IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.21503 of 2013 (O&M)
Date of decision : 01.03.2017

Punjab State Warehousing Corporation

...Petitioner

Versus

Deputy Commissioner, Kapurthala and another

...Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.

Present: Mr. Harsh Aggarwal, Advocate for the petitioner.

Mr. Gaurav Jindal, Advocate for respondent No.2.

Ms. Monica Chhibber Sharma, DAG, Punjab.

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AMIT RAWAL, J. (Oral)

The petitioner-Punjab State Warehousing Corporation is aggrieved of the impugned orders dated 30.05.2011 (Annexure P-8) and 26.03.2002 (Annexure P-3) passed by respondent Nos.1 and 2 i.e. Deputy Commissioner, Kapurthala and Municipal Council, Kapurthala, whereby assessment of the tax of the unit consisting of godown, has been assessed at the rate of ₹8,19,590/- gross and appeal filed against the same after remand has also been dismissed.

Mr. Harsh Aggarwal, learned counsel appearing on behalf of the petitioner submits that as per the provision of Section 3 of the Punjab Warehouses Act, 1957, no person shall carry on the business of warehouseman except under licence granted under the Act. The provision of

Sub-Section 2 of Section 4 and 6 provide for payment of licence fee and renewal fee respectively. Rules framed under the aforementioned Act i.e. Punjab Warehouses Rules, 1958 (hereinafter to be referred as the 1958 Rules) particularly Rule No.21 statutorily requires the Corporation to keep his warehouse in good condition. The petitioner-Corporation is having 9 godowns within the municipal area of respondent Committee with a storage capacity of about 1,53,000 bags. Lot of expenditure is incurred for maintenance and upkeep of the godowns in essence, number of persons are appointed for proper maintenance, security, maintenance of records etc. of the godowns. It has been charging a sum of 84 paise per bag which contains the following element:-

“i)	*Establishment*	*32 paisa*
ii)	*Insurance*	*5 paisa*
iii)	*Insecticide*	*7 paisa*
iv)	*Gross payment*	*6 paisa*
v)	*Misc.*	*5 paisa*
vi)	*Head Office & Distt. Office overhead*	*4 paisa*
vii)	*Rent*	*10 paisa*
viii)	*Interest on investment*	*15 paisa*
		84 paisa”

Vide order dated 12.01.1995, The House Tax Committee of the respondent-Committee assessed the house tax against the petitioner to the extent of entire storage capacity of the godowns at the rate of 63 paise per bag by giving rebate of 25%. The aforementioned order was challenged before the Appellate Authority. Vide order dated 25.07.1995, the Appellate Authority set aside the order and remanded the matter back to the House Tax Sub Committee (hereinafter to be referred as HTSC) and vide order dated 16.09.1996 (Annexure P-1), reduced the assessed rental value to 56 paise per bag . The aforementioned order was again challenged before the Appellate Authority which was allowed vide order dated 12.09.1997 (Annexure P-2) where the matter was again remitted back. Vide order dated 26.03.2003 (Annexure P-3), HTSC again reassessed the rental value at the rate of 72 paise per bag. Vide order dated 18.11.2003 (Annexure P-6), the order was assailed before the Appellate Authority which was convinced and allowed the appeal by fixing the rate of rent at the rate of 10 paise per bag. The Municipal Committee assailed the aforementioned order before this Court vide CWP No.15237 of 2004 and this Court vide order dated 11.07.2006 remanded back the matter by holding that it was not given any opportunity to rebut the material taken before the Appellate Authority for the first time. On remand, the Appellate Authority without hearing on all issues passed the impugned order dated 30.05.2011(Annexure P-8) and upheld the order dated 26.03.2002 (Annexure P-3).

He submits that the aforementioned findings rendered by the Courts below are totally fallacious and erroneous inasmuch as that rental value of godowns should have been assessed as per the provision of the East Punjab Rent Restriction Act, 1949. The authorities have lost sight of the fact that the entire regular expenses incurred by the petitioner are to be taken into account while determining the actual rent from the stockist. Calculation submitted before the authorities regarding average expenses incurred on storage upper bag has been attached but yet there is no adherence/advertence. The godown is never occupied in its full/optimum capacity throughout the year as being seasonal. i.e. for limited period of three months onwards and for nine months when godown remain vacant.

The order dated 26.03.2002 (Annexure P-3) is mechanical and sketchy, has been passed in a stereo type manner. In fact, it was passed in the absence of the representative of the petitioner-Corporation. Even Appellate Authority has erroneously passed the order without taking into consideration the direction contained in the remand order dated 12.09.1997 (Annexure P-2).

Per Contra, Mr. Gaurav Jindal, learned counsel appearing on behalf of respondent No.2 submits that assessment done at the rate of 72 paise i.e. 84 paise minus 12 paise is perfectly legal and justified. He has relied upon ratio decidendi culled out by Hon'ble Supreme Court in *Municipal Committee, Patiala Versus Model Town Residents Association and others, 2007(3) RCR (Civil) 754*, to contend that for the purpose of assessment of annual value, the basis of the tax is value of the land or building on which it is imposed, is arrived in following three manners:-

1. Actual land fetched by the land or building in case it is actually let.
2. In case it is not let, rent based on hypothetical tendency in the cases of building.
3. Where either of the aforementioned method is not available, valuation is based upon capital value for which annual value has to be derived by applying suitable percentage which may not be the same for lands and buildings.

and thus urges this Court for upholding the orders while dismissing the writ petition.

I have heard learned counsel for the parties and appraised the paper book and of the view that there is force and merit in the submissions of Mr. Harsh Aggarwal, Advocate for the petitioner. In the order dated 12.09.1997 (Annexure P-2), the Appellate Authority initially had remanded back the matter to the Sub Committee to take into consideration the following aspects:-

A. Duration of the bags remaining in the godown

B. Number of bags lying in the godowns.

C. Area of the godown remained unoccupied.

D. Actual rent receipt and official expenses incurred by the Corporation.

However, the findings arrived at by the Appellate Authority vide impugned order dated 30.05.2011 (Annexure P-8) lacks non-application of mind. For the sake of brevity, operative part of the order, reads as under:-

> *"I have heard the arguments of both the counsels and have examined the record carefully. As per House Tax Committee of Municipal Council, Kapurthala, the appellant has 9 godowns in which 1,53,000 bags can be kept and the appellant is charging 84 paisa per bag as rent. 12 paisa per bag has been exempted in the assessment. Keeping in view Section 3(1) of the Punjab Municipal Act and according to the criteria mentioned in the Act, an assessment of Rs.8,19,590/- as the value of the gross annual rent on the value of land and building was made out. At the time of considering on the assessment of the House Tax Committee, Sh. S.C. Sharda came present on behalf of appellant and approved this assessment*

> *admitting it to be correct and signed the order. 2007(4) CCC1 has been referred by the Municipal Council and this ruling is applicable in this case. The facts about expenditure which have been shown by the appellant were not brought by the representative of the appellant, in the knowledge of House Tax Committee made in this regard by the Municipal Council, Kapurthala nor filed any objection in this regard at that time. Municipal Council, Kapurthala has made assessment according to the provision mentioned in the Punjab Municipal Act to which the appellant had consented after admitting it correct. Therefore, the assessment which has been made by the Municipal Council, Kapurthala vide order dated 26.3.2002, is right and correct. Therefore, this appeal is dismissed. The appeal file be consigned after completing formalities."*

The aforementioned facts have not been taken into consideration particularly, the record of the rent 86 paise per bag as indicated above. In fact, as per the breakup, only 8 paise per bag is being considered as rent, thus, in my view, impugned orders dated 30.05.2011 (Annexure P-8) and 26.03.2002 (Annexure P-3) are totally erroneous and perverse and are hereby set aside.

The assessment done by the Deputy Commissioner by taking the breakup of 10 paise per month is perfectly legal and justified, for, as cost of breakup of 84 bags as indicated above, has been ignored by both the authorities. It is strange that both the instrumentality of the State are fighting with each other and indulging into cost of litigation and wastage of time.

In my view, respondents have failed to set any cogent reasons against unassailed breakup.

The rate fixed by the Deputy Commissioner vide order dated 18.11.2003 by taking into consideration the cost of breakup as assessing the rent at the rate of 10 paise per bag is best calculation, thus, writ petition stands allowed in the aforementioned terms.

There is no dispute to the ratio decidendi culled out in Municipal Committee, Patiala's case (Supra), but the same judgment is in respect of the tendency of the building. It is only the rent being collected by the petitioner, per bag and, therefore, the ratio decidendi would not apply to the facts and circumstances of the case as indicated above.

01.03.2017 **(AMIT RAWAL)**
pawan **JUDGE**

Whether speaking/reasoned:- **Yes/No**

Whether reportable:- **Yes/No**