IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.08.2016

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THE HONOURABLE Mr. JUSTICE T.S.SIVAGNANAM

W.P.No.6164 of 2009
and
M.P.No.1 of 2009

The Commissioner of Income Tax
Nungambakkam High Road
Chennai 600 034. ... Petitioner

.Vs.

The Commissioner
Corporation of Chennai
Ribbon Buildings
Chennai - 600 002. ... Respondent

Prayer

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus calling for the records of the respondent in Zo.VII RDC.No.R3/362/2009 dt.11.03.2009 and quash the demands made thereon and also direct to refund the amount paid by the Income Tax Department by way of property tax for the half years commencing from 2004-05 in respect of the said properties owned by the petitioner.

For Petitioner : Mr.T.Ravikumar

For Respondent : Mr.K.Soundararajan



ORDER

Heard Mr.T.Ravikumar, learned counsel appearing for the petitioner and Mr.K.Soundararajan, learned Standing counsel appearing for the respondent Corporation.

2.The petitioner in this writ petition is the Commissioner of Income Tax, Chennai and the challenge is to the order passed by the respondent Corporation which infact is an intimation to the petitioner intimating that they have been collecting a sum of Rs.1,07,832/-, Rs.14,20,467/- and Rs.3,14,874/- as Service Tax per half year which is based upon the annual value in respect of three of the buildings.

3.The legal issue involved in this writ petition is as to whether the respondent could demand the property tax for the buildings used by the petitioner Department which is owned by the President of India. The respondent has been demanding payment of property tax. However, at the relevant point of time viz., 2007-08, it appears that based on some circular which was prevailing during the said period and on certain advice, some amounts were remitted by the petitioner Department. But the respondent Corporation has received those amounts and issued receipts as if they were remitted towards the payment of property tax.

4.The petitioner addressed the respondent by letter dated 28.01.2009 stating that the Income Tax Department is paying Service Charges to the Corporation of Chennai, in respect of the office buildings and the quarters owned by the Department at Nungambakkam, Quarters at Anna Nagar, Baracca Road, Bazullah Road, T.Nagar and SAF Games Village which are used for the purpose of Office as well as Residence. Relying on the decision of the Hon'ble Supreme Court in the case of Municipal Corporation, Amritsar v. The Senior Superintendent of Post Offices, Amritsar Division, Amritsar [JT 2004 (1) SC 561], the Pay and Accounts Office have raised an objection and therefore, the petitioner requested that no demand need be raised in respect of the aforesaid building and if already raised may kindly be kept in abeyance.

5.In response to the said communication, the impugned letter has been sent by the Assistant Revenue Officer of the Respondent Corporation stating as if they have collected the amount as Service Charges [wrongly mentioned as Service Tax].

6.The learned counsel for the petitioner invited the attention of this Court to the receipts issued by the Respondent Corporation towards such collection and all receipts are property tax collection receipts and they have been collected as property tax and only for the purpose of giving a colour as if it is Service charges, in the impugned communication it has been stated so. The learned counsel further referring to paragraph 5 of the affidavit filed in support of the writ petition submitted that the petitioner Department is separately paying Service Charges in respect of all the buildings and there is no dispute on the said fact.

7.Though the respondent Corporation have been served and they have entered appearance through a counsel, till date no counter affidavit has been filed. However, the learned Standing Counsel appearing for the respondent on instructions from the officials present in the Court submits that though the receipts are property tax receipts, what was collected from the petitioner was only the service charges and only the receipts were issued from the property tax receipt book.

8.In terms of Article 285 of the Constitution [Article 285 (1) of Constitution of India] the property of the Union shall, save in so far as Parliament may by law otherwise provide, be exempt from all taxes imposed by a State or by any authority within a State. Thus, in the light of the constitutional embargo, the State of Tamil Nadu or an authority of the State namely, the respondent Corporation cannot impose any tax on the properties owned by the Union.

9.In the case of Municipal Corporation, Amritsar (Supra) the postal department was served with demands by the Corporation calling upon them to clear the arrears of property tax. The similar stand as taken in this writ petition was taken by the Posts and Telegraphs Department stating that in terms of Article 285(1) of Constitution of India, properties are exempt from tax. In fact in the said case, the question was whether the demand so made was by way of Service charges or tax and factually, it was clarified that under the provisions of the said Municipal Corporation Act, there was no provisions for levying service charges and only provision is for payment of tax.

10.The Hon'ble Supreme Court took note of the earlier decision in the case of Union of India v. Purna Municipal Corporation and others, (1992) 1 Supreme Court Cases 100, wherein it was held that Section 135 of the Railways Act being Act of the Central Government and saved by clause (1) of Article 285 of the Constitution, clause (2) of Article 285 was not attracted and the Municipal Corporation was restrained from demanding tax by way of service charges from railways.



11.More recently in the case of Rajkot Municipal Corporation and others v. Union of India reported in (2013) 14 Supreme Court Cases 599, similar issue arose and ultimately an agreement was arrived at between the parties where the Union of India agreed to certain aspects. At this stage, it would be useful to refer to few of the conditions as recorded by the Hon'ble Supreme Court.

> "14.In view of the above, there is no need to consider the appeals on merits. We dispose of the

appeals and pending applications by recording the following broad agreement between the parties:

(i) The Union of India and its departments will pay service charges for the services provided by the appellant Municipal Corporations. They will not pay any property tax. The service charges will be paid at 75%, 50% and 33 1/3% respectively for the property tax levied on private owners, depending upon whether the Union of India or its department is utilising the full services, or partial services or nil services. The Union of India represented by its department concerned will enter into agreements/understandings in regard to service charges for each of its properties, with the respective municipal corporation."

12.It is further brought to the notice of this Court that identical issue came up for consideration before this Court when the Corporation of Chennai called upon the Principal Accountant General to pay the property tax for the building owned by the Union of India which was challenged by the Principal Accountant General, Chennai in W.P.No.29929 of 2005 and the said writ petition was allowed and it was held therein that the Corporation of Chennai has to refund the property tax collected from the Principal Accountant General.

13.In the light of the constitutional provision and thereby a clear exemption being granted, the levy or collection of property tax by the respondent Corporation on the buildings owned by the Union of India is unauthorised and illegal. Therefore, if any such tax have been collected, the same requires to be refunded. So far as the service charges are concerned, it seems that the Union of India had already agreed before the Hon'ble Supreme Court as recorded in the judgment in the case of Rajkot Municipal Corporation (Supra). Thus, it goes without saying that the Union of India will be bound by the said undertaking.

14.During the course of the argument, a question was posed by this Court to the learned counsel for the petitioner as to how these service charges have been quantified as the petitioner has stated in the affidavit that they have been paying service charges. The learned counsel replied by stating that there is no dispute to the said fact and the petitioner themselves have stated so in their letter dated 28.01.2009 stating that they are paying service charges to the Corporation of Chennai, half yearly, based on 33 1/3% of the property tax. Therefore, this submission is taken on record to state that there is no default on the part of the petitioner in remitting the service charges.

15.In the light of the above stated legal position, the writ petition is disposed of by holding that the respondent Corporation are not entitled to levy and collect property tax for the buildings owned by the Union of India and if any property tax had already been collected, the same shall be refunded within a reasonable time. However, in terms of the agreement arrived at, as recorded by the Hon'ble Supreme Court in Rajkot Municipal Corporation (Supra), the petitioner is bound to remit the service charges to the respondent Corporation. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

1.The Commissioner
Corporation of Chennai
Ribbon Buildings
Chennai - 600 003.

2.The Commissioner of Income Tax,
Nungambakkam High Road,
Chennai 34.

+1cc to Mr.T.Ravikumar, SCGC, S.R.No.46035

W.P.No.6164 of 2009
and
M.P.No.1 of 2009

MSM(CO)
CA(02/09/2016)