

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No. 4215 of 2016 (O&M)
Date of decision: August 23, 2016

M/s Laqshya Media Pvt. Ltd.

.. Petitioner

v.

State of Punjab and others

.. Respondents

CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL
HON'BLE MR. JUSTICE HARINDER SINGH SIDHU

Present: Mr. Piyush Kant Jain, Advocate for the petitioner.
Mr. Jagmohan Bansal, Addl. Advocate General, Punjab.
Mr. Ashok Kumar Bazaz, Advocate for respondents No. 2 to 4.

...

Rajesh Bindal J.

1. The petitioner has filed the present petition seeking quashing of the order dated 22.1.2016 (Annexure P-16), passed by the Commissioner, Municipal Corporation, Ludhiana, demanding advertisement tax amounting to ₹ 41,77,500/-.
2. Learned counsel for the petitioner submitted that the petitioner entered into a concession agreement with M/s Ludhiana City Bus Services Ltd. (for short, 'the Company') on 26.5.2008. In terms of the agreement, the petitioner was granted concession to design, build and maintain bus shelters

at different places, which were to be transferred to the Company free of charge after expiry of the concession period. The petitioner was given right to display advertisements.

3. It was argued that the petitioner was earlier issued letters dated 5.1.2015, 22.1.2015, 8.4.2015 and 17.8.2015 raising illegal demand of advertisement tax. Those were impugned by filing CWP No. 20050 of 2015. The writ petition was disposed of on 21.9.2015 with a direction to the authorities to decide the legal notice dated 19.8.2015 got served by the petitioner by passing a speaking order. The petitioner was further directed to deposit ₹ 25,00,000/-. The needful was done. The legal notice was disposed of by respondent No. 3 by passing order dated 22.1.2016, which has been impugned in the present petition.

4. Learned counsel for the petitioner, while challenging the aforesaid order, submitted that Section 90 of the Punjab Municipal Corporation Act, 1976 (for short, 'the Act') provides for taxes, which can be imposed by the Corporation. It includes tax on advertisement. Sub-section (3) thereof provides that taxes as specified in sub-sections (1) and (2) shall be levied at such rates as may, from time to time, be specified by the Government by notification and shall be assessed and collected in accordance with the provisions of the Act and the bye-laws made thereunder. Stress was laid regarding assessment and collection of the tax in accordance with the provisions of the Act and the bye-laws made thereunder claiming that there is no procedure provided for assessment and collection and no bye-laws have been framed. Sub-section (4) of Section 90 of the Act provides that even the Government may, by special or general order, direct a Corporation to impose any tax, as provided for in sub-section

(1) thereof, if not already imposed.

5. Section 122 of the Act was referred to, which specifically deals with tax on advertisements. It provides that every person liable to pay tax under specified conditions shall pay the same calculated at such rate, as may be specified by the Government. Sub-section (2) thereof provides that tax leviable under this sub-section shall be payable in advance in such number of instalments and in such manner, as may be determined by the bye-laws made in this behalf. "Bye-law" has been defined under Section 2(4) of the Act to mean a bye-law framed under the Act by notification in the official gazette. Section 399(1)(A)(7) of the Act was referred to, which provides for framing of bye-laws with reference to submission of returns by the person liable to pay any tax under the Act. Section 399(1)(A)(8) of the Act provides for framing of bye-laws for any other matter relating to levy, assessment, collection, refund or remission of taxes under the Act.

6. As regards rate of tax, learned counsel for the petitioner referred to the notification dated 17.5.2005, issued by the Government of Punjab, specifying rates of tax on advertisements, which was revised vide notification dated 15.12.2014.

7. It was further argued that despite all these enabling provisions specifically requiring framing of bye-laws for levy, filing of returns, assessment, collection, refund etc. with reference to the taxes leviable under the Act, no bye-laws have been framed, in the absence of which the tax on advertisement could not be demanded, as the levy would take the character of being confiscatory.

8. The Punjab Municipal Outdoor Advertisement Policy, 2012 was referred to by learned counsel for the petitioner to submit that the same

provides only the provisions regarding advertisement and the safeguards to be taken for the purpose. It also provides for mode of allotment thereof.

9. In the aforesaid factual matrix, the contention is that the demand and recovery of tax under any statute will arise only after the procedure for filing of return, assessment, appeals, penalties, interest and consequence of default are provided. In the absence of these machinery provisions, direct demand raised by respondent No. 3 is violative of Article 265 of the Constitution of India. Without affording proper opportunity of hearing and framing any assessment of tax, directly demand notice was issued. It was further argued that even the order now passed is on the legal notice got served by the petitioner, on a direction issued by this court earlier. Otherwise, the provisions of the Act do not provide for passing of any order. The order refers to size of advertisement as per agreement without even ensuring actual size and number of advertisements and as to whether those advertisements were in place or not. Merely because a right had been given in the concession agreement, the same would not mean that all the advertisements had been put in place. The tax could possibly be levied only if the advertisement was there and not merely on the basis that concession agreement enabled the petitioner to put those advertisements. Further, relying upon the judgments of Hon'ble the Supreme Court in Kunnathat Thathunni Moopil Nair etc. v. State of Kerala and another, AIR 1961 SC 552; State of A. P. v. Nalla Raja Reddy and others, AIR 1967 SC 1458 and Commissioner, Central Excise and Customs, Kerala v. M/s Larsen & Toubro Ltd., AIR 2015 SC 3600, it was submitted that the demand being confiscatory in the absence of machinery provisions, the same deserves to be set aside.

10. Still further, it was submitted that reference to the provisions of Sections 146 and 147 of the Act by the respondents in the reply is totally misplaced, as there is no assessment of tax, for which the provisions will apply. The provisions of Municipal Account Code, 1930 are also of no relevance as it talks of maintenance of record and does not prescribe any procedure for assessment.

11. Raising the issue of delay, it was submitted that notice for the first time for demanding tax for the year 2008 onwards was issued in the year 2015, hence, the same was time-barred, as even assessment could be framed within a reasonable time. In support of this argument, reliance was placed upon State of Punjab and others v. Bhatinda District Coop. Milk P. Union Ltd., (2007) 11 SCC 363.

12. Learned counsel for respondents No. 2 to 4, while referring to the provisions of Section 122 of the Act, submitted that the provisions are quite explicit. For taxes, the person liable, taxable event and the rate of tax is to be defined. All three para-meters are fulfilled in the present case. Section 122 of the Act defines the person and the eventuality in which the tax is leviable. The rate of tax is to be specified by the Government. The needful was done by issuing notifications dated 17.5.2005 and 15.12.2014. Sub-section (2) of Section 122 of the Act provides that advertisement tax is payable in advance. Even if the number of instalments have not been specified by framing bye-laws, that will not make the section unworkable and levy *non-est*. Section 123 of the Act prohibits advertisement without written permission of the Commissioner of the Municipal Corporation. It further provides that such a permission shall not be granted in case the advertisement contravenes any bye-law made under the Act or the tax, if

any, due in respect of the advertisement has not been paid. It further provides that permission is to be granted only for the period for which tax has been paid. Section 126 of the Act provides for powers of the Commissioner in case any advertisement is displayed in violation of the provisions of Section 123 of the Act. Such an advertisement can be directed to be removed immediately. The provisions of the Act, in fact, are self assessment provisions. It is only on failure of a person liable to pay tax that a bill is sent in terms of the provisions of Section 135 of the Act. It provides the particulars of the tax and the period for which the same is demanded. Sub-section (4) of Section 135 of the Act provides that the tax, if not paid, after it becomes due, the Commissioner may issue a notice of demand. Section 138 of the Act provides for procedure for recovery of tax, if not paid. Section 146 of the Act provides for appeal against any levy or assessment of tax, whereas Section 147 of the Act provides for pre-condition for entertainment of appeal. It was submitted that complete machinery has been provided under the Act for levy, the person liable to pay tax, incidence of tax and rate of tax. Further procedure for assessment, demand notice, recovery and penalty have also been provided, hence, the contention that there are no machinery provisions is totally misconceived. In support of the plea, reliance was placed upon the judgment of this court in Brij Mohan Gupta v. State of Haryana and another, 2015(4) RCR (Civil) 318.

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

14. The relevant provisions of the Act are reproduced hereunder:

“2. Definitions- In this Act, unless the context otherwise requires,-

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(4) "bye-law" means a bye-law made under this Act, by notification in the Official Gazette;

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90. Taxes 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:-

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(d) a tax on advertisements other than advertisements published in newspapers;

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(3) The taxes specified in sub-section (1) and sub-section (2) shall be levied at such rates as may, from time to time, be specified by the Government by notification and shall be assessed and collected in accordance with the provisions of this Act and the bye-laws made thereunder.

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122. Tax on advertisement.- (1) Every person, who erects, exhibits, fixes or retains upon or over any land, building, wall, boarding, frame, post or structure or upon or in any vehicle any advertisement or, who displays any advertisement to public view in any manner whatsoever, visible from a public street or public place (including any advertisement exhibited by means

of cinematograph), shall pay for every advertisement which is so erected, exhibited, fixed or retained or so displayed to public view, a tax calculated at such rates, as may from time to time, be specified by the Government:

Provided that no tax shall be levied under this section on any advertisement which-

(a) relates to public meeting, or to an election to Parliament or Legislative Assembly or the Corporation or to candidature in respect of such election; or

(b) is exhibited within the window of any building if the advertisement relates to the trade, profession or business carried on in that building; or

(c) relates to the trade, profession or business carried on within the land or building upon or over which such advertisement is exhibited or to any sale or letting of such land or building or any effects therein or to any sale, entertainment or meeting to be held on or upon or in the same; or

(d) relates to the name of the land or building upon or over which the advertisement is exhibited, or to the name of the owner or occupier of such land or building; or

(e) relates to the business of a railway administration and is exhibited within any railway station or upon any wall or other property of a railway administration; or

(f) relates to any activity of the Government or Union of India or the Corporation.

(2) The tax on any advertisement leviable under this section

shall be payable in advance in such number of instalments and in such manner as may be determined by bye-laws made in this behalf.

123. Prohibition of advertisements without written permission of Commissioner- (1) No advertisement shall be erected, exhibited, fixed or retained upon or over any land, building, wall, boarding, frame, post or structure or upon in any vehicle or shall be displayed in any manner whatsoever in any place within the City without the written permission of the Commissioner granted in accordance with bye-laws made under this Act.

(2) The Commissioner shall not grant such permission, if-

(a) the advertisement contravenes any bye-law made under this Act; or

(b) the tax, if any, due in respect of the advertisement has not been paid.

(3) Subject to the provisions of sub-section (2), in the case of an advertisement liable to the advertisement tax, the Commissioner shall grant permission for the period to which the payment of the tax relates and no fee shall be charged in respect of such permission.

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126. Power of Commissioner in case of contravention.- If any advertisement is erected, exhibited or fixed, retained in contravention of the provisions of section 123, the Commissioner may require the owner or occupier of the land,

building, wall, boarding, frame, post or structure or vehicle upon, or over in which the same is erected, exhibited, fixed or retained, to take down or remove such advertisement or may enter any land, building, property or vehicle and have the advertisement dismantled, taken down or removed or spoiled, defaced or screened.

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135. Presentation of bill.- (1) When any tax has become due, the Commissioner shall cause to be presented to the person liable for the payment thereof, a bill for the amount due:

Provided that no such bill shall be necessary in the case of -

- (a) a tax on vehicles and animals;
- (b) a theatre-tax; and
- (c) a tax on advertisements.

(2) Every such bill which shall be in prescribed form shall for the purposes of this Act, be considered a notice of demand shall specify the particulars of the tax and the period for which the charge is made.

(3) If the amount specified in the bill is paid within a period of fifteen days from the presentation thereof a rebate of five per cent shall be allowed in the amount of tax.

(4) If the tax on vehicles and animals or the theatre tax or the tax on advertisements is not paid after it has become due, the Commissioner may cause to be served upon the person liable for the payment of the same a notice of demand in the prescribed form.

(5) For every notice of demand served under sub-section (4) a fee of such amount not exceeding five rupees as may be determined by bye-laws made in this behalf shall be payable by the person on whom the notice is served and shall be included in the costs of recovery.

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138. Manner of recovering tax.-- Any sum due on account of tax payable under this Act may be recovered, together with costs of recovery, through the following processes by the Competent Authority,-

- (a) by service of writ of demand on the defaulter;
- (b) by distraint and sale of a defaulter's movable property;
- (c) by the attachment and sale of defaulter's immovable property;
- (d) in the case of octroi and toll, by the seizure and sale of goods and vehicles; and
- (e) in the case of taxes on land and buildings, by the attachment of rent due in respect of the property or any other property owned by the defaulter.

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146. Appeal against assessment, etc.- (1) An appeal against the levy or assessment of any tax, other than tax on building and land under this Act shall lie to the Divisional Commissioner who shall decide the same after giving to the appellant an opportunity of being heard either within the local area of the City or his head-quarters.

(2) If, before or on the hearing of an appeal under this section, any question of law or usage having the force of law or construction of a document arises, the Divisional Commissioner on his own motion may, or on the application of any party to the appeal, shall, draw up a statement of the facts of the case, and the question so arising, and refer the statement with his opinion on the question for the decision of the High Court.

(3) On a reference being made under sub-section (2), the subsequent proceedings in the case shall be, as nearly as may be, in conformity with the rules relating to references to the High Court contained in Order XLVI of the First Schedule to the Code of Civil Procedure, 1908.

(4) In every appeal, the costs shall be in the discretion of the appellate authority.

(5) Costs awarded under this section to the Corporation shall be recoverable by the Corporation as an arrear of tax due from the appellant.

(6) If the Corporation fails to pay any costs awarded to an appellant within ten days after the date of the order for payment thereof, the appellate authority may order the Commissioner to pay the amount to the appellant.

147. Conditions of right to appeal.--No appeal shall be entertained under Section 146, unless-

(a) the appeal is, in the case of tax on lands and buildings, brought within thirty days next after the date of authentication

of the assessment list under section 101 (exclusive of the time requisite for obtaining a copy of the relevant entries therein), or as the case may be, within thirty days of the date on which an amendment is finally made under Section 103, and, in the case of any other tax, within thirty days next after the date of the receipt of the notice of assessment or of alteration of assessment or, if no notice has been given, within thirty days after the date of service of the first notice of demand in respect thereof:

Provided that an appeal may be admitted after the expiration of the period prescribed therefor by this section if the appellant satisfies the appellate authority that he had sufficient cause for not preferring the appeal within that period.

(b) the amount, if any, in dispute in the appeal has been deposited by the appellant in the office of the Corporation.

399. Powers to make bye-laws.- (1) Subject to the provisions of this Act the Corporation may in addition to any bye-laws which it is empowered to make by any other provision of this Act, make bye-laws to provide for all or any of the following matters, namely,--

A. Bye-laws relating to taxation;

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(7) the submission of returns by the persons liable to pay any tax under this Act;

(8) any other matter relating to the levy, assessment, collection, refund or remission of taxes under this Act:

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15. As per the scheme of the Act, especially regarding taxation, Section 90(1)(d) of the Act enables the Corporation to levy tax on advertisements other than advertisements published in newspapers. Sub-section (3) thereof provides that taxes as specified shall be levied at such rates as may be specified by the Government from time to time by notification issued in this behalf. It shall be assessed and collected in accordance with the provisions of the Act and the bye-laws framed thereunder.

16. Section 122 of the Act defines the person liable to pay tax and the taxable event. It states that every person, who erects, exhibits, fixes or retains upon or over any land, building, wall, boarding, frame, post or structure or upon or in any vehicle any advertisement or, who displays any advertisement to public view in any manner whatsoever, visible from a public street or public place, shall pay for every advertisement which is so erected, exhibited, fixed or retained or so displayed to public view, a tax calculated at such rates, as may from time to time, be specified by the Government. Proviso thereto provides exception where no tax is levied under this section. Sub-section (2) thereof provides that tax on advertisement is payable in advance in such number of instalments and in such manner, as may be determined by the bye-laws, to be made in this behalf. It is not in dispute that no bye-laws have been framed under the provisions as none were referred to at the time of hearing.

17. Section 123 of the Act prohibits erection, exhibition etc. of any advertisement without written permission of the Commissioner, which is not to be granted, *inter-alia*, in case the tax, if any, due in respect of the

advertisement has not been paid. The rates of advertisement tax, as envisaged in Section 122 of the Act have been specified by the Government vide notification dated 17.5.2005 (Annexure P-8). It mentions the size of the advertisement and the rate of tax. Sub-section (3) of Section 123 of the Act provides that in case of an advertisement liable to tax, the Commissioner shall grant permission for the period to which the payment of the tax relates.

18. Section 126 of the Act provides that in case any advertisement is exhibited or retained in contravention of the provisions of Section 123 of the Act, the Commissioner may require the owner or occupier to remove the same. On failure, he can get it dismantled or removed.

19. Section 135 of the Act provides that in case tax on advertisement has become due, the Commissioner may serve notice on the person liable to pay the same in prescribed form. Nothing from the Act or the Rules has been referred to show that any form has been prescribed for issuing such notice.

20. Section 138 of the Act provides for the manner of recovery of taxes.

21. Section 146 of the Act provides for appeal against the levy or assessment of any tax other than the tax on building and land, whereas Section 147 of the Act provides for condition for entertainment of appeal.

22. Even though Section 399 of the Act enables the Corporation to frame bye-laws, which includes the bye-laws relating to taxation regarding submission of returns, levy, assessment, collection, refund or remission, no Rules were referred at the time of hearing, which may have been framed for the purpose of levy, assessment and collection of tax leviable.

23. The concession agreement was executed between the Company and the petitioner for design, finance, construction, maintenance and transfer of bus shelters on DBMT basis for City Bus Service. The Company has been incorporated through equity contribution by Municipal Corporation and Punjab Infrastructure Development Board. The petitioner has been awarded the contract to design, finance, build and maintain bus shelters during the concession period and at the end of the concession period, transfer at no cost to the Company the bus shelters along with all facilities and amenities attached thereto. At that stage, the agreement would stand terminated. The petitioner, namely, the concessionaire has been given exclusive advertisement rights on the bus shelters and right to market advertising space, collect and appropriate revenue in this behalf. The agreement also defines the maximum limit and the area of advertisement on each bus shelter. It is the liability of the concessionaire to pay all taxes.

24. As per the scheme of the Act, certain taxes are to be paid in advance, may be in instalments to be specified in terms of the bye-laws to be framed in this behalf, whereas certain taxes are to be paid after assessment. The taxes, which are payable in advance, are taxes on vehicles and animals and taxes on advertisements. It is only after payment of these taxes that necessary permission is granted. That is the reason that the Act does not even envisage assessment of these types of taxes. The only stringent provision provided is that in case any one erects or exhibits any advertisement in contravention to the provisions of Section 123 of the Act, which prohibits advertisements without permission of the Commissioner, which can be granted only on payment of tax, is that the person concerned can be directed to remove the same or it can be got removed by the

Commissioner. No provision of the Act or bye-laws have been referred to, which provide for assessment and collection of tax that too after affording opportunity of hearing. Section 135(4) of the Act provides for issuance of demand notice directly without there being any provision for show cause notice and hearing before passing order of assessment and consequently demand notice. Even the number of instalments for payment of tax in advance, as are to be specified by framing bye-laws in terms of Section 122(2) of the Act, have also not been referred to. Appeal is also maintainable against levy or assessment of tax. One of the stringent condition laid down in Section 147 of the Act is that amount in dispute has to be deposited before the appeal can be entertained. In the absence of any assessment or levy, no appeal can possibly be maintained.

25. The levy and recovery of tax in the absence of machinery provisions in a taxing statute has been considered by Hon'ble the Supreme Court from time to time. The issue was considered by Hon'ble the Supreme Court in Kunnathat Thathunni Moopil Nair's case (supra), wherein it was observed as under:

“9. ... Ordinarily, a taxing statute lays down a regular machinery for making assessment of the tax proposed to be imposed by the statute. It lays down detailed procedure as to notice to the proposed assessee to make a return in respect of property proposed to be taxed, prescribes the authority and the procedure for hearing any objections to the liability for taxation or as to the extent of the tax proposed to be levied, and finally, as to the right to challenge the regularity of assessment made, by recourse to proceedings in a higher

civil court. The Act merely declares the competence of the Government to make a provisional assessment, and by virtue of Section 3 of the Madras Revenue Recovery Act, 1864, the landholders may be liable to pay the tax. The Act being silent as to the machinery and procedure to be followed in making the assessment leaves it to the Executive to evolve the requisite machinery and procedure. The whole thing, from beginning to end, is treated as of a purely administrative character, completely ignoring the legal position that the assessment of a tax on person or property is at least of a quasi-judicial character.....”

(Emphasis supplied)

26. In Jagannath Baksh Singh v. State of U.P., AIR 1962 SC 1563, Hon'ble the Supreme Court was examining the constitutional validity of the U.P. Large Land Holdings Tax Act (31 of 1957). Dealing with the argument that the Act did not make a specific provision about the machinery for assessment or recovery of tax, the Court observed as under:

“17. ... if a taxing statute makes no specific provision about the machinery to recover tax and the procedure to make the assessment of the tax and leaves it entirely to the executive to devise such machinery as it thinks fit and to prescribe such procedure as appears to it to be fair, an occasion may arise for the courts to consider whether the failure to provide for a machinery and to prescribe a procedure does not tend to make the imposition of the tax an unreasonable restriction within the meaning of Article 19(5). An imposition of tax

which in the absence of a prescribed machinery and the prescribed procedure would partake of the character of a purely administrative affair can, in a proper sense, be challenged as contravening Article 19(1)(f)."

(Emphasis supplied)

27. In Rai Ramkrishna v. State of Bihar, AIR 1963 SC 1667, Hon'ble the Supreme Court was examining the constitutional validity of the Bihar Taxation on Passengers and Goods (Carried by Public Service Motor Vehicles) Act, 1961. Reiterating the view taken in Kunnathat Thathunni Moopil Nair's case (supra), Hon'ble the Supreme Court held that a statute is not beyond the pale of limitations prescribed by Articles 14 and 19 of the Constitution and that the test of reasonableness prescribed by Article 304(b) is justiciable. However, in cases where the statute was completely discriminatory or provides no procedural machinery for assessment and levy of tax or where it was confiscatory, the Court would be justified in striking it down as unconstitutional. In such cases the character of the material provisions of the impugned statute may be such as may justify the Court taking the view that in substance the taxing statute is a cloak adopted by the legislature for achieving its confiscatory purpose.

28. In State of A.P. v. Nalla Raja Reddy, AIR 1967 SC 1458, Hon'ble the Supreme Court was examining the constitutional validity of the Andhra Pradesh Land Revenue (Additional Assessment) and Cess Revision Act, 1962 (22 of 1962) as amended by the Amendment Act (23 of 1962). Noticing the absence of machinery provisions in the impugned enactments, it was observed as under:

“22. ... if Section 6 is put aside, there is absolutely no provision in the Act prescribing the mode of assessment. Sections 3 and 4 are charging sections and they say in effect that a person will have to pay an additional assessment per acre in respect of both dry and wet lands. They do not lay down how the assessment should be levied. No notice has been prescribed, no opportunity is given to the person to question the assessment on his land. There is no procedure for him to agitate the correctness of the classification made by placing his land in a particular class with reference to ayacut, acreage or even taram. The Act does not even nominate the appropriate officer to make the assessment to deal with questions arising in respect of assessments and does not prescribe the procedure for assessment. The whole thing is left in a nebulous form. Briefly stated under the Act there is no procedure for assessment and however grievous the blunder made there is no way for the aggrieved party to get it corrected. This is a typical case where a taxing statute does not provide any machinery of assessment.”

(Emphasis supplied)

29. In Heinz India (P) Ltd. v. State of U. P., (2012) 5 SCC 443, Hon'ble the Supreme Court observed as under:

“This Court has in a long line of decisions rendered from time to time, emphasised the importance of machinery provisions for assessment of taxes and fees recoverable

under a taxing statute. In one of the earlier decisions on the subject a Constitution Bench of this Court in *K.T. Moopil Nair v. State of Kerala* [AIR 1961 SC 552] examined the constitutional validity of the Travancore-Cochin Land Tax Act (15 of 1955). While recognising what is now well-settled principle of law that a taxing statute is not wholly immune from attack on the ground that it infringes the equality clause in Article 14, this Court found that the enactment in question was violative of Article 14 of the Constitution for inequality was writ large on the Act and inherent in the very provisions under the taxing section thereof. Having said so, this Court also noticed that the Act was silent as to the machinery and the procedure to be followed in making the assessment. It was left to the executive to evolve the requisite machinery and procedure thereby making the whole thing, from beginning to end, purely administrative in character completely ignoring the legal position that the assessment of a tax on person or property is a quasi-judicial exercise.”

30. All the aforesaid judgments were referred to with approval by Hon'ble the Supreme Court in M/s Larsen & Toubro Ltd.'s case (supra), where charge of service tax on the indivisible works contracts prior to 1.6.2007 was set aside as the Finance Act, 1994 did not lay down charge or machinery provisions to levy and assess service tax on these transactions.

31. In the case in hand, the Company which entered into the concession agreement with the petitioner is a company in which the Corporation itself holds majority shares. It had granted permission for

display of advertisements. Initially, the letter was sent to the petitioner requiring it to pay the advertisement tax from the date of agreement within 7 working days and also furnish the details of advertisements displayed and the location thereof. The aforesaid letter is stated to be 5.1.2015. As the document has been placed on record, it was not signed by any one. It was replied to by the petitioner vide letter dated 13.1.2015, to which the Assistant Commissioner(s), Municipal Corporation, Ludhiana, vide letter dated 22.1.2015 responded by stating that it was the duty of the petitioner to pay advertisement tax as per the agreement and in case of failure, proceedings for removal of the advertisements and also for terminating the contract shall be initiated. It was followed by another letter dated 8.4.2015 from the Assistant Commissioner(s), Municipal Corporation requiring the petitioner to deposit the amount of tax mentioned in the notice. On failure, proceedings for removal of advertisement and for terminating the contract were to be initiated. There is another notice dated 17.8.2015 issued under the signatures of Superintendent (H.Q.), Municipal Corporation, Ludhiana in the same line.

32. The petitioner got a legal notice dated 19.8.2015 issued to the Municipal Corporation and the Company claiming that demand of advertisement tax was illegal. Thereafter, the petitioner filed CWP No.20050 of 2015 in this court, which was disposed of on 21.9.2015 without any expression of opinion with a direction to respondent No. 2 therein to take a final decision on the legal notice got served by the petitioner. The petitioner was further directed to deposit a sum of ₹ 25,00,000/-. The needful was done by the petitioner and the Municipal Corporation decided the legal notice got served by the petitioner vide

impugned order dated 22.1.2016 holding the advertisement tax to be payable by the petitioner.

33. In the case in hand, the Municipal Corporation issued notice for deposit of tax on advertisement. Such a notice cannot be said to be authorised, if read in consonance with the provisions of Sections, 123, 126 and 135 of the Act. As has already been noticed, in case there is violation by any person in erecting or displaying any advertisement, the only power conferred on the Commissioner is either to get it removed or remove the same. Even though Section 135 of the Act envisages issuance of a demand notice for recovery of the advertisement tax due on a prescribed form, however, no form, as such, was referred to. There is no procedure prescribed in the Act or the Rules regarding filing of returns, assessment of tax and consequently recovery thereof. The order, which has been impugned in the present petition, has not been passed in exercise of powers conferred under any of the provisions of the Act, Rules or by-laws framed thereunder, but it was in pursuance to the directions issued by this court for disposal of the legal notice got issued by the petitioner.

34. For the reasons mentioned above, in our opinion, the manner in which the demand of tax on advertisement has been raised from the petitioner cannot be legally sustained, hence, the same is set aside. The impugned order dated 22.1.2016 is quashed. However, the same shall not debar the competent authority, if any, to raise demand against the petitioner if permissible in law by following the prescribed procedure.

35. The petition stands disposed of accordingly.

(Rajesh Bindal)
Judge

(Harinder Singh Sidhu)
Judge

August 23, 2016
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Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No