

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

C.W.P. No. 5215 of 2001 (O&M)

Date of decision: 13.7.2016

General Manager Telecom, District Pathankot .. Petitioner

vs

State of Punjab and others .. Respondents

**Coram: Hon'ble Mr. Justice Rajesh Bindal
Hon'ble Mr. Justice Harinder Singh Sidhu**

Present: Mr. Anil Rathee, Advocate, for the petitioner.

Ms. Sudeepti Sharma, Deputy Advocate General, Punjab.

Mr. H. S. Sethi, Advocate, for respondent nos. 2 to 4 and 6 to 8
in CWP No. 9786/2001.

Rajesh Bindal, J.

This order will dispose of four writ petitions bearing CWP Nos. 5215, 9786, 11583 and 12099 of 2001, as question involved in all the petitions is regarding demand of octroi on import of material in local areas by the Department of Telecommunication, Government of India.

The facts are being noticed from CWP No. 5215 of 2001.

The issue regarding charging of octroi from the petitioner was raised before the Deputy Commissioner, who vide order dated 10.3.2000 directed that no octroi be charged and material be released without payment thereof. He further left the issue regarding charging of octroi by the Municipal Committee open in case at any later stage it could prove that the octroi was payable before 1.4.1937. The Contractor, who had been awarded

the contract to collect octroi, filed revision against the order passed by the Deputy Commissioner before the Principal Secretary of the department concerned, who vide order dated 4.10.2000, accepted the same and set aside the order passed by the Deputy Commissioner, opining that the octroi was chargeable.

The aforesaid order has been impugned by the petitioner before this Court. Referring to Article 285 of the Constitution of India, learned counsel for the petitioner submitted that the properties of the Union of India are exempted from all taxes imposed by the State or by any authority within the State. Octroi being a tax imposed by a local authority, hence, the petitioner would be exempted from payment thereof. In support of the plea, reliance was placed upon judgment of Hon'ble the Supreme Court in Municipal Corporation, Amritsar vs The Senior Superintendent of Post Offices, Amritsar Division and another, (2004) 3 SCC 92.

On the other hand, learned counsel for the respondents submitted that the Article 285(2) of the Constitution of India further provides that if any tax was being levied prior to the commencement of the Constitution, the same shall be continued to be levied till such time any law is framed by the Parliament. As the octroi was leviable before 1.4.1937, hence, there is nothing wrong in raising demand against the petitioner.

Heard learned counsel for the parties and perused the paper book.

Article 285 of the Constitution of India is extracted below:-

“285. Exemption of Property of the Union from State Taxation. (1) 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.

(2) Nothing in clause (1) shall, until Parliament by law otherwise provides, prevent any authority within a State from levying any tax on any property of the Union to which such property was immediately before the commencement of this Constitution liable or treated as liable, so long as that tax continues to be levied in that State.

The issue was considered by Hon'ble the Supreme Court in Municipal Corporation, Amritsar's (supra), in which it was opined that it was not within the competence of the Corporation to impose tax on the property of the Union of India, the same being in violation of Article 285 of the Constitution of India. Relevant paras thereof are extracted below:-

“8. The question, whether the demand so made was by way of 'service charge' or 'tax', need not detain us any longer. The demand so made was with regard to the services rendered to the respondents' department, like water supply, street lighting, drainage and approach roads to the land and buildings. In the counter, the respondents averred that they are paying for the services rendered by the appellant-Corporation by way of water & sewerage charges and power charges separately. It is also categorically averred that no other specific services are being provided to the respondents for which the tax in the shape of service charges can be levied and realized from the respondents. There is no provision in the Municipal Corporation Act for levying service charges. The only provision is by way of tax. Undisputedly, the appellant-Corporation is collecting the tax from general public for water supply, street lighting and approach roads etc. Thus, the "tax" was sought to be imposed in the garb of "service charges". The interplay of the constitutional and legal provisions being well cut and well defined, it was clearly

not within the competence of the Corporation to impose tax on the property of the Union of India, the same being violative of Article 285 (1) of the Constitution.

9. Furthermore, the issues raised herein are no more res-integra. This Court, in Union of India v. Purna Municipal Corporation & Ors. (1992) 1 SCC 100 considered an identical question and held that Section 135 of the Railways Act, being an 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. This is what this Court has said in para 5 of that judgment:

"The aforesaid provisions, existing as it is, in terms permits taxation of railways by the local authority in the manner given therein; the Central Government being the controlling and the regulating authority permitting liability at a given point of time, its extent and manner. The Indian Railways Act being a central enactment has no role to play in sub-article (2) of Article 285, for that is a sphere in which the State legislation operates. The reasoning of the High Court to oust the applicability of Section 135 of the Indian Railways Act on the test of sub-article (2) of Article 285 was totally misplaced, as also in not venturing to create room for it in sub-article (1) of Article 285. The interplay of the constitutional and legal provisions being well cut and well defined requires no marked elaboration to stress the point. Accordingly, we allow this appeal, set aside the judgment and order of the High Court and issue the writ and direction asked for in favour of the Union of India restraining the respondent council from raising demands on the railway in regard to service charges."

10. The same view was reiterated in Union of India & Anr. v. Ranchi Municipal Corporation & Ors. (1996) 7 SCC 542.

The contention raised by learned counsel for the respondents that the tax was leviable before 1.4.1937, hence, it is saved by Article 285 (2) of the Constitution of India, is merely to be noticed and rejected for the reason that it is merely an averment. No document has been produced before the Court even upto the stage of arguments to show that any such tax was leviable before the commencement of the Constitution. Hence, the contention being misconceived, is rejected.

For the reasons mentioned above, the writ petitions are allowed. It is declared that the local authorities have no jurisdiction to levy octroi on the material imported by the petitioner within the local area. The amount of octroi already charged may be refunded to the petitioner within a period of three months from the date of receipt of certified copy of the order. On failure, the authorities shall be liable to pay interest @ 6% per annum from the date of the order till its payment.

(Rajesh Bindal)
Judge

13.7.2016
vs

(Harinder Singh Sidhu)
Judge