IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Civil Writ Petition No.20983 of 2011
Date of Decision: March 06, 2017

Rohan and Rajdeep Infrastructure Privated Limited, Pune

...Petitioner

Versus

Punjab Infrastructure Regulatory Authority, Punjab, Chandigarh & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

Present: Mr.Kanwaljit Singh, Senior Advocate with
Mr.Armaan Midha, Advocate,
for the petitioner.

Mr.Yatinder Sharma, Addl.A.G.Punjab,
for the State.

Mr.Sandeep Khunger, Advocate,
for respondent No.3.

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AMIT RAWAL, J. (Oral)

The grievance of the petitioner company in the present writ petition is no longer in dispute in view of the decision dated 8.11.2016 rendered by the Hon'ble Supreme Court in **Civil Appeal No.4944-4945 of 2016 (M/s Welspun Projects Ltd. Versus Director, State Transport, Punjab & another),** as the prime dispute between the petitioner and the Municipal Corporation, Amritsar is as to whether in pursuance to the concessionary agreement arrived at on Built Operate and Transfer basis, the petitioner company would be liable to pay the house tax or in the circumstances of the concessionary agreement, the lessee would be liable to pay the tax or the department of transport. The Hon'ble Supreme Court had an occasion to deal with the terms and conditions of the concessionary agreement/lease agreement, much less the provisions of the Municipal Corporation Act, particularly Section 157. The terms and conditions of the concessionary agreement are parameteria to the one in the present case as the case in the judgment cited supra is with regard to Bus Stands of Jalandhar and Ludhiana. The tax already paid by the petitioner company has been ordered to be refunded by the Municipal Corporation along with interest of 10%.

Mr.Sandeep Khunger, learned counsel representing respondent No.3-Municipal Corporation, Amritsar has drawn the attention of this Court to the various letters, i.e., Annexures R3/1 onwards to contend that the petitioner had also let out certain shops to various shopkeepers and collected the tax for onward payment or transmission to the Municipal Corporation and, therefore, it will be undue act and, thus, urges this Court for remanding the matter back to the Punjab Infrastructure Regulatory Authority, the order of which dated 4.10.2011 is under challenge.

I have heard the learned counsel for the parties and appraised the paper book.

The terms and conditions of the concessionary agreement vis-a-vis the basis in the Civil Appeal aforementioned and as well as the present writ petition are the same. The principles of the Municipal Corporation also are the same. For the sake of brevity, the operative part of the findings rendered by the Hon'ble Supreme Court in the case cited supra read thus:-

> *"7) Undoubtedly, the inter-se relationship between the parties and all the relative rights and obligations are entirely governed by the Concession Agreements and the Lease Deeds.*

It is thus to be seen first of all that if these Agreements can provide any conclusive direction to settle the matter in hand.

8) For appreciating the relevant provisions of the Lease Deeds and Concession Agreements referred to above, it is to be mentioned here that house tax is always assessed and paid in accordance with the provisions of the Act. The definition of owner has been described in sub-Section 35 of Section 2 which reads as under:

> *"2(35) "Owner" includes a person who for the time being is receiving or is entitled to receive, the rent of any land or building whether on his own account or on account of himself and others or as an agent, trustee, guardian or receiver for any other person who should so receive the rent or be entitled to receive it if the land or building or part thereof were let to a tenant;"*

9) Section 97(2) of the Act (as it stood at the relevant time) provides with the incidence of tax on lands and buildings. It reads as under:-

> *"97(2) – Incidence of taxes on lands and buildings:-*
>
> *If any land has been let for a term exceeding one year to a tenant and such tenant has built upon the land, the taxes on land and buildings assessed in respect of that land and the building erected thereon shall be primarily leviable upon the said tenant, whether the land and building are in the occupation of such tenant or sub-tenant of such tenant."*

10) Clause 6 and Clause 13(e) of the first lease deed dated 16.08.2005 are reproduced below:-

> *"6. The Lessee shall pay unto the Lessor an annual rent of Re 1/- as lease rental, which shall be paid as an advance lease rental in single lump sum payment of Rs. 15/- (in consideration of a possible extension of the Concession Period) on or prior to the date upon which this deed is executed.*
>
> *13(e). That except the lease rental specified in Section 6 hereof, it shall not levy any fee, rental, tax or any other charge on the Lessee for the lease of the Demised Premises."*

11) Another lease deed was executed on 25.10.2005. Clause 6 and Clause 13(e) of the said lease deed are reproduced below:-

> *"6. The Lessee shall pay unto the Lessor an annual rent of Re 1/- as lease rental, which shall be paid as an advance lease rental in single lump sum payment of Rs. 15/- (in consideration of a possible extension of the Concession Period) on or prior to the date upon which this deed is executed.*
>
> *13(1)(e). That except the lease rental specified in Section 3 hereof, it shall not levy any fee, rental, tax or any other charge on the Lessee for the lease of the Demised Premises."*

12) From a perusal of the aforesaid clauses, it is clear that they are identical and no change has been made. The

Concession Agreement was executed on 22.06.2005. Clause 24.1(a) of the Agreement, which is relevant and heavily relied upon by the respondents, is reproduced below:-

> *"24.1 Local Taxation:-*
>
> *a. The concession period shall include all charges towards import license, toll, customs, duties, import duties, business taxes etc. that may be levied in accordance with the applicable laws as on the proposal acceptance date in India on the concessionaire's equipment, plant and Machinery and Materials (whether permanent, temporary or consumable) acquired for the purpose of this concession agreement and on the services to be performed under this concession agreement. Nothing in this concession agreement shall relieve the concessionaire from its responsibility to pay any tax that may be levied in India on profits made by it in respect of this concession agreement.*

13) It may be mentioned here that both the lease deeds were executed by the Director, State Transport, Punjab for and on behalf of the Governor of the State of Punjab. From a perusal of Clauses 6 and 13(e) of the lease deeds reproduced above, we are of the opinion that the appellant-Company was required to pay rent of Re. 1 only as lease rental and further the Government has specifically mentioned that except the lease rental, it shall not levy any fees, rent, tax or any other *charge on the lessee for the lease of the demised premises. We find that even though under the provisions of Section 2(35) read with 97(2) of the Act, normally the tenant who has been given land on lease for a term exceeding 1 (one) year is primarily liable to pay taxes on lands and buildings yet in view of the provisions of Section 157(1) of the Act, the Government is empowered to exempt in whole or in part from the payment of any such tax any person or class of persons or any property or description of property which in the present case has been done on behalf of the government when the lease deeds were executed.*

For ready reference, Section 157(1) of the Act is reproduced below:-

> *"157. Powers of Government in regard to taxes-(1) The Government may by order exempt in whole or in part from the payment of any such tax any person or class of persons or any property or description of property."*

14) A reading of Concession Agreement dated 22.06.2005, more so, Clause 24.1(a) which deals with the local taxation states that the concession period shall include all charges towards import license, toll, customs, duties, import duties etc. which is to be payable by the appellant-Company. In view of the specific exemption given under the lease deed regarding payment of any taxes on the demised premises, in our considered opinion, the appellant-Company is not at all required to pay any municipal taxes on the demised premises.

We may also mention here that the house tax was being paid by the transport department prior to the signing of the Concession Agreement and if it was intended that this burden should be passed on to them appellant-Company, a clear clause interpreting this point would have certainly been inserted in the Agreement itself. Not only this, the Department continued to pay the house tax for 3 to 4 years even after the date of the signing of the agreement.

15) In view of the forgoing discussion, we are of the considered opinion that the appellant-Company is not liable to pay any house tax under the Act and the demand and payment of house tax from the appellant-Company was without the authority of law and the appellant-Company is entitled to the refund of the amount of house tax paid by it alongwith rate of interest at the rate of 10% p.a. from the date of deposit."

Mr.Kanwaljit Singh, learned Senior Counsel assisted by Mr.Armaan Midha, Advocate, representing the petitioner company has fairly conceded before this Court that in case the petitioner has collected the tax from the shopkeepers, he will refund the same as and when the demand is raised on the same terms and conditions, i.e., it will bear the rate of interest @ 10%.

For the foregoing reasons, the impugned order is hereby set-aside. The writ petition is allowed and the Municipal Corporation, Amritsar is directed to refund the house tax paid by the petitioner along with interest at the rate of 10% and the petitioner, as and when the demand is raised by the shopkeepers, refund the same on the terms and conditions and it will entail interest @ 10%.

Since the liability has been fastened on the State Transport Corporation, the Municipal Corporation shall be at liberty to recover the same.

March 06, 2017 **(AMIT RAWAL)**
ramesh **JUDGE**

Whether speaking/reasoned **Yes/No**

Whether Reportable: **Yes/No**