within the definition of 'industrial building' as per the DMC (Property-Taxes) Bye-Laws, 2004***?

20. Depending upon the outcome of the aforesaid question, the other issues raised by the parties will have to be considered.

21. In order to effectively answer this question, it is pertinent to first peruse the jurisprudential mandate configured upon the Court by virtue of Article 227 of the Constitution of India.

22. Reference can be made to the decision of the Supreme Court in the case of ***Waryam Singh v. Amarnath***[14], wherein, the Supreme Court held that the power of superintendence conferred by Article 227 is to be exercised most sparingly and only in appropriate cases in order to keep the subordinate Courts within the bounds of their authority and not for correcting mere errors.

23. At this juncture, reference can also be made to the decision of the

[14](1954) 1 SCC 51.

Supreme Court in the case of ***Achutananda Baidya v. Prafullya Kumar Gayen And Ors***[15], wherein the Supreme Court held that the High Court can interfere under Article 227 of the Constitution of India in cases of erroneous assumption or acting beyond its jurisdiction, refusal to exercise jurisdiction, error of law apparent on record as distinguished from a mere mistake of law, the arbitrary or capricious exercise of authority or discretion, a patent error in procedure, arriving at a finding which is perverse or based on no material, or resulting in manifest injustice. The relevant extracts of the said decision read as under:-

> *"The power of superintendence of the High Court under Article 227 of the Constitution is not confined to administrative superintendence only but such power includes within its sweep the power of judicial review. The power and duty of the High Court under Article 227 is essentially to ensure that the Courts and Tribunals, inferior to High Court, have done what they were required to do. Law is well settled by various decisions of this Court that the High Court can interfere under Article 227 of the Constitution in cases of erroneous assumption or acting beyond its jurisdiction, refusal to exercise jurisdiction, error of law apparent on record as distinguished from a mere mistake of law, arbitrary ot capricious exercise of authority or discretion, a patent error in procedure, arriving at a finding which is perverse or based on no material, or resulting in manifest injustice. As regards finding of fact of the inferior court, the High Court should not quash the judgment of the subordinate court merely on the ground that its finding of fact was erroneous but it will be open to the High Court in exercise of the powers under Article 227 to interfere with the finding of fact if the subordinate court came to the conclusion without any evidence or upon manifest misreading of the evidence thereby indulging in improper exercise of jurisdiction or if its conclusions are perverse.*
>
> *If the evidence on record in respect of a question of fact is not at all taken into consideration and without reference to such evidence, the finding of fact is arrived at by inferior court or Tribunal, such finding must be held to be perverse and lacking in factual basis. In such circumstances, in exercise of the jurisdiction under Article 227, the High Court will be*

[15](1997) 5 SCC 76

competent to quash such perverse finding of fact."

24. Reliance can be placed on the decision of the Supreme Court in the case of ***Ramesh Chandra Sankla Etc v. Vikram Cement Etc***[16], wherein, the Court noted that the power of superintendence under Article 227 of the Constitution of India conferred on every High Court over all Courts and Tribunals throughout the territories in relation to which it exercises jurisdiction is very wide and discretionary in nature. It can be exercised *ex debito justitiae*, i.e. to meet the ends of justice. It is equitable in nature. While exercising supervisory jurisdiction, a High Court not only acts as a Court of law but also as a Court of equity. It is, therefore, the power and also the duty of the Court to ensure that the power of superintendence must advance the ends of justice and uproot injustice.

25. It is apropos to lend credence to the observations of the Supreme Court in the case of ***Mohd. Yunus v. Mohd. Mustaqim & Ors***[17] wherein the Supreme Court held that a mere wrong decision without anything more is not enough to attract the jurisdiction of the High Court under Article 227 of the Constitution of India. The relevant extracts of the said decision read as under:-

> *"Upon any view of the matter, the High Court had no jurisdiction to interfere with the impugned orders passed by the learned Subordinate Judge, under Art. 227 of the Constitution. A mere wrong decision without anything more is not enough to attract the jurisdiction of the High Court under Art. 227.*
> *The supervisory jurisdiction conferred on the High Courts under Art. 227 of the Constitution is limited "to seeing that an inferior Court or Tribunal functions within the limits of its authority", and not to correct an*

[16] (2008) 14 SCC 58.
[17](1983) 4 SCC 566.

error apparent on the face of the record, much less an error of law. In this case there was, in our opinion, no error of law much less an error apparent on the face of the record. There was no failure on the part of the learned Subordinate Judge to exercise jurisdiction nor did he act in disregard of principles of natural justice. Nor was the procedure adopted by him not in consonance with the procedure established by law. In exercising the supervisory power under Art.227, the High Court does not act as an Appellate Court or Tribunal. It will not review or re-weigh the evidence upon which the determination of the inferior court or tribunal purports to be based or to correct errors of law in the decision."

26. Therefore, it is crystal clear that though the fetters imposed on the High Court under Article 227 of the Constitution of India are limited to seeing that an inferior Courts or Tribunal functions within the limits of its authority. However, in no manner it mean that this discretionary power cannot be exercised in cases whereby i) the subordinate Courts acted on an erroneous assumption, ii) beyond its jurisdiction, iii) refused to exercise jurisdiction, iv) error of law apparent on record, v) arbitrary or capricious exercise of authority or discretion, vi) a patent error in procedure, vii) finding which is perverse or based on no material, or resulting in manifest injustice etc. It be noted that these categories are only illustrative in nature and enumerated herein to chalk down the ambit of jurisprudential horizon exercised by the High Court under Article 227 of the Constitution of India.

27. After perusing the legislative mandate couched in the phraseology of Article 227 of the Constitution of India, it is pertinent to peruse the definition of the 'industrial building' as envisaged under Bye-law 9(e) of the DMC property tax bye-laws 2004, which reads as under:-

"9 (e). "industrial building" shall mean any building or structure or part thereof in which products or materials of all kinds and properties are fabricated, assembled or processed as in assembly plants, and such buildings shall include laboratories, power plants, smoke houses,

> *refineries, gas plants, mills, dairies, factories, workshops, automobile repair garages, and printing presses, but the portion of the building for purposes other than purposes specified in this clause shall be assessed separately according to its use."*

28. A bare perusal of the aforesaid definition would indicate that 'industrial building' would mean any building or structure or part thereof in which products or materials of all kinds and properties are fabricated, assembled or processed, as in assembly plants, and such building shall include laboratories/power plants/smock houses, refineries, gas plants, mills, dairies, factories, workshops, automobile repair garages and printing presses, but the portion of the building for purposes, other than purposes specified, in said Clause shall be assessed separately, according to its use.

29. In order to effectively understand the true import of the said definition, it is pertinent to examine the effect of the word "include" in the definition clause of any statute.

30. The manner of construing an 'include' in a clause and its widening effect has been explained in the case of ***Dilworth v. Commissioner of Stamps***[18] as under:-

> *"'include' is very generally used in interpretation clauses in order to enlarge the meaning of the words or phrases occurring in the body of the statute, and when it is so used these words or phrases must be construed as comprehending, not only such things as they signify according to their natural, import, but also those things which the definition clause declares that they shall include."*

31. This proposition of law has been affirmed by the Supreme Court

[18]1899 AC 99 : 15 TLR 61.

in the case of ***Regional Director, Employees' State Insurance Corpn. v. High Land Coffee Works of P.F.X. Saldanha and Sons***[19], ***CIT v. Taj Mahal Hotel, Secunderabad*** [20] and ***State of Bombay v. Hospital Mazdoor Sabha*** [21].

32. In ***CIT v. Taj Mahal Hotel*** [22], the Supreme Court considered whether sanitary and pipeline fittings would fall within the definition of "plant" under Section 10(5) of the Income Tax Act, 1922. Section 10(5) of the Income Tax Act provided *inter alia* that in Section 10(2) the word "plant" includes "vehicles, books, scientific apparatus and surgical equipment purchased for the purpose of the business, profession or vocation". While answering the above question in the affirmative, the Supreme Court held that :

> *"6. The word "includes" is often used in interpretation clauses in order to enlarge the meaning of the words or phrases occurring in the body of the statute. When it is so used, those words and phrases must be construed as comprehending not only such things as they signify according to their nature and import but also those things which the interpretation clause declares that they shall include."*

33. Reference can also be made to the decision of the Supreme Court in the case of ***Ramala Sahkari Chini Mills Ltd. v. CCE***[23], wherein the Court held that the word "include" should be given a wide interpretation as by employing the said word, the legislature intends to bring in, by legal fiction, something within the accepted connotation of the substantive part. The

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[19](1991) 3 SCC 617
[20](1971) 3 SCC 550
[21]1960 SCC OnLine SC 44
[22](1971) 3 SCC 550
[23](2010) 14 SCC 744

relevant extracts of the said decision read as under:-

> *"15. Therefore, it is trite that generally the word "include" should be given a wide interpretation as by employing the said word, the legislature intends to bring in, by legal fiction, something within the accepted connotation of the substantive part. (Also see CIT v. Taj Mahal Hotel [(1971) 3 SCC 550] ; Indian Drugs & Pharmaceuticals Ltd. v. ESI Corpn. [(1997) 9 SCC 71 : 1997 SCC (L&S) 1038] and T.N. Kalyana Mandapam Assn. v. Union of India [(2004) 5 SCC 632] .) It is also well settled that in order to determine whether the word "includes" has that enlarging effect, regard must be had to the context in which the said word appears. [See South Gujarat Roofing Tiles Manufacturers Assn. v. State of Gujarat [(1976) 4 SCC 601 : 1977 SCC (L&S) 15] ; R.D. Goyal v. Reliance Industries Ltd. [(2003) 1 SCC 81] and Philips Medical Systems (Cleveland) Inc. v. Indian MRI Diagnostic and Research Ltd. [(2008) 10 SCC 227]]"*

34. In ***N.D.P. Namboodripad* v. *Union of India***[24], the Supreme Court observed that the word 'include' has different meanings in different contexts. It was further held that generally when the word 'include' is used in a definition clause, it is used as a word of enlargement, that is to make the definition extensive and not restrictive: -

> *"18. The word 'includes' has different meanings in different contexts. Standard dictionaries assign more than one meaning to the word 'include'. Webster's Dictionary defines the word 'include' as synonymous with 'comprise' or 'contain'. Illustrated Oxford Dictionary defines the word 'include' as : (i) comprise or reckon in as a part of a whole; (ii) treat or regard as so included. Collins Dictionary of English Language defines the word 'includes' as : (i) to have as contents or part of the contents; be made up of or contain; (ii) to add as part of something else; put in as part of a set, group or a category; (iii) to contain as a secondary or minor ingredient or element. It is no doubt true that generally when the word 'include' is used in a definition clause, it is used as a word of enlargement, that is to make the definition extensive and not restrictive. But the word 'includes' is also used to connote a specific meaning, that is, as 'means and includes' or 'comprises' or 'consists of'."*

[24](2007) 4 SCC 502.

35. In ***CTO v. Rajasthan Taxchem Ltd.***[25] as well, the Supreme Court held that when the word 'include' is used in the words or phrases, it must be construed as comprehending not only such things as they signify according to their nature and impact, but also those things which the interpretation clause declares they shall include. The relevant extracts of the said decision read as under:-

> *"22. We have already extracted the definition of raw material under Section 2(34) which specifically includes fuel required for the purpose of manufacture as raw material. The word includes gives a wider meaning to the words or phrases in the statute. The word includes is usually used in the interpretation clause in order to enlarge the meaning of the words in the statute. When the word include is used in the words or phrases, it must be construed as comprehending not only such things as they signify according to their nature and impact but also those things which the interpretation clause declares they shall include."*

36. After understanding the import of the word 'include' in the definition clause by the legislature, it is pertinent to understand the impact of the usage of both words "means" and "include" in a definition clause.

37. At this juncture, reference can be made to the decision of the Supreme Court in the case of ***Mahalakshmi Oil Mills v. State of A.P.*** ,[26] wherein the question was with respect to the definition of 'tobacco' in the Andhra Pradesh General Sales Tax Act, 1957, which uses both the words "means" and "includes". The Court held that the definition, which consists of two separate parts that specify what the expression means and also what it includes, is obviously meant to be exhaustive. The relevant extracts of the said decision read as under:-

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[25](2007) 3 SCC 124.
[26](1989) 1 SCC 164

"10. Before us, it is urged on behalf of the assessees that the word "tobacco", in its ordinary connotation, takes in the tobacco plant and every part of it, including the seed. The definition also makes it clear that it takes in every form of tobacco, manufactured or unmanufactured. Thus tobacco seeds, not only when they are in their raw unmanufactured state but also when, on manufacture, they manifest themselves in the form of tobacco seed oil or tobacco seed cake will fall within the definition. On the other hand, on behalf of the State it is submitted that the definition, which covers both what the expression means as well as what it includes, is exhaustive. Tobacco seed does not come within the first part of the definition, for the expression "tobacco, cured or uncured, manufactured or unmanufactured" has to be read as a whole and will not take in tobacco seed. It will not come under the second part because it specifically mentions leaves, stalks and stems but leaves out seeds. Since tobacco seeds do not fall within the definition, the oil and cake produced by the crushing of the seeds will not also be covered by the definition or eligible for the consequent exemption.

11. We are inclined to accept the contention urged on behalf of the State that the definition under consideration which consists of two separate parts which specify what the expression means and also what it includes is obviously meant to be exhaustive. As Lord Watson observed in Dilworth v. Commr. of Stamps [1899 AC 99 : 15 TLR 61 : 79 LT 473] the joint use of the words "mean and include" can have this effect. He said, in a passage quoted with approval in earlier decisions of this Court: (AC pp. 105-06)

> *Section 2 is, beyond all question, an interpretation clause, and must have been intended by the legislature to be taken into account in construing the expression "charitable devise or bequest," as it occurs in Section 3. It is not said in terms that "charitable bequest" shall mean one or other of the things which are enumerated, but that it shall "include" them. The word "include" is very generally used in interpretation clauses in order to enlarge the meaning of words or phrases occurring in the body of the statute; and when it is so used these words or phrases must be construed as comprehending, not only such things as they signify according to their natural import, but also those things which the interpretation clause declares that they shall include. But the word "include" is susceptible of another construction, which may become imperative, if the context of the Act is sufficient to shew that it was not merely employed for the purpose of adding to the natural significance of the words or expressions defined. It may be equivalent to "mean and include", and in that case it may afford an exhaustive explanation of the meaning which, for the purposes of the Act, must invariably be attached to these words or expressions."*

38. Furthermore, in the case of ***P. Kasilingam v. P.S.G. College of***

Technology[27], wherein, the Court held that the usage of words 'means and includes', indicates an exhaustive explanation of the meaning which, for the purposes of the Act, must invariably be attached to these words or expressions. The Court held as under:-

> *"19. ... A particular expression is often defined by the legislature by using the word 'means' or the word 'includes'. Sometimes the words 'means and includes' are used. The use of the word 'means' indicates that 'definition is a hard-and-fast definition, and no other meaning can be assigned to the expression than is put down in definition'. (See Gough v. Gough [(1891) 2 QB 665 (CA)] ; Punjab Land Development and Reclamation Corpn. Ltd. v. Labour Court [(1990) 3 SCC 682 : 1991 SCC (L&S) 71] , SCC p. 717, para 72.) The word 'includes' when used, enlarges the meaning of the expression defined so as to comprehend not only such things as they signify according to their natural import but also those things which the clause declares that they shall include. The words 'means and includes', on the other hand, indicate 'an exhaustive explanation of the meaning which, for the purposes of the Act, must invariably be attached to these words or expressions'. [See Dilworth v. Commr. of Stamps [1899 AC 99 : (1895-99) All ER Rep Ext 1576] (Lord Watson); Mahalakshmi Oil Mills v. State of A.P. [(1989) 1 SCC 164 : 1989 SCC (Tax) 56] , SCC p. 170, para 11.] The use of the words 'means and includes' in Rule 2(b) would, therefore, suggest that the definition of 'college' is intended to be exhaustive and not extensive and would cover only the educational institutions falling in the categories specified in Rule 2(b) and other educational institutions are not comprehended. Insofar as engineering colleges are concerned, their exclusion may be for the reason that the opening and running of the private engineering colleges are controlled through the Board of Technical Education and Training and the Director of Technical Education in accordance with the directions issued by the AICTE from time to time."*

39. In ***Bharat Coop. Bank (Mumbai) Ltd.* v. *Employees Union***[28],the Supreme Court again considered the difference between the 'inclusive' and 'exhaustive' definitions and observed as under:-

> *"23. ... when in the definition clause given in any statute the word 'means'*

[27]1995 Supp (2) SCC 348
[28](2007) 4 SCC 685

> *is used, what follows is intended to speak exhaustively. When the word 'means' is used in the definition ... it is a 'hard-and-fast' definition and no meaning other than that which is put in the definition can be assigned to the same. ... On the other hand, when the word 'includes' is used in the definition, the legislature does not intend to restrict the definition : it makes the definition enumerative but not exhaustive. That is to say, the term defined will retain its ordinary meaning but its scope would be extended to bring within it matters, which in its ordinary meaning may or may not comprise. Therefore, the use of the word 'means' followed by the word 'includes' in [the definition of 'banking company' in] Section 2(bb) of the ID Act is clearly indicative of the legislative intent to make the definition exhaustive and would cover only those banking companies which fall within the purview of the definition and no other."*

40. In ***Hamdard (Wakf) Laboratories* v. *Labour Commr.***[29] it was held that when an interpretation clause uses the word 'includes', it is *prima facie* inclusive; when it uses the word 'means and includes', it will afford an exhaustive explanation to the meaning which, for the purposes of the Act must invariably be attached to the word or expression.

41. In ***Jagir Singh v. State of Bihar*** [30], the definition of "owner", which was in the form of a "means X and includes Y" clause, was being interpreted as under:-

> *"The definition of the term "owner" is exhaustive and intended to extend the meaning of the term by including within its sweep bailee of a public carrier vehicle or any manager acting on behalf of the owner. The intention of the legislature to extend the meaning of the term by the definition given by it will be frustrated if what is intended to be inclusive is interpreted to exclude the actual owner."*

42. At this stage, reference can be made to the decision of the Supreme Court in the case of ***Black Diamond Beverages v. CTO***[31], wherein the definition of "sale price" as occurring in Section 2(d) of the West Bengal

[29](2007) 5 SCC 281.
[30](1976) 2 SCC 942
[31](1998) 1 SCC 458

Sales Tax Act, 1954 was in question. In the said definition as well, there was usage of both words "means" and "includes". The Court held that the interpretation of the first part of the definition in no way controlled or affected by the other part of the definition and includes the other part. While relying on the Craies on Statute Law (7th Edn., Part 1, p. 214), the Court held that the first part of the definition defines the meaning of the word "sale price" and therefore, must be given its ordinary, popular or natural meaning. The interpretation thereof is in no way controlled or affected by the second part, which "includes" certain other things in the definition. The relevant extracts of the said decision read as under:-

> *"7. It is clear that the definition of "sale price" in Section 2(d) uses the words "means" and "includes". The first part of the definition defines the meaning of the word "sale price" and must, in our view, be given its ordinary, popular or natural meaning. The interpretation thereof is in no way controlled or affected by the second part which "includes" certain other things in the definition. This is a well-settled principle of construction. Craies on Statute Law (7th Edn., Part 1, p. 214) says:*
>
> > *'An interpretation clause which extends the meaning of a word does not take away its ordinary meaning ... Lord Selborne said in George Robinson v. Local Board for the District of Barton-Eccles, Winton & Monton [George Robinson v. Local Board for the District of Barton-Eccles, Winton & Monton, (1883) LR 8 AC 798 (HL)] AC at p. 801:*
> >
> > > *"... An interpretation clause of this kind is not meant to prevent the word receiving its ordinary, popular, and natural sense whenever that would be properly applicable; but to enable the word as used in the Act ... to be applied to something to which it would not ordinarily be applicable." '*
>
> *Therefore, the inclusive part of the definition cannot prevent the main provision from receiving its natural meaning.*
>
> *8. In view of the above principle of construction, the first part of the definition of sale price in Section 2(d) of the 1954 Act must be given its own meaning and the respondent's counsel is therefore right in urging that the first part of Section 2(d) which is similar to the first part of Section 2(p) in the Rajasthan Sales Tax Act, 1954, must be given the same*

> *meaning given to similar words in Hindustan Sugar Mills v. State of Rajasthan [Hindustan Sugar Mills v. State of Rajasthan, (1978) 4 SCC 271 : 1978 SCC (Tax) 225] . What the said meaning is we shall consider separately. If, therefore, by virtue of Hindustan Sugar Mills case [Hindustan Sugar Mills v. State of Rajasthan, (1978) 4 SCC 271 : 1978 SCC (Tax) 225] the first part is to be interpreted as bringing within its natural meaning the "freight charges" then the contention for the appellants that like "packaging charges" these "freight charges" must have also been specifically included in Section 2(d) cannot be accepted."*

43. This position was also reiterated by the Supreme Court in the case of ***K. Lakshminarayanan v. Union of India***[32], wherein, the question was whether the expression "Central Government" used under Section 3(3) of the General Clauses Act, 1963 means the "Administrator". The Supreme Court held that the definition of Central Government, which means the "President" is not controlled by the second expression "and shall include the Administrator". The ordinary or popular meaning of the words "the President" occurring in Section 3(8)(b) has to be given and the second part of the definition shall not in any way control or affect the first part of the definition.

44. Reference can also be made to the decision of the Supreme Court in the case of ***Pioneer Urban Land & Infrastructure Ltd. v. Union of India***[33], wherein after discussing the legal position revolving around the words 'means and includes' in definition clause, the Court has held as under:-

> ***"82.*** *This statement of the law, as can be seen from the quotation hereinabove, is without citation of any authority. In fact, in Jagir Singh v. State of Bihar [Jagir Singh v. State of Bihar, (1976) 2 SCC 942 : 1976 SCC (Tax) 204] , SCC paras 11 and 19 to 21 and Mahalakshmi Oil Mills v. State of A.P. [Mahalakshmi Oil Mills v. State of A.P., (1989) 1 SCC 164 : 1989 SCC (Tax) 56] , SCC paras 8 and 11 (which has been*

[32](2020) 14 SCC 664.
[33](2019) 8 SCC 416

cited in P. Kasilingam [P. Kasilingam v. PSG College of Technology, 1995 Supp (2) SCC 348]), this Court set out definition sections where the expression "means" was followed by some words, after which came the expression "and includes" followed by other words, just as in Krishi Utpadan Mandi Samiti case [Krishi Utpadan Mandi Samiti v. Shankar Industries, 1993 Supp (3) SCC 361 (2)] . In two other recent judgments, Bharat Coop. Bank (Mumbai) Ltd. v. Employees Union [Bharat Coop. Bank (Mumbai) Ltd. v. Employees Union, (2007) 4 SCC 685 : (2007) 2 SCC (L&S) 82] , SCC paras 12 and 23 and State of W.B. v. Associated Contractors [State of W.B. v. Associated Contractors, (2015) 1 SCC 32 : (2015) 1 SCC (Civ) 1] , SCC para 14, this Court has held that wherever the expression "means" is followed by the expression "and includes" whether with or without additional words separating "means" from "includes", these expressions indicate that the definition provision is exhaustive as a matter of statutory interpretation. It has also been held that the expression "and includes" is an expression which extends the definition contained in words which follow the expression "means". From this discussion, two things follow. Krishi Utpadan Mandi Samiti [Krishi Utpadan Mandi Samiti v. Shankar Industries, 1993 Supp (3) SCC 361 (2)] cannot be said to be good law insofar as its exposition on "means" and "includes" is concerned, as it ignores earlier precedents of larger and coordinate Benches and is out of sync with later decisions on the same point. Equally, Dr Singhvi's argument that clauses (a) to (i) of Section 5(8) of the Code must all necessarily reflect the fact that a financial debt can only be a debt which is disbursed against the consideration for the time value of money, and which permeates clauses (a) to (i), cannot be accepted as a matter of statutory interpretation, as the expression "and includes" speaks of subject-matters which may not necessarily be reflected in the main part of the definition."

45. Reference can also be made to the Full Bench decision of this Court in the case of ***Ram Phal v. State & Ors.***[34], wherein, the definition of 'victim' as defined in Section 2(wa) of the Code of Criminal Procedure, 1973 which states that 'victim' means a person who has suffered any loss or injury caused by reason of the act or omission for which the accused person has been charged and the expression 'victim' includes his or her guardian or legal heir was at focal point. The Court while relying on the decision of

[34]2015 SCC OnLine Del 9802

Black Diamond held that the "means X and includes Y" clause in Section 2 (wa) cannot be interpreted so as to result in the included meaning Y excluding the actual meaning X of the term being defined; thus "legal heirs" who are included within the definition of the term 'victim' cannot exclude those who actually fall within the definition of 'victim' by virtue of emotional harm suffered, such as the father or siblings of a deceased victim or other categories of persons.

46. The upshot of the legal position as delineated from the judicial pronouncements as discussed above would emphatically underscore that generally the word 'means' in the definition would indicate that it was a hard-and-fast definition, and no other meaning can be assigned to the expression than was put down in definition thereby, indicating that the definition is exhaustive in nature. On the other hand, the use of the word 'include' in the definition clause would indicate that the definition not only includes the enumerated categories therein but also includes categories of the same class, thereby indicating that the definition was inclusive in nature.

47. Thereafter, the next point that underpins the discussion would indicate that the usage of the words 'means and includes' would imply that the legislative intent behind the usage of such words in the definition clause was to give the definition an exhaustive character. However, another facet of this discussion would also underscore that in definition clause of such nature like 'means X and includes Y' would not mean that the ordinary or popular

meaning of the words preceded by 'means' in the definition clause can be restricted to only categories enumerated in the definition clause after the

word ‘includes’. Therefore, the inclusive part of the definition cannot prevent the main provision from receiving its natural meaning.

48. Therefore, on the touchstone of the principles, as envisaged above, it is pertinent to test the reasoning of the MTT. The MTT, while allowing the appeals of the respondents, held as under:-

> *“21. The definition uses the word, 'include' which implies that the definition of 'Industrial Building' is 'inclusive' and not 'exhaustive'. It includes uses which are industrial in nature but not provided in the definition, The word 'include' in the statutory definition is generally used to enlarge the meaning of the preceding words and it is by way of expansion and not with restriction. The word 'include' is used in the interpretation clauses in order to enlarge the meaning of words or phrases, occurring in the body of the statute and when it is so used, these words or phrases must be construed as comprehending, not only such things as it signifies according to their natural import but, also, those things which the interpretation clause declares that they shall include {Reliance placed on (1991) 3 SCC 617-Regional Director, ESIC Vs High Land Coffee Works & (2016) 7 SCC 585}. The use of word 'include' in Bye-law 9(e) does not restrict the meaning of ‘industrial building’ or makes it ‘exhaustive’. The contention of ld. Counsel for the Respondent that the definition is ‘exhaustive’ is not at all convincing.”*

49. At first blush, the reasoning accorded by the MTT would indicate that while construing the definition of ‘industrial building’, it only focused on the word ‘include’ without putting any impetus on the word ‘means’ used in the said definition. The MTT simply recorded that the usage of the word ‘include’ gives an inclusive definition to the industrial building.

50. However, the legal position as envisaged above would clearly indicate that when the definition clause uses both words, i.e., ‘means’ and ‘includes’, it generally conveys the exhaustive character of the definition. Therefore, on that front, it appears that the definition of ‘industrial building’ is not

inclusive rather exhaustive.

51. However, the legal position as already quoted above would also indicate that the ordinary or popular meaning of the words preceded by 'means' in the definition clause cannot be given complete bypass by virtue of the illustrative categories enumerated in the definition clause after the word 'includes'.

52. Therefore, in order to understand the scope and ambit of the said definition, it is essential to accord due significance to certain key terms embedded within it, i.e., "fabricated," "assembled," and "processed". These expressions are not merely incidental; rather, they form the core of the definitional framework and serve to delineate the nature of transformation or treatment that a material or product must undergo to fall within the ambit of the definition. A careful and contextual interpretation of these terms is thus indispensable for a proper understanding of the legislative intent.

53. In technical parlance, "fabrication" is defined by ***Ballentine's Law Dictionary (3rd Edition)*** as "*the act or process of manufacturing or constructing, especially the construction of machines, structures, or other products from various prepared parts or materials.*" Similarly, ***McGraw-Hill Dictionary of Scientific and Technical Terms (6th Edition, 2003)*** defines fabrication as "*the manufacture of devices or structures by cutting, shaping, assembling, and often welding components, typically involving metals or semiconductors.*" The ***Cambridge English Dictionary*** defines fabrication as "*The act of producing a product, especially in an industrial process*". Thus, fabrication entails an act of deliberate transformation of raw

or basic inputs through skilled mechanical or industrial work, often to produce a product not previously existing in that form.

54. The term "Assembly", as defined in ***Black's Law Dictionary (6th Edition, 1990)***, refers to "*the fitting together of manufactured parts into a complete machine or unit.*" The ***McGraw-Hill Dictionary of Scientific and Technical Terms (6th Edition, 2003)*** adds that assembly involves "*a group of machined or fabricated parts that fit together to form a self-contained unit*". Therefore, in contrast to fabrication, assembly involves the integration of already fabricated or finished parts into a new functional whole, without necessarily altering the individual identity of the components.

55. Furthermore, the term "Processing" has a broader scope. According to ***Ballentine's Law Dictionary (3rd Edition),*** processing is "*a series of actions, changes, or functions bringing about a result*," often used in the context of raw materials being converted into a different state. The ***McGraw-Hill Dictionary*** similarly defines it as "*a set of operations performed on a material to change its properties or condition*." The ***Cambridge English Dictionary*** defines *processing* as "*the act of preparing, changing, or treating food or natural substances as a part of an industrial operation*," thereby emphasizing its application in transforming raw or natural inputs through deliberate industrial procedures. Complementing this, the ***Collins English Dictionary*** states that "*processing is subjecting something to a series of actions in order to achieve a particular result*," highlighting the sequential and purposeful nature of the operations involved. Together, these definitions underscore that processing entails a systematic alteration or refinement of materials, often through mechanical, chemical, or

thermal means, to enhance utility, functionality, or marketability.

56. Thus, a cursory look at the definitions of the terms “fabrication,” “assembly” and “processing” across various technical and legal dictionaries reveal that their import is not to confine the scope of these expressions to rigid or narrowly defined operations. On the contrary, the manner in which these terms have been defined—often employing broad, functional language such as “a series of actions”, “the act of preparing or treating,” or “the fitting together of parts”—indicates a deliberate attempt to render them inclusive and adaptable to varied industrial and commercial contexts. This expansive approach ensures that the terms can encompass a wide spectrum of activities and technological processes, including evolving methods of production, automation, and hybrid manufacturing practices. Therefore, the purpose of such definitions is not to limit the meaning of these terms to a fixed set of operations but to accommodate their applicability across a range of factual and operational matrices.

57. On the touchstone of the aforenoted discussion, it is pertinent to examine whether the IT/ITeS services would be included in the definition of ‘industrial building’.

58. The term IT/ITeS is a broad and inclusive expression that encapsulates a wide spectrum of services that rely on digital infrastructure to facilitate, support, or optimize business functions. It spans an extensive array of operations, all of which harness computing technologies to improve organizational efficiency and performance. These services range from Business Process Outsourcing (BPO) and Knowledge Process Outsourcing

(KPO) to Electronic Data Interchange (EDI), Computer-Aided Design (CAD), Digital Marketing, and numerous others. These activities vary significantly in nature and scope, depending upon the specific technological function they serve—whether it is data processing, design automation, customer support, analytics, or online promotion. Additionally, IT/ITeS services also include cloud computing, software development, cybersecurity operations, and systems integration—each with its own set of tools, workflows, and outcomes. This diversity underscores the highly heterogeneous character of the IT/ITeS sector.

59. In view of the above, it is manifestly evident that the IT/ITeS sector is not a monolithic entity and cannot be treated as a homogeneous unit for the purposes of classification. Moreover, while some IT operations may involve sophisticated processing akin to manufacturing—such as software compilation or server-based rendering—many others involve activities that are essentially clerical or communicative in nature. Therefore, a blanket classification of all IT/ITeS establishments as ‘industrial building’ would be both legally untenable and practically misleading. Various aspects such as legislative intent, scope and place of operations and context etc need to be looked into while construing the nature of IT/ITeS services and putting a single classification of this entire industry.

60. The nature of work performed across different segments of this industry is widely dissimilar, both in process and in end purpose. Consequently, in determining whether a particular unit qualifies as an ‘industrial building’ under relevant statutory frameworks, the critical test would hinge upon the dominant or principal nature of activity undertaken—

specifically, whether it involves fabrication, assembly, or processing of goods or materials, as opposed to mere provision of services through digital means.

61. At this juncture, reference can be made to a decision of ***Panacea Biotec Ltd. v. D.D.A***.[35], wherein, this Court held that the software development and ITeS come under the purview of the "industry" as per Clause 7.7 of the MPD 2021. The Court noted that the software development is done with the aid and help of manpower. It results in the creation of a product which may be intangible initially but when is transferred to floppies, CD-ROMS, punch card, magnetic tapes, etc, it becomes a marketable commodity or goods. It is saleable and has value even in its intangible form. The Court further noted that Computer software is a marketable product and are 'goods' covered under Article 366(12) of the Constitution of India as held in ***Tata Consultancy Services v. State of Andhra Pradesh***[36]. Relevant extracts of the said decision read as under:-

> *"16. The contention raised by the respondent is that software development and Information Technology cannot be regarded as manufacturing process or industry. It is not possible to accept the said contention. The Black's Law Dictionary defines "Industry" as "Any department or branch of art, occupation or business conducted as a means of livelihood or for profit: especially one which employs much labour and capital and is a distinct branch of trade." Industry can be defined as the habitual activity, either bodily or mental, to manufacture by way of processing, assembling and creating goods or saleable commodity. Software development is done with the aid and help of manpower. It results in creation of a product which may be intangible initially but when is transferred to floppies, CD roms, punch card, magnetic tapes, etc, it becomes a marketable commodity or goods. It is saleable and has value even in it's intangible form. Sub-Clause*

[35] 2008 SCC OnLine Del 497

[36] (2005) 1 SCC 308.

14 of the Sub-lease deed has to be interpreted in a reasonable manner and with sufficient flexibility and should not be given a very strict interpretation as to prevent the Sub-lessee from using the property in a manner he wants. Computer software is a marketable product and are 'goods' under Article 366(12) of the Constitution of India as held in TATA Consultancy Services v. State of Andhra Pradesh, (2005) 1 SCC 308. Use of intellectual rights and resources which are otherwise intangible to produce a product can be regarded as a manufacturing process/activity for the purpose of Sub-Clause 14. Sub-Clause 14 of the Sub-lease deed draws a distinction between a property used for "running of industry" or "carrying on manufacturing process" and a property being used for "carrying on trade or business". Development of software is not equivalent to carrying on trade or business. Trading involves sale and purchase of commodities and excludes development or manufacturing process which results in creation of a new product. The term "business" is very wide, and almost synonymous with the term "trade", but as used in Sub-Clause 14 it has to be given a restrictive meaning. It has been used as contra to the expressions "carrying on manufacturing process or running of an industry".

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18. A reading of the said Clause indicates that under the new Master Plan of Delhi 2021, a limited type of new industries have been permitted and these include computer hardware and software industries which are regarded as hi-tech areas. Contention of DDA in their affidavit dated 26th September, 2007 that under the Master Plan of Delhi 2001 computer software was not considered as an industry and was not permissible in industrial premises and under the Master Plan of Delhi 2021, computersoftware is permissible only in new industrial areas and is to be restricted to hi-tech areas, is to be rejected. It cannot be said that Master Plan of Delhi 2001 did not consider development of computer software to be an industry or involving manufacturing process. Further interpretation given to Clause 7.7 of Master Plan of Delhi 2021 by DDA is incorrect. The said Clause stipulates that new industrial activity in Delhi would be restricted to hi-tech areas like computer software industry and also industries involving system integration using computer hardware and software. The term "hi-tech area" is used for the purpose of referring to the nature of industry rather than expanding the scope of the terms industry or manufacturing process by deeming fiction. Certain other industries are also mentioned."

62. Reference can also be made to the decision of the Bombay High Court

in the case of ***ESI Corpn. v. Reliable Software Systems (P) Ltd.***[37], wherein the Court held that computer related activities like development, programming, application, and software development, though not mentioned in the definition but would fall within the meaning of "manufacturing process" under section 2(k) of the Factories Act, 1948. The relevant extracts of the said decision read as under:-

> *"30. Let me now examine the meaning of "manufacturing process" as defined under Section 2(k) of the Factories Act. Many verbs describing different activities are mentioned in the said definition. It is true that each activity and verb has its own connotation. The Factories Act was enacted in 1948 and at the relevant time, use of computer and software was alien to the Legislature. Naturally, the words which are more appropriate, precisely describing the activities carried out with the help of the computers i.e. development of software, programming of data, application etc. were neither known nor in practice at the relevant time when the Act was enacted. Albeit, the absence of these words, the manufacturing of the substance with the help of computers can be covered generally under the activities which are mentioned in the definition of manufacturing process as making, altering, treating, adapting etc. Thus, the Section defining manufacturing process allows a wide interpretation. This can be substantiated by giving example that some other activities like turning, milling, fitting welding, drilling, ironing, cooking, painting etc. are not specifically mentioned in the definition of manufacturing activities though these are considered as manufacturing process at various work places and covered under different 'verbs' used in the definition of manufacturing process. Therefore, though computer related activities like development, programming, application are not mentioned in the definition and to that effect there is no amendment in the section; the definition takes care of activities like development and application.*
>
> ***
>
> *32. On this point, I may advert to a letter produced by Mr. Mehta which is issued by the Joint Director, ESIC, New Delhi dated 9th December, 2003, Exhibit-H, to the Regional Director where it is communicated that the Directorate General, Government of India, Ministry of Labour and Factories, Advisory Services and Labour Institutes by letters dated 9th March, 2003, and dated 22nd September, 2003 has clarified that the term "software development" falls within the meaning of "manufacturing*

[37]2012 SCC OnLine Bom 937

process" under section 2(k) of the Factories Act, 1948. I do not find any hesitation to rely on and adopt this clarification that the software development is a manufacturing process. Again going back to the facts in First Appeal No. 307 of 2012, in the form filled up by the Appellants, they have mentioned that the unit is a software development therefore, the order of the ESI Court that the Appellants are covered under the E.S.I. Act and they are liable to pay the contribution is legal. Hence, no interference is required in the order except the amount of the contribution.

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Issues Findings
(i) Whether creation of software or development of software itself is a manufacturing process or not? Yes
(ii) Whether the premises where computers are involved in manufacturing process is a factory under the E.S.I. Act? Yes"

63. At this juncture, reference can also be made to the decision of the Supreme Court in the case of ***ITC Ltd. v. State of U.P.***[38]**,**whereby *inter alia*, one of the questions was whether the hotels can be considered as "industrial building" as per the NOIDA bye-laws. The Supreme Court held as under:-

"68. When tourism is given the status of an industry, it does not mean tourism involves manufacturing, fabrication, processing or assembling. ***The term "industry" has different nuances. The traditional meaning of "industry" may be manufacture or production of goods. When used in the context of an "industrial area" or "a land for industrial use" the word "industry" will refer to use for manufacture, production and allied activities. On the other hand, when the word "industry" is used in the context of tourism/hotels, hospitals/nursing homes or banking, it refers to a service industry, that is, groups engaged in that particular organised activity, and does not refer to any manufacturing, processing, assembling, etc.***

69. When the government policy gave tourism and hotels, the status of an industry, it did not require hotels to undertake manufacturing or production activities. By giving the status of "industry", the policy enabled a particular service activity (in this case tourism and hotels) to secure certain benefits in allotment of land at concessional prices and certain tax exemptions. Therefore, the fact that tourism or hotels have been given the status of "industry" will not convert them into industries, for the purpose

[38](2011) 7 SCC 493

of allotment of plots, nor will the use of land by such tourism or hotel industry, will be an industrial use. It does not also mean that all the hotels and tourist offices should be shifted from commercial areas to industrial areas or that hotels or tourist offices cannot operate in commercial areas, or that they cannot get allotment of land or building earmarked for commercial use. Running hotels, to repeat, is a commercial activity and the use of a land or building for a hotel is commercial use and therefore, allotment of plots for hotels in a commercial area is wholly in consonance with the Noida Regulations and the Master Plan which earmarks areas for specific land uses like industrial, residential, commercial, institutional, public, semi-public, etc."

64. Moreover, as per Clause 7.7 of the MPD 2021, new types of industries have been envisaged by the legislature, reflecting the legislative intent to promote new industries, thereby giving them concessions. For the sake of clarity, Clause 7.7 of MPD 2021 reads as under:-

"7.7 New Industrial Areas Development of new industrial areas in Greenfield areas of NCT of Delhi should be largely planned for the purpose of relocation of existing industries and for the development of a limited; type of new industries for the following
purposes:
(a)xxxx
(b) Greenfield sites for Hi-tech industries. New industrial activity in the NCT of Delhi should be restricted to hi-tech areas as given below:

i. Computer hardware and software industry and industries doing system integration using computer hardware and software.
ii.Packaging.
iii. Industries integrating and manipulating the interfaces of the computers and telecom facilities.
iv. Industries catering to the information needs of uses
by providing databases or access to databases spread throughout the globe.
v. Industries providing the facilities for sophisticated testing of different or all components of the information technology.
vi.Electronic goods.
vii. Service and repair of TV and other electronic items.
viii. Photo composing and desktop publication.
ix. TV and video programme production.
x. Textile designing and fabric testing, etc.
xi. Biotechnology.
xii. Telecommunications and enabling services.

xiii. Gems and jewellery."

65. Thus, a bare perusal of Clause 7.7 of the MPD 2021 would encapsulate that the computer hardware and software industry and industries doing system integration using computer hardware and software are considered as new industries. This is indicative of the legislative intention to promote and proliferate the software industry. However, a closer look at Clause 7.7 would also indicate that industries where just computer hardware is merely installed do not fall within the said definition; rather, the industries where system integration is happening by using computer hardware and software are covered under the definition of industry.

66. Therefore, conjointly reading the definition of 'industrial building' as set forth in Bye-law 9(e) of the DMC Property Tax Bye-laws, 2004, in conjunction with Clause 7.7 of the MPD 2021, it becomes apparent that any establishment wherein raw materials—irrespective of their nature or origin—are assembled, fabricated, or subjected to processing, would appropriately fall within the ambit of an 'industrial building'.

67. It is pertinent to underscore that the terms "assembled," "fabricated," and "processed" have been employed in a deliberately broad and expansive manner, allowing for a flexible and purposive interpretation. Accordingly, the scope of this definition cannot be restricted merely to traditional notions of manufacturing involving tangible and physical goods. Rather, it logically extends to encompass non-material inputs such as data, digital content, or intellectual capital, especially where such inputs are subjected to systematic transformation or reconstitution into new intellectual property outputs, such as software, algorithms, digital products, or proprietary databases.

68. In such cases, where raw data is ingested, structured, refined, and ultimately transformed into a new and distinct intellectual property possessing commercial utility and independent market value, the process bears the hallmark of industrial activity in its modern, knowledge-based incarnation, rendering them to peg under the definition of 'industrial building'. Thus, industries engaged in such technologically intensive processing should also be brought within the fold of 'industrial building', consistent with the progressive interpretation of planning and taxation statutes in the context of a digitised economy. Therefore, the finding of MTT *qua* said aspect is upheld.

69. At this juncture, it be noted that the MTT further held that Section 115(A) of the DMC Act permits that every building has to be assessed as one single unit provided that where portions of any building or vacant land are separately owned so as to be entirely independent and capable of separate enjoyment, even though access to such separate portions is made through a common passage or a common stair case, as the case may be, such separately owned portions may be assessed separately. In view of the aforesaid, the MTT noted that the subject property is predominantly being used for IT/ITeS services and incidental activities like canteen or storage facility are part and parcel of the predominant activity. The relevant extracts of the MTT qua this aspect read as under:-

> *"39. Ld. Counsel for the Appellant argued that the respondent has treated the subject building as 'Business Building' despite the same not falling under the definition of Bye-law 9(b). Ld. Counsel for the Appellant submitted that by virtue of Section 115(A) of the DMC Act, every building has to be assessed as a single unit and since the subject property is a single unit having one owner and no separate access, the whole of the*

subject building has to be assessed as one user at a single rate, as the entire building is rented-out to M/s Wipro Ltd. The subject building, therefore, has to be classified for property-tax purposes for only one use. Splittingof uses by the Respondent is contrary to Section l 15(A) of the Act. Ld. Counsel for the Appellant, also, submitted that the subject building is pre-dominantly being used for IT/ITES activities and any incidental activity viz. Canteen or storage are to be considered as part and parcel of pre-dominant activity.

40. I am in conformity with the ld. Counsel for the Appellant on this count. An employer is legally bound to have Canteen facility to cater to the needs of employees/workmen and the storage, also, is an integral part of industrial activity, as the raw material and finished products have to be stored in the premises. The contention of ld. Counsel for the Respondent that all portions of the building are separate and independent units of occupation, has no merit. The Respondent/Assessing Authority has not disclosed any material/proof before it, to reach such a conclusion while passing the impugned Assessment Order dated 15.10/21.10.2015. The contention of ld. Counsel for the Respondent is, therefore, rejected."

70. While the reasoning advanced by the MTT may, at first blush, appear to be plausible, however a deeper and more nuanced examination of the definition of 'industrial building' reveals that partial or compartmentalised assessment of a building is indeed envisaged and permissible under the statutory framework. A bare perusal of the definition clause indicates that those portions of a building which are utilised for purposes other than those specifically enumerated under the definition of 'industrial building' may be independently assessed based on their actual functional use. This interpretative latitude is evidently designed to accommodate practical exigencies. For instance, it is conceivable that an assessee may strategically commence assembling, fabricating, or processing of raw materials in only a limited segment of the property—primarily with the intent to avail the benefits accruing from the classification of 'industrial building'—while the predominant use of the remaining premises is directed towards activities

extraneous to the industrial character, such as commercial showrooms, office spaces, or restaurants unrelated to industrial production.

71. In such circumstances, a rigid and undifferentiated classification of the entire premises as an 'industrial building' would be both inequitable and contrary to the statutory intent. The law, therefore, wisely empowers the Assessing Authority to undertake a segregated assessment, evaluating each discrete portion of the premises in accordance with its predominant use, thereby ensuring a more accurate and justifiable taxation framework. In furtherance of the above, a conjoint reading of Section 115A of the DMC Act along with Bye-law 9(e) of the DMC Property Tax Bye-laws, 2004, reinforces the legal position that different portions of a building can be subjected to separate assessment based on their respective functional usage.

72. It is imperative to underscore that Bye-law 9(e) of the DMC Property Tax Bye-laws, 2004, embodies a specific statutory mandate which empowers the Assessing Authority to undertake a nuanced assessment of properties put to mixed or multiple uses. While Section 115A ordinarily operates as a thumb rule governing the assessment process, the express latitude granted under Bye-law 9(e) needs to be given due importance, particularly in cases where a building is subjected to varied functional operations—industrial, commercial, business, or otherwise. The said Bye-law, in its very design, equips the Assessing Authority with the discretion to dissect and evaluate different portions of a building in accordance with the distinct nature of activities being carried out therein. Such provision is intended to remedy potential mischiefs or evasions by the assessee, and ensures that the assessment reflects the actual character and use of each

constituent part of the premises. Thus, Bye-law 9(e) serves not merely as an enabling clause, but as a necessary corrective instrument to secure the integrity and fairness of the taxation regime.

73. However, this principle is not without limitations. Where the dominant or predominant activity conducted within the building constitutes assembling, fabricating, or processing of raw materials, i.e., activities squarely falling within the ambit of an 'industrial building', then the incidental or ancillary use of certain portions—such as administrative offices, or minor service areas like canteen etc—cannot be hived off and assessed independently. Such incidental components are intrinsically linked to and form an integral part of the industrial activity, and thus, their separate assessment would defeat the holistic understanding of the industrial operation.

74. Needless to say, the determination of what constitutes predominant activity versus incidental use is a fact-sensitive enquiry, to be adjudicated upon the peculiar circumstances and factual matrix of each individual case, including the nature of the operations carried out, the spatial distribution of activities, and the functional interdependence between different segments of the building.

75. Coming back to the definition of 'business building' under Property Tax Bye-laws, 2024, under which the Corporation sought to cap the respondent's activities, is concerned. The definition of 'business building' under the Property Tax Bye-laws, 2004 needs to be looked into in contrast to the definition of 'industrial building' under the same Bye-laws:

Business Building	**Industrial Building**
"business building" shall mean any building or part thereof used for transaction of business or for keeping of accounts and records or for similar other purposes, and such buildings shall include (i)offices (other than offices of Central Government, State Government and local bodies), banks, professional establishments, court houses, and libraries for the principal function of transaction of public business and keeping of books and records; (ii)office buildings (premises) solely or principally used as office or for office purpose; and (iii)one and two star hotels, restaurants, lodges and guest houses; (c) "mercantile building" shall mean any building or part thereof used as shops, stores or markets for display or sale of merchandise, either wholesale or retail, or for office, storage or service facilities incidental to the sale of merchandise and located in the same building, and such buildings shall include establishments wholly or partly engaged in wholesale trade, manufacturer's whole-sale outlets (including related storage facilities), warehouses, and establishments engaged in truck transport (including truck transport booking agencies), and subscriber trunk dialing and international subscriber dialing booths;	9 (e). "industrial building" shall mean any building or structure or part thereof in which products or materials of all kinds and properties are fabricated, assembled or processed as in assembly plants, and such buildings shall include laboratories, power plants, smoke houses, refineries, gas plants, mills, dairies, factories, workshops, automobile repair garages, and printing presses, but the portion of the building for purposes other than purposes specified in this clause shall be assessed separately according to its use.

76. Having elaborately discussed the scope and import of the definition of ‘industrial building’, if the scope of ‘business building’ is considered, it shall

mean any building or part thereof, used for transformation of business or for keeping of accounts and records or for similar and other purposes and such building shall include primarily offices (other than offices of Central Government, State Government, Local Bodies), Banks, Professional Establishment, Court houses, and libraries for the for the principal function of transaction of public business and keeping books and records and also office building (premises solely or principally used for office or for office purposes.

77. A fair comparison of 'industrial building' and 'business building' would indicate that 'industrial building' would include any building or any part or structure thereof, wherein some fabrication, assembling or processing of raw materials are few basic ingredients, whereas, in 'business building', the principal dominant purpose seems to be a premises where business is transacted, offices are held, and record etc. are being maintained.

78. In the 'business building', there does not seem to be any production, assembling, fabrication of raw materials and further, it does not require any plants and machinery etc. It is, thus, seen that under the Bye-laws of 2004 itself, there lies a clear distinction underscoring the object for which the building in question is put to use and, accordingly, to apply the concerned use factor.

79. It be noted that if the building in question are categorized as "business building", use factor-4 will have to be applied, and if they have to be categorized as an "industrial building", it shall be subjected to use factor-3. The higher use factor will eventually lead to greater tax liability.

80. The calculation of property tax under the unit area method is arrived at the annual value of a covered space in a building, which is to be calculated by applying the formula, which reads as under: -

> *"Annual Value (AV) = CA x UAV x AF x OF x UF x SF*
> *Where, CA = Covered Area , UAV =Unit Area Value , AF = Age factor ,*
> *OF = Occupancy factor, UF = Use factor, SF = Structure factor."*

81. Having seen the comparison of industrial building as well as business building, under the facts of the present case it can be safely concluded that the buildings which are occupied and used primarily for processing Digital Transformation, Cloud Services by Offering cloud strategy, migration, management, and operations support, Application Development and Maintenance by Developing, maintaining, and enhancing software applications and IT Consulting necessarily fall within the definition of 'industrial building'.

82. Within the same building, ancillary activities such as work station, conference hall, cafeteria, parking facility etc. would also not change the predominant use of premises/ building as an 'industrial building' as those ancillary services are an integral part of the elemental activity. Services like XML digital publishing services, database management services, business process, consulting services, service design and advisory, resourcing, case management, engineering, and asset and facilities management would also fall within the domain of the "industrial building".

83. In view of the aforenoted discussion, the liberty is reserved in favour of the Corporation to issue a fresh show cause notice in appropriate cases to ascertain the predominant nature of the activity undertaken by the assesses

in the premises. Depending upon the inspection, an appropriate decision can be taken in accordance with extant rules and regulations. With the aforesaid clarification, the impugned orders are upheld.

84. Accordingly, the petitions alongwith all pending applications, are disposed of.

PURUSHAINDRA KUMAR KAURAV, J

MAY 20, 2025
DPA/aks/@m