

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**CWP No.17765 of 2015 (O&M)
Date of decision: September 10, 2015**

Brij Mohan Gupta

....Petitioner

Vs.

State of Haryana & another

.....Respondents

**CORAM: HON'BLE MR. JUSTICE HEMANT GUPTA
HON'BLE MRS. JUSTICE RAJ RAHUL GARG**

Present: Mr. Akshay Kumar Jindal, Advocate, for the petitioner.

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

HEMANT GUPTA, J.

Challenge in the present writ petition is to the Haryana Municipal Corporation (Amendment) Act, 2012 (for short 'the Act') vide Haryana Act No.21 of 2012 particularly to Section 87(1)(a) contemplating determination of the property tax and also the notification dated 11.10.2013 (Annexure P-3) fixing the rates of property tax.

2. The petitioner is owner of the properties situated within the area of Municipal Corporation, Karnal. The Act, as originally enacted contemplated determination of the 'Annual Rental Value', as the basis for levy of house tax. The petitioner refers to the guidelines circulated by the Central Government mandating the reforms of the property tax system under the Jawaharlal Nehru National Urban Renewal Mission (JNNURM). The Central Government, after

considering the different methods of assessment of tax, suggested adoption of unit area system. The relevant extract from the Property Tax ULB Level Reform circulated by Government of India reads as under:

“Valuation and Assessment:

As has been spelt out in Section 11, the present system of assessment is not transparent and not capable of self-assessment. It rewards the unscrupulous and penalizes the honest tax payer. It is in this context that the Government of India had recommended adoption of a system which is formula based and capable of self-assessment. Different cities have tried out alternative approaches to introduce a self-assessment system. These may be a capital value based system, a rental value based system or a unit area system based on multiple factors. Each State/ULB should decide which system is most suitable for it, given its local circumstances. (It must be mentioned that JNNURM does not mandate that there should be a change in the system of assessment since this may take a couple of years to finalize and implement. The first priority should be for achieving full coverage of assessments within the existing system and full recovery of taxes.)

Whatever be the basis decided upon the system of assessment should (a) be objective based on clearly enunciated parameters, (b) be formula based so that it is capable of self-assessment, (c) eliminate or at least minimize discretion at the field level; and (d) be citizen-friendly. The unit area system is enunciated in more detail below:

- The unit area system: The unit area system is a simple arithmetical system of calculation of property tax based on covered area of the building and the unit area value or unit area tax for the category (of locality or amenity, etc.) in which the premises is located through which it is possible for any citizen to self-assess his property tax and file his return form. (This could also be applied to vacant land).
- Grouping of localities: In the unit area value system the entire city has to be grouped into somewhat homogenous categories for specifying a unit area value. Such groupings could be done taking into

consideration factors like average rental value, average capital value of land, quality of physical infrastructure, availability of social and market infrastructure, type of development, economic classes of occupants, etc. The factor(s) that should be considered should be decided by the ULB taking into consideration local requirements and availability of information.”

3. The petitioner contends that in pursuant of such recommendations, the State has enacted the Haryana Municipal Corporation (Amendment) Act, 2012 vide Act No.21 of 2012 substituting Section 87(1)(a) and Section 97 and at the same time introducing Sections 87A, 87B & 87C. The relevant Sections, the legality and validity of which is subject matter of challenge, read as under:

“87. Taxes etc. to be imposed by Corporation under this Act and arrangement of certain taxes collected by Government. – (1) The Corporation shall, for the purposes of this Act, levy the following taxes-

(a) a property tax payable by the owner or occupier of building and land at the rates notified by the Government, from time to time depending upon the area in which the building or land is situated, its location, purpose for which it is used, its capacity for profitable use, quality of construction and other relevant factors.

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94. Apportionment of liability of taxes on land and building when premises assessed are let or sub-let –

If any building or land assessed to tax specified in clause (a) of sub-section (1) of Section 87 is let or sub-let and amount of rent payable in respect thereof is less than the property tax, then the occupier shall be liable to pay the difference between the amount of the said property tax and the rent paid by him.

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97. Property list – Save as otherwise provided in this Act, each Corporation shall cause a property list of all lands and buildings in the municipal area to be prepared in such form and manner and containing such

particulars with respect to each land and building, as may be prescribed.

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100. New Property list – It shall be at the discretion of the Corporation to prepare for the whole or any part of the municipality a new property list every year.

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146. Amendment of property list – (1) The authority may at any time amend the property list by inserting the name of any person whose name ought to have been or ought to be inserted, or by inserting any property which ought to have been or ought to be inserted, or by altering the details of any property which has been erroneously valued or assessed through fraud, accident or mistake, whether on the part of the authority or of the assessee, or in the case of a tax payable by the owner or the occupier by a change in the tenancy, after giving notice to any person affected by the amendment of a time, not less than one month from the date of service, at which the amendment is to be made.

Explanation – For the purposes of this sub-section, the authority means the Zonal Taxation Officer or any officer authorized by the Commissioner of Municipal Corporation.

(2) Any person interested in any such amendment may tender his objection to the Corporation in writing before the time fixed in the notice or orally or in writing at that time and shall be allowed an opportunity of being heard in support of the same in person, or by authorized agent, as he may think fit.”

4. On the other hand, Sections 87A, 87B & 87C deal with the self-assessment of tax, deposit of property tax and penalties respectively. Section 87A reads as under:

“87A. Self assessment of tax – Notwithstanding anything contained in this Act, every person liable to pay the property tax shall himself calculate the tax of the building or land according to the procedure notified in this regard, of which he is either owner or the occupier at the rates notified under clause (a) of sub-section (1) of Section 87.”

5. Still further, Section 21 of the Act is to validate the notification issued on 21.06.2012 fixing the rates of tax. It is pointed out that earlier the State has issued notification dated 21.06.2012 prescribing the rate of tax, which was substituted by another notification dated 28.01.2013. Now, another notification has been issued on 11.10.2013 substituting the notification dated 28.01.2013, whereby the Municipal Corporations in the State of Haryana have been categorized in two categories i.e. (i) Municipal Corporations of Gurgaon and Faridabad are 'A1 Cities'; & (ii) Municipal Corporations of Ambala, Panchkula, Karnal, Panipat, Rohtak, Hisar and Yamunanagar are 'A2 Cities'.

6. It is contended by the learned Counsel for the petitioner that uniform varying rates of property tax have been imposed keeping in view the sizes of the plot and the purpose for which, the site is being used located in A1 and A2 cities without taking into consideration the factors enumerated in Section 87(1)(a) of the Act. The said provision contemplates that property tax shall be at the rates notified by the Government, but such rates are depending upon the area in which the building or land is situated; its location; purpose for which it is used; its capacity for profitable use; quality of construction and other relevant factors. It is contended that none of these factors have been taken into consideration while issuing impugned notification dated 11.10.2013.

7. On the basis of the above provisions of the Statute and the rates fixed, learned counsel for the petitioner has argued that the provisions of the Act are discriminatory and arbitrary, as there are no guidelines framed in the Statute as to how the property tax has to be calculated and/or levied. It is also argued that Sections 87 and 97, as amended, are vague and give sweeping powers to the State Government and thus, it is a case of excessive delegated legislation. It

is also argued that the Act and the notification issued do not contemplate any opportunity of hearing before fixing the rates nor the occupier has any Forum to dispute the levy of property tax. Therefore, the provisions of the Act violate the principles of natural justice. It is also argued that an appeal under Section 139 can be entertained only on deposit of the amount of tax, which is harsh and in fact, takes away the right of appeal of the occupier(s). It is also argued that the provisions of the Act are contrary to the recommendations of the Central Government as the taxes have been levied without taking into consideration the class or location of building. Therefore, the impugned notification dated 11.10.2013 is contrary to the provisions of the Statute.

8. At this stage, we may notice that the notification dated 11.10.2013 has prescribed different rates of tax for residential; commercial – shops, commercial spaces i.e. shopping malls, multiplexes or commercial official spaces etc; industrial properties; institutional properties – Commercial, Non Commercial, Educational institutions; Special Categories – private hospitals, marriage palaces, cinema halls, Banks, Storage Godwons, Grain Market/ Subzi Mandi/Timber Market/ Sub-Market Yard, Clubs, Hotels, other institutions such as standalone hotels, paying guest house/accommodation, private office building, restaurants; mixed use properties; and vacant land. But there is no classification on the basis of nature of construction raised or the location of building within the area of Municipal Corporation.

9. We have heard learned counsel for the petitioner at length and find that the arguments raised are required to be examined in two parts. Firstly, as to whether the provisions of the Act are illegal or ultra vires any provision of the Constitution and secondly as to

whether, the notification fixing rates of tax, is in accordance with the provisions of Statute.

10. The charging provision to levy tax is Section 87A. It provides that the State Government shall notify the rate of property tax from time to time. The factors, which have to be taken into consideration by the Government, are (1) the area in which the building or land is situated; (2) its location; (3) purpose for which it is used; (4) its capacity for profitable use; (5) quality of construction and (6) other relevant factors. Such provision of the Statute cannot be challenged on the ground that it contravenes the guidelines as issued by the Central Government.

11. The power of imposition of the property tax falls within Entries 5 & 49 of List II of the Constitution. Such Entries read as under:

“5. Local Government, that is to say, the constitution and powers of municipal corporations, improvement trusts, district boards, mining settlement authorities and other local authorities for the purpose of local self-government or village administration.

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49. Taxes on lands and buildings.”

12. The State Legislature is, thus, fully competent to legislate on the subject of municipal tax as it is reserved for the States as per subjects contained in List II. There is no Central Statute in respect of levy and collection of the property tax situated in the State. Therefore, only the State Legislature is competent Legislature to impose property tax in the State. A Division Bench judgment of this Court in a case reported as Model Town Residents Association v. State of Punjab etc., (2002) 3 PLR 88, has upheld the competence of the Legislature to impose house tax, it being in exercise of entry 49 of list II. In appeal against the said order, the Hon’ble Supreme Court in a judgment reported as Municipal Committee, Patiala v. Model Town Residents

Association & others, (2007) 8 SCC 669 while upholding the said part of the order, set aside the order passed by this court. The Court held that the powers of the State Legislature to classify the buildings between the self-occupied residential houses and self-occupied commercial houses under the Punjab Municipal Act, 1911 is legal and justified when the State Legislature amended the basis of determination of Annual Rental Value. The Hon'ble Supreme Court observed as under:

"9. Before examining the question of constitutional validity, we need to take note of certain concepts under municipal taxation. Value is the function of price. Value is the function of the economy. Valuation is subjective exercise. Valuation involves an element of guess work. Valuation does not involve straight-jacket formula. Broadly, the following methods merit attention in the determination of Fair Market Value ("FMV") they are: (a) net asset method; (b) multiple based method; and (c) discounted cash-flow method. The word "rate" has acquired a special meaning. It means a tax for local purposes imposed by local authorities. The basis of the tax is the annual value of the land or building on which it is imposed. The annual value is arrived at by three ways, namely, (i) actual rent fetched by the land or building where it is actually let; (ii) where it is not let, rent based on hypothetical tenancy, particularly in the case of buildings; and (iii) where either of these two methods is not available, by valuation based on capital value from which annual value has to be derived by applying a suitable percentage which may not be the same for lands and buildings.

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14.Essentially, in this case we are concerned with commercial property. It is the tax on the scarce resources, mainly the land whose prices are escalating, which provides an intelligible differentia (rational basis) having requisite connection with the object sought to be achieved. There cannot be a straight-jacket formula for determination of the annual value. The State is always entitled to raise resources by way of imposition of tax. As held in the case of *Patel Gordhandas Hargovindas v.*

Municipal Commr., Ahmedabad, AIR 1963 SC 1742 cost of construction plus market value of the land thus constituted the very basis for determination of the annual value, where it is not possible to obtain figures concerning actual rent or hypothetical rent, it is in these circumstances that the cost of construction plus the market value of the land can form the basis for arriving at the annual value.

15. In our view, the classification made between premises occupied by tenants on one hand and those occupied by the owner himself is wholly reasonable and has direct nexus with the object sought to be achieved.

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16. In the present case, the High Court has further held that Section 3(8aa) was ultra vires and unconstitutional for want of guidelines which gives wide powers to the officers in the matter of fixing annual value. This finding of the High Court is equally erroneous. Therefore, leeway has to be given to the A.O. for arriving at the market value of the land and the cost of construction by applying apposite principles under the Land Acquisition Act qua the land and by proceeding to arrive at the cost of construction of the houses by invoking the instances of registration on transfer of houses under the Registration Act. Therefore, in our view, the High Court had erred in striking down Section 3(8aa).

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In concurring, but separate judgment, it was observed to the following effect:

“27. It is so well settled and needs no restatement at our hands that the legislature is supreme in its own sphere under the Constitution subject to the limitations provided for in the Constitution itself. It is for the legislature to decide as to when and in what respect and of what subject matter the laws are to be made. It is for the legislature to decide as to the nature of operation of the statutes.

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30. The court cannot usurp the functions assigned to the legislative bodies under the Constitution and even indirectly require the legislature to exercise its power of

law making in particular manner. The court cannot assume to itself a supervisory role for the law making power of the legislature under the provisions of the Constitution. The High Court must ensure that while exercising its jurisdiction which is supervisory in nature it should not over step the well recognized bounds of its own jurisdiction.”

13. In the aforesaid judgment, the Hon’ble Supreme Court considering the Punjab Municipal Act, 1911, has upheld the determination of the annual value based upon the classification of self occupied and tenanted buildings. The Court has held that some leeway has to be given to the Assessing Officer for arriving at the market value of the land and the cost of construction by applying apposite principles under the Land Acquisition Act qua the land and by proceeding to arrive at the costs of construction of the houses by invoking the instance of registration on transfer of houses under the Registration Act. If the Assessing Officer is competent to arrive at the market value for the purposes of determination of the house tax under the Punjab Municipal Act, the legislature while enacting the Act, is competent to lay down the basis of determination of the house tax. The factors mentioned in Section 87(1)(a) i.e. the area in which the building or land is situated, its location, purpose for which it is used, its capacity for profitable use, quality of construction and other relevant factors, are the relevant guidelines incorporated in the statute itself to determine the rate of tax. Since the levy of property tax falls within the exclusive domain of the State legislature, it is the legislature which is competent to determine the basis of levy of the property tax. Thus, we do not find any illegality when Section 87(1)(a) of the Act was incorporated empowering the State Government to notify the rates of property tax by taking into consideration the factors as mentioned therein.

14. The question which requires to be examined is as to whether the notification dated 11.10.2013 fixing the rate of tax is in accordance with the provisions of Section 87(1)(a) of the Act.

15. The argument that no guidelines have been framed in the statute as to how the property tax is to be calculated and levied, is not tenable. Section 87(1)(a) of the Act gives sufficient guidelines which have to be taken into consideration by the State Government before notifying the property tax such as the area in which the building is situated i.e. size of the plot and the location i.e. where it is located. It may include a locality within a city or whether the locality within the city is divergent for the purposes of levy of property tax; use of property where it is residential, commercial, institutional etc., the capacity for profitable use i.e., whether it is self occupied, residential property or a commercial property and use for business, quality of construction etc. If in the light of such test, the notification dated 11.10.2013 is examined, we find that the State Government has taken into consideration the factors enumerated in Section 87(1)(a) of the Act. Firstly the area and location in which the building is situated has been taken into consideration when Faridabad and Gurgaon have been classified as A1 Cities, attracting higher property tax. The cities in Haryana do not have wide spectrum of localities. The different colonies within the municipal area have not been treated differently. Therefore, the rate is not higher in certain areas of the Municipal Corporation and less in certain other areas. It is a conscious decision of the State Government to adopt a uniform rate of property tax within a Municipal Corporation. Therefore, it cannot be said that the said factors as delineated in Section 87(1)(a) have not been taken into consideration. The purpose for which the building is used has been extensively considered i.e. residential, commercial, institutional, industrial and the special categories. For the commercial properties,

i.e., shops, shopping malls, multiplex, commercial, office space etc., different rates of tax have been provided. Different rates of tax have also been provided for commercial or non commercial properties and also for educational institutions and the special categories including private hospitals, marriage palaces, cinema halls, banks, storage godown, grain market/sabzi mandi/timber market/ sub-market yard, clubs, hotels, stand-alone hostel, paying guest house, private office buildings and restaurants.

16. Conceivably, all relevant uses regarding profitable use of the property entailing the house tax, have been taken into consideration. The quality of construction is taken into consideration when a nominal property tax of Rs.1.00 per square yard per year is levied for A1 cities and Rs.0.75 per square yard per year for A2 cities on house with plot size upto 300 square yards. Still further 100% rebate is provided to all residential building upto 250 square yards owned by the ex-servicemen or families of deceased soldiers, ex-servicemen and ex-central paramilitary personnel etc. and also to the religious properties, orphanages, Municipal Buildings, cremation/Burial Grounds etc. Therefore, the purpose for which the building is used, the nature of construction etc., has been kept in view while fixing different rates of tax. Even if a particular purpose has not been taken into consideration, it will not vitiate the levy of property tax as the provisions of Section 87(1)(a) are the guidelines which have to be taken into consideration and are directory in nature. In such situation, substantial compliance would satisfy the requirement of the statute.

17. We do not find that Section 87 or Section 97 of the Act is either vague or give sweeping powers to the State Government. The conferment of power to notify the rate of tax cannot be said to be

arbitrary. It falls within the executive domain of the State Government in terms of the Statute.

18. The argument that the notification fixing the rate of tax does not provide any opportunity of hearing nor there is any Forum for the owner or occupier to dispute the levy of the property tax, is not tenable. Since the levy of property tax is statutory, the statute has to provide for the opportunity of hearing or Forum to dispute the levy of property tax. Under the un-amended provisions, there was a wide discretion available with the executive authorities to assess the property tax by taking into consideration the factors, which were subjective and variable. The State legislature has plugged the loopholes taking out such discretion by framing a uniform rate of tax, which can be paid by the owners themselves. It is a facility to pay property tax on a pre-determined rate. Therefore, the same cannot be challenged on the ground that no opportunity of hearing was provided nor there is any Forum to challenge the levy of property tax. In taxing statutes, the requirement is to examine the legislative competence. If the legislature is competent, the levy and the procedure to collect the taxes cannot be questioned. The mechanism after the amending Act is that every person liable to property tax shall himself calculate the tax, on the building or the land in terms of Section 87A of the Act, but if he does not do the same and the assessment is framed, he has a right of appeal under Section 139 of the Act. Therefore, an incentive is given to the owner or occupier to pay tax by the process of self assessment, but if the owner or occupier does not pay tax, there is a process of adjudication and also a right of appeal. Therefore, it cannot be said that there is no right of opportunity of hearing or there is violation of the principles of natural justice. The scheme of Act is a two-step process, one is purely voluntary in terms of Section 87A of the Act and secondly if the tax as per the property list in terms of

Section 97 of the Act, is not furnished, the owner or the occupier is liable to penalty which amount of penalty can be subjected to appeal. Therefore, it is the process to facilitate the payment of property tax voluntarily. In Government of Andhra Pradesh v. P. Laxmi Devi (Smt.), (2008)4 SCC 720, the Hon'ble Supreme Court held that where the language of the taxing provision is plain, the court cannot concern itself with the intention of the legislature. It was held as under:-

“20. In Partington v. Attorney General, (1969) LR 4 HL 100, Lord Cairns observed as under:-

“If the person sought to be taxed comes within the letter of the law he must be taxed, however, great the hardship may appear to the judicial mind. On the other hand if the court seeking to recover the tax cannot bring the subject within the letter of the law, the subject is free, however, apparently within the spirit of the law the case might otherwise appear to be.”

The above observation has often been quoted with approval by this Court, and we endorse it again. In *Bengal Immunity Co. Ltd. v. State of Bihar*, AIR 1955 SC 661, this Court held that if there is hardship in a statute it is for the legislature to amend the law, but the court cannot be called upon to discard the cardinal rule of interpretation or mitigating a hardship.

21. It has been held by a Constitution Bench of this Court in *ITO v. T.S. Devinatha Nadar*, AIR 1968 SC 623, that where the language of a taxing provision is plain, the Court cannot concern itself with the intention of the legislature. Hence, in our opinion the High Court erred in its approach of trying to find out the intention of the legislature in enacting the impugned amendment to the Stamp Act.

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46. In our opinion, there is one and only one ground for declaring an Act of the legislature (or a provision in the Act) to be invalid, and that is if it clearly violates some provision of the Constitution in so evident a manner as to leave no manner of doubt. This violation can, of course, be in different ways, e.g. if a State

legislature makes a law which only Parliament can make under List-I to the Seventh Schedule, in which case it will violate Article 246(1) of the Constitution, or the law violates some specific provision of the Constitution (other than the directive principles). But before declaring the statute to be unconstitutional, the Court must be absolutely sure that there can be no manner of doubt that it violates a provision of the Constitution. If two views are possible, one making the statute constitutional and the other making it unconstitutional, the former view must always be preferred. Also, the Court must make every effort to uphold the constitutional validity of a statute, even if that requires giving a strained construction or narrowing down its scope vide *Rt. Rev. Msgr. Mark Netto v. Government of Kerala and others*, (1979)1 SCC 23. Also, it is none of the concern of the Court whether the legislation in its opinion is wise or unwise.”

19. The argument that an appeal under Section 139 of the Act can be entertained only on deposit of amount of tax is harsh and takes away the right of appeal, is not tenable. The Court in P. Laxmi Devi's case (supra), while considering its earlier judgment reported as Gujarat Agro Industries Co. Ltd. v. Municipal Corporation of the City of Ahmedabad, (1999)4 SCC 468; Vijay Prakash D. Mehta v. Collector of Customs, (1988)4 SCC 402 and Anant Mills Co. Ltd. v. State of Gujarat, (1975)2 SCC 175, held to the following effect:-

“26. It may be noted that in *Gujarat Agro Industries Co. Ltd. vs. Municipal Corporation of the city of Ahmedabad and Ors.* (supra) the appellant had challenged the constitutional validity of Section 406(e) of the Bombay Municipal Corporation Act which required the deposit of the tax as a precondition for entertaining the appeal. The proviso to that provision permitted waiver of only 25% of the tax. In other words a minimum of 75% of the tax had to be deposited before the appeal could be entertained. The Supreme Court held that the provision did not violate Article 14 of the Constitution.”

20. Similar provisions have been examined by a Full Bench of this Court in M/s Emerald International Ltd. v. The State of Punjab, 1997(2) PLR 797. In M/s Emerald's case, the Full Bench held as under:-

"20. The perusal of the aforementioned observations of the apex Court clearly show that the apex Court while dealing with the constitutional validity of certain provisions of the Bombay Provincial Municipal Corporations Act and Section 406 of the said Act as amended by Gujarat Act (5 of 1970) held that the right of appeal was the creature of the statute and that it failed to understand as to why the Legislature while granting the right of appeal could not impose conditions for the exercise of such right. While reproducing the observations of the apex Court we do not and need not comment upon the constitutional validity of the provision of the statute with which we are dealing with as the vires of the two Acts have already been upheld by the Division Bench while referring the case to us. The aforementioned observations, in our considered view, throw sufficient light, for holding that the assessee have to accept the conditions laid down in the provision pertaining to appeals if they want to take advantage of the same and that the conditions imposed therein cannot be described to be onerous. Moreover, the words "undue hardship" cannot, in our considered view, be equated with the words "unable to pay" as have been used in the statute.

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23.The Apex Court (In *Vijay Parkash D. Mehta and Jawahar D. Mehta vs. Collector of Customs (Preventive) Bombay*, AIR 1988 SC 2010) held that the aforesaid provision provides conditional right of appeal and that it was obligatory on the appellant to deposit the dues or penalty pending appeal, failing which the Tribunal was competent to reject the appeal. It was further held that the proviso did empower the Appellate Authority to dispense with such deposit in case of undue hardship. The right to appeal, it was observed by the apex Court was neither an absolute right nor an ingredient of natural justice, the principle of which must be followed in all judicial and quasi-judicial

adjudications. The following observation of the apex Court clearly supports the arguments of the learned counsel for the State that right to appeal was a statutory and that it could be circumscribed by conditions :

"Right to appeal is neither an absolute right nor an ingredient of natural justice the principles of which must be followed in all judicial and quasi-judicial adjudications. The right to appeal is a statutory right and it can be circumscribed by the conditions in the grant."

In our considered view, the observations of the Apex Court as reproduced above are fully applicable to the facts of the instant case. The provisions in the statute being dealt with herein are similar except that words "undue hardship" has been used in the proviso in the Customs Act whereas the words "unable to pay" has been used in the Punjab and Haryana Acts.

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26. As a sequel to our discussion on the question of law referred to us the following conclusions can be deduced :

(a) The appeal is a creation of a Statute and in case a person wants to avail of the right of appeal, he has to accept the conditions imposed by the Statute.

(b) The right of appeal being a creature of Statute, the Legislature could impose conditions for exercise of such a right. Neither there is a constitutional nor legal impediment for imposition of such a condition.

(c) The right of appeal is neither natural nor inherent attaching to a litigation and such a right neither exists nor can be assumed unless expressly given by the Statute.

(d) Even if, this Court was to interpret the bare provisions of two statutes, i.e., the Punjab General Sales Tax Act, 1948 and the Haryana General Sales Tax Act, 1973, it could safely be held that there is a complete bar to the

entertainment of an appeal by the appellate authority without the payment of tax amount unless the authority is satisfied that the dealer is unable to pay the amount so assessed and only in that situation the appellate authority for the reasons to be recorded in writing can entertain the appeal without deposit of the payment of such amount.”

21. The argument that the amending Act contravenes the guidelines issued by the Central Government and thus, the statute is ultra vires, does not merit any acceptance. The guidelines issued by the Central Government are only advisory. The State Legislature is competent to legislate on the subject of the property tax in terms of Entry 49 List II. Therefore, merely because the legislation as enacted is not exactly the same as suggested by the Central Government, the State Act cannot be said to be illegal.

22. Another argument which was raised needs to be discussed at this stage. The learned counsel for the petitioner has referred to Clause 4(i) of the notification dated 11.10.2013, which reads as under:-

“4. General

(i) The new system of taxation and rates shall be applicable from the financial year 2010-11 onwards with the stipulation that for the period prior to the date of publication of this notification, the property owners shall have the option to pay as per the new or old policy, whichever is opted by them.”

23. We find that the State legislature is competent to make the provisions of law as applicable retrospectively. In the present case, Section 21 of the amending Act, validates the notification issued on 30.9.2003 and 21.6.2012. Therefore, it is not a retrospective imposition of tax, but validating of the action taken earlier i.e. the notification dated 30.9.2003 and 21.6.2012. The notification dated 11.10.2013, has been issued in terms of Section 87(3) and Section

149(1) of the Act. The levy of tax and rates have been made applicable from the Financial Year 2010-11 but with a further option that the property owners have the option to pay the same as per the new or old policy, whichever is opted by them. Therefore, it is open to the owners to opt for the rates, which were prevailing prior to the publication of the notification on 11.10.2013. It is not a retrospective taxation, but an option has been given to pay the tax as per the old policy or the new provisions. Thus, we do not find that the Notification dated 11.10.2013 is contrary to the provisions of the Statute.

24. In view of the above, we do not find any merit in the present writ petition and the same is, thus, dismissed.

(HEMANT GUPTA)
JUDGE

September 10, 2015
Vimal/ds

(RAJ RAHUL GARG)
JUDGE