

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

RSA No.2750 of 2017 (O&M)

Date of decision:01.11.2018

M/s Vardhman Polytex Limited

... Appellant

Vs.

Municipal Corporation, Bhatinda and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Arun Bansal, Advocate
for the appellant.

AMIT RAWAL J.

The appellant-plaintiff has not been successful in seeking recovery of ₹39,11,220/- and ₹35,171/- charged by the Municipal Corporation being an amount of octroi with regard to electricity connection bearing account Nos.LS-6 and LS-19.

The suit aforementioned was filed on the premise that Municipal Council, Bhatinda was converted into Municipal Corporation, Bhatinda w.e.f. 13.04.2003 and PSEB authorities i.e., defendants No.3 to 5 started charging and collecting octroi on the units of electricity consumed by the plaintiff. The aforementioned act was done in pursuance to the notification dated 21.04.1994 issued under Section 62-A of the Punjab Municipal Act. Repeated requests did not make any headway which gave a cause of action to file the suit.

The main thrust of the suit had been that plaintiff had never charged octroi in the price of goods sold to the customer, therefore, it was not in the domain of the Corporation to charge the amount.

The aforementioned suit was contested by denying the refund of amount as alleged and particularly as per the judgment dated 31.01.2001 rendered in CWP No. 602 of 2001. On the preponderance of evidence, the plaintiff was not successful before the trial Court and as well as before the Lower Appellate Court.

Learned counsel appearing on behalf of the appellant-plaintiff submitted that the Courts below have lost the sight of the fact that a comparative table of all the expenditure and the costs of products had been produced on record establishing that no octroi was added with the costs of products. DW2-Sahil Gupta admitted that no octroi was collected on the electricity so supplied after the passing of the impugned order by this Court as the judgment, *ibid*, had attained finality upto the Hon'ble Supreme Court. The appellant was entitled to refund of octroi charged w.e.f. 28.11.1994 and thus, urged this Court for setting aside the impugned judgments and decrees.

I am afraid the aforementioned argument is not sustainable in the eyes of law, for, evidence brought on record did not establish the octroi was charged or otherwise. A computation was self serving document was not supported by an cogent evidence to establish non-charging of octroi. PW3-Suresh Kumar Banke, Assistant Manager of the plaintiff admitted in cross-examination that expenditure reflected like salary, electricity bills, water supply bill, costs of raw material and other expenses were added in

the manufacturing expenses. It had also account of power and fuel. The
aforementioned testimony leads to irresistible conclusion that story coined
in the plaint was not genuine. PW2-Sandeep Goyal was also not sure
whether the costs of product of expenditure of electricity along with octroi
was added or not, thus, in my view, the plaintiff miserably failed to
discharge the onus in support of the averments made in the plaint.

The concurrent findings of facts and law based upon the
appreciation of oral and documentary evidence do not call for any
interference. No substantial question of law arises for adjudication of the
present appeal.

Resultantly, the appeal stands dismissed.

(AMIT RAWAL)
JUDGE

November 01, 2018
savita

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No