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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 18146 of 1994
Date of Decision: 04.07.2018

Food Corporation of India .... Petitioner

Versus

The State of Punjab and others .... Respondents

CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Ms. Puneeta Sethi, Advocate
for the petitioner.

Ms. Monica Sachdeva, AAG, Punjab.

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Avneesh Jhingan, J.

The present writ petition has been filed by the Food Corporation of India with a prayer for quashing order dated 20.05.1993 (Annexure P-10) and further direction is sought to the respondents to refund the amount of house tax paid during the years 1980-81 to 1989-90.

The respondents in this writ petition are State of Punjab-respondent No. 1, the Director Local Government-respondent No. 2 and the Municipal Committee, Adampur (Jalandhar)-respondent No. 3.

The petitioner had constructed the godowns within municipal limits of Adampur, bearing Khasra Nos. 27//24/1, 2, 3, 4, 5, 6, 7, 8, 9, 37//4, 5, 6/1, 6/2, 7 H. B. No. 257. The petitioner was paying house tax since the year 1976-77 onwards. The Punjab Government exercising powers under Section 17 (1) of the Punjab New Mandi Township (Development and Regulation) Act, 1960 issued a notification by virtue of which the Punjab Municipal Act, 1911 (*for short the Act*) ceased to operate on the Khasra numbers specified in the notification. The schedule in the notification is quoted below:-

District	***Tehsil***	***Name of New Mandi township***	***Name of Revenue Estate.***	***Rect.***	***Specification of Khasra Nos.***
1	2	3	4	5	6
Jullundhur	Jullundhur	Adampur	Adampur H.B.No. 257	A-K-M 25-2-4	25//21, 30//6/1, 6/2, 9/1, 9/2, 12, 13, 17/2, 18/1, 18/3, 19, 21, 22, 23/1, 23/2, 24, 25, 26, 27// 24/1, 24/2, 24/3, 24/4, 24/5, 24/6, 24/7, 24/8, 24/9, 37//4, 6/2m in, 7, 38//1/1, 2/1, 2/3, 3, 4/1, 4/2, 5, 6/2, 7/2, 8, 9, 10, 12, 13, 14, 39//1, 941, 943, 944 min.

After issuance of the notification, the godowns of the Food Corporation of India fell in the area in which the Act was not operative. In spite of this, respondent No. 3 issued tax bills to the petitioner for the year 1980-81. The petitioner paid house tax for the year 1980-81 and continued to deposit till year 1989-90.

A notice (Annexure P-6) was given by the petitioner on 14.06.1990 to respondent No. 3 for refund of house tax amounting to ₹ 1,64,511/- which had been deposited for the period from 1980-81 to 1989-90.

The Executive Officer of the Municipal Committee wrote a letter dated 06.12.1991 to the Director, Local Government, Punjab stating that after the notification dated 04.06.1980, the Act ceases to operate in the Mandi area. As per the opinion received from the Advocate, the Committee was liable to refund the amount to the petitioner. It was further stated that the Municipal Committee is a 'C' Class Committee, hence, it cannot refund the whole amount in one installment and a case for payment in small installments was submitted to the Administrator. In spite of the letter, no refund was given to the petitioner. Reminders were sent by the petitioner dated 14.10.1991 and 28.05.1992.

The refund application was rejected vide order dated 20.05.1993, on the ground that the method of refund of house tax recovered is set out in common law and the remedy for the petitioner is to file a civil suit.

Aggrieved of the refusal to refund, the present writ petition was filed.

There is no dispute raised by the respondents on the fact that the godowns of the petitioner are in the Khasra numbers mentioned in the notification dated 04.06.1980. The resistance of the respondents for refunding the amount is two fold; firstly that the godowns were constructed before the issuance of the notification and secondly that there is no provision for refund and that too especially after 14 years.

The contentions raised deserves rejection. The issue is not related to the date of construction of the godowns. The notification dated 04.06.1980 in plain words states that the properties in Khasra numbers mentioned in the notification will not come within the ambit of the Act. There is no condition that the property should be constructed after the date of notification. It is well settled law that nothing can be read into the notification.

The second argument raised is legally and factually unsustainable. It is factually wrong that the refund was applied after 14 years. The assessment years involved in this petition are 1980-81 to 1989-90. The petitioner issued a notice for refund of the said amount on 14.06.1990 i.e. at the end of the assessment year 1989-90. The refund was rejected on 20.05.1993. In the order passed, it was no where held that in spite of the notification, the Act would operate in the area where the godowns are situated. It has not been denied that the petitioner was entitled to refund. Refund was denied on the ground that the remedy would be to file a civil suit. Even otherwise as per Annexure P-7, the Municipal Committee admitted that the amount has to be refunded to the petitioner and the case was forwarded so that the refund could be made in small installments. It is established that the tax was collected without authority of law and hence, the action of the respondents is violative of Article 265 of the Constitution of India. The respondents cannot deny the refund merely on the ground that there is no provision for refund in the statute. Once it is established that the respondents had no authority to levy and collect the tax on the property of the petitioner, the tax cannot be retained by the respondents, specially when there is no specific provision to do so.

The Supreme Court in ***Salonah Tea Co. Ltd. Versus Supdt. of Taxes*** held as under:-

> " *While a petition praying for mere issue of a writ of mandamus to the State to refund the money alleged to have been illegally collected is not ordinarily maintainable, if the allegation is that the assessment was without a jurisdiction and the taxes collected was without authority of law and therefore, the respondents had no authority to retain the money collected without any authority of law, the High Court has the power to direct refund in a writ petition.*"

Tax Collected and retained by the respondents is not backed by any statutory power to do so.

The respondents are directed to refund the amount of ₹1,64,511/- to the petitioner within three months from the receipt of certified copy of this order.

The writ petition is allowed accordingly.

(AJAY KUMAR MITTAL)
JUDGE

4th July, 2018

shabha

(AVNEESH JHINGAN)
JUDGE

Whether Speaking/reasoned : *Yes*

Whether Reportable : *Yes*