IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(1) RSA-778-1997 (O&M)
Date of decision: 18.12.2019

Municipal Corporation, Ludhiana
...Appellant

Versus

Ralson (India) Ltd. Ludhiana

...Respondent

(2) RSA-779-1997 (O&M)

Municipal Corporation, Ludhiana
...Appellant

Versus

Ralson (India) Ltd. Ludhiana

...Respondent

CORAM: HON'BLE MR.JUSTICE H.S. MADAAN

Present: Mr. Ashok Kumar Bazaz, Advocate for the appellant.

Mr. Kanwaljit Singh, Sr. Advocate with
Mr. Aayush Arora, Advocate for the respondent.

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H.S. MADAAN, J.

Briefly stated facts of the case are that plaintiff Ralson (India) Ltd., Ludhiana had filed a Civil Suit No.87 of 01.02.1992 against Municipal Corporation, Ludhiana (for short 'M.C., Ludhiana') and its Commissioner, seeking a decree for permanent injunction restraining the defendants, their officials, employees, servants etc., from charging octroi on the face value of the total value of the goods paid by the plaintiff to the seller purchased through bill No.102116 dated 29.01.1992 and in addition to that, craving for grant of mandatory injunction directing the defendants to allow the goods loaded in eight trucks to be brought to factory premises of the plaintiff on payment of octroi payable on the amount of Rs.517504 @ 1% i.e.Rs. 517404. As per version of the plaintiff, it is a public limited company and is one of the biggest manufacturer of cycle and rickshaw tyres and for the manufacturing of these items, the plaintiff import dash black and allied goods from Korea and other countries. Since these goods are used for export purposes, as such, no custom duty is payable on the same and the face value of the goods remains the actual payment made by the plaintiff to the seller. After manufacturing of the goods from this raw material, those are exported to different companies keeping at par the price paid for purchase of raw material. The plaintiff had been importing dash black and other material for manufacturing cycle and rickshaw tyres and the defendants had been charging octroi on the face value of the bill i.e. the purchase price for which the plaintiff purchased the goods by actual payment. The plaintiff had imported dash black from Korea which was packed in 1620 bags and loaded in eight trucks valuing Rs.517504/-, therefore, the octroi duty payable on these items @ 1% came out to Rs.5175.04/-. The plaintiff offered to pay octroi charges but defendants refused to accept the same and did not allow the plaintiff to take its goods to the factory premises, causing great prejudice to the plaintiff in manufacturing of goods which would amount to national loss since the plaintiff would not be able to manufacture the goods and supply those to the customers out of India and that would result in loss of foreign exchange also. Hundred of workers would suffer job loss. According to the plaintiff, when the defendants refused to receive the octroi of Rs.5175.04/- @ 1% on the face value of the bill and did not allow the plaintiff to take material to their factory premises, the plaintiff brought the suit in question.

On getting notice, defendants appeared and filed written statement, raising a preliminary objection that jurisdiction of the civil court to entertain and try the suit was barred under Section 149 of the Punjab Municipal Corporation Act. On merits, the defendants contended that plaintiff is not a public limited company and Sh. Sanjeev Pahwa is not competent to file the suit; no copy of resolution as alleged by the plaintiff had been supplied to defendants; the defendants denied the material assertions in the plaint. According to the defendants, the custom duty is levied on the material imported and the defendants by assessing value of the consignment for the purpose of octroi has to calculate price of the material plus the custom duty and the freight charges. The total is to be considered for assessment of the octroi on the articles. In that way, the face value of the bill was being wrongly interpreted by the plaintiff. The defendants charged the octroi @ 1% on the advalorem value of the consignment, which included price, custom duty and freight charges. The value of the consignment including freight charges came out to Rs.4546343.90/-. The octroi fee came out to Rs.45463.44/-. The plaintiff had paid less amount on the consignment. As such, the defendants had every right to recover the octroi @ 1% on the value of the goods which included custom duty and freight charges; that if any exemption had been granted on certain conditions that had no value as far as assessment of the octroi was concerned; the plaintiff was under obligation to pay the octroi on the imported material after calculating the price of consignment which included the custom duty and freight charges also. According to the defendants, the plaintiff had no right to exclude the custom duty and freight charges of the consignment and to dictate the defendants to accept the octroi as per wishes of the plaintiff. Therefore, suit for permanent injunction or mandatory injunction was not maintainable. In the end, such defendants prayed for dismissal of the suit.

Plaintiff filed replications to the written statement denying the allegations therein, whereas, reiterating the averments in the plaint.

On pleadings of the parties, the following issues were framed:-

1. Whether plaintiff is a public limited company and Kartar Singh is competent to file the suit on its behalf? OPP.
2. Whether plaintiff is entitled to the permanent and mandatory injunction as prayed for on the grounds alleged in the plaint? OPP
3. Whether the jurisdiction of the civil court is barred to try the suit u/s 149 of the Punjab Municipal Corporation Act? OPD.
4. Relief.

It may be mentioned here that plaintiff had brought another suit bearing No.95 of 08.02.1992 against those very defendants and vide order dated 04.10.1993, Civil Suit No.95 of 08.02.1992 was consolidated with CS No.87 of 01.02.1992. Since the question of law and facts involved in both the suits was same and both the counsel for the parties stated that they had no objection if two suits were consolidated and evidence was recorded in CS No.87 of 01.02.1992. It may be mentioned here that facts of CS No.95 dated 08.02.1992 were almost same as that of CS No.87 of 01.02.1992 except the fact that import bill in dispute in that suit was having No.102117 dated 08.01.1992. Similar issues had been framed in both the cases.

Parties were afforded adequate opportunities to lead evidence in support of their respective claims.

After hearing arguments, learned Court of Sub Judge, Ist Class, Ludhiana, decided issues No.1 to 3 in both the cases in favour of the plaintiff-company and as a result of findings on the issues, both the suits were decreed. Resultantly, the defendants, their officials, employees, servants were restrained from charging octroi duty on and above the face value i.e. the total value of the goods paid by the plaintiff purchased through bill No.102116 and 102117 and defendants were directed to allow goods loaded in eight trucks to be brought to the factory premises of the plaintiff on payment of octroi payable on the amount of Rs.517504/- @ 1% i.e. Rs.5175.04/-. This was so done, vide judgment and decree dated 28.08.1995.

The defendant Municipal Corporation, Ludhiana felt aggrieved by the said judgments and decrees and had preferred appeals before District Judge, Ludhiana, which were assigned to Addl. District Judge, Ludhiana, who vide judgment and decree dated 15.10.1996, dismissed both the appeals.

Still feeling dissatisfied, the defendant Municipal Corporation, Ludhiana has knocked at the door of this Court, by way of filing Regular Second Appeals, notices of which were given to the respondent/plaintiff, who has put in appearance through counsel to offer a contest.

I have heard learned counsel for the parties besides going through the record.

Both the Courts below on analysis of the evidence produced by the parties, in the light of facts and circumstances of the case and the legal position had come to the conclusion that plaintiff is a public limited company and suits had been filed by duly authorized persons. With regard to entitlement of the plaintiff to relief of permanent and mandatory injunction, it has been concluded that plaintiff had imported goods for value of Rs.517504/- vide bill No.102116 dated 29.01.1992 and bill No.102117 dated 01.01.1992 from Korea, a foreign country and those goods were exempt from custom duty. The goods so imported were raw material i.e. dash black which is used for manufacturing of cycle tyres and tubes and after manufacturing the prepared goods are totally exported and plaintiff-company was to export the manufactured goods on the same value for which the raw material had been purchased and further since goods were exempt from custom duty, the custom duty was not paid on those goods and when the raw material imported by the plaintiff-company that was exempted from custody duty, the plaintiff was required to pay octroi duty to defendants on the face value of the goods for which those had been purchased by the plaintiff-company from the foreign country and plaintiff-company had obtained duty exemption from Government of India. While dealing with the contentions raised by the defendants that octroi duty was chargeable on the face value of goods plus custom duty, that contention was rejected by the trial Court observing that the interpretation of relevant provisions i.e. Section B.XII of Municipal Corporation Act was that octroi duty should be charged @ 1% on the price of goods plus excise duty if paid by the party. However, since in the instant case, the plaintiff had not paid any custom duty on the goods imported by them, then defendants could not have asked for payment of octroi duty on the amount of custom duty and they could claim octroi on the face value of the goods i.e. @ 1% of the bill amounts. Since the plaintiff was willing to pay the octroi @ 1% on the bill amounts, it was found that the defendants were not justified in detaining the trucks of plaintiff containing imported material. In that way, entitlement of the plaintiff to decree for permanent and mandatory injunction was found.

As regards the jurisdiction of the civil court to deal with the matter, the trial Court in discussion under issue No.3 has touched that aspect in a very detailed and proper manner, coming to the conclusion that the civil court had jurisdiction to entertain and try such type of suits. For ready reference, the relevant portion of the judgment of the trial Court i.e. para Nos.9 & 10 are reproduced as under:-

> *"9. In order to prove this issue the 1d. counsel for the defendants has taken the plea that in terms of Section 149 of Punjab Municipal Corporation Act, jurisdiction of the civil court is barred. Instead of filing the present suit the plaintiffs should*

have filed appeal to the higher department authorities. As the plaintiffs have failed to file the appeal before the higher Deptt. Authorities the suit of the plaintiff be dismissed, because the civil court has no jurisdiction to try the suit. In order to rebut this contention the 1d. counsel for the defendant has referred to a case law titled as Municipal Committee Ladwa Vs. Daryat Lal & Ors. 1986 Punjab Legal Reports and Statutes page 469. In this case law it has been held that when the tax is not imposed in accordance with the provisions of Section 61, it need not be challenged before the departmental authorities. Civil Court can declare the levy illegal. When that tax is imposed on a citizen without following the due procedure laid down under law, it is open to a civil court to issue a restraint against the issuance of levy. Article 265 of the Constitution of India itself lays down that no tax shall be imposed even in accordance with law.

10. The ld. counsel for the defendants has also taken the plea that a prior notice U/s 396 of Punjab Municipal Corporation Act, 1976 has not been served on the defendants. The suit of the plaintiff is liable to be dismissed on these grounds also. But in this regard the ld. counsel for the plaintiff has referred to Clause 3 of Section 396 of the Punjab Municipal Corporation Act, 1976 wherein it has been written that nothing in sub section 1 shall be deemed to apply to a suit in which the only relief in Claimed as an injunction on which the object would be defeated by the giving of notice or the postponement of the institution of the suit. In view of this clause also I think that there was no need to the plaintiff to *file the present suit after serving prior notice on the defendants. In view of these facts this issue is decided against the defendants."*

When the matter came before the Addl. District Judge, Ludhiana, he found himself in agreement with the trial Court. He had observed that both the sides were in agreement that octroi @ 1% is chargeable by the defendant-MC from the plaintiff on consignment of goods imported by the plaintiff from other countries and the only dispute between them was whether price of goods includes custom duty or not. Since, no custom duty was payable on the bills and rather, it was exempt. This fact was admitted by DW2 Om Parkash, an employee of MC also. Therefore, defendant-MC could not include the custom duty and freight charges in actual price of the goods and Rule 15(3) Chapter-V of the Municipal Account Code, 1930 provide that the custom duty and freight charges are to be included in the price of goods and upon that amount, octroi @ 1% is to be paid by the person concerned was not applicable. With regard to the bar of jurisdiction of civil Court under Section 149 of the Punjab Municipal Corporation Act, learned Addl. District Judge, referred to various judgments pressed into service on behalf of the MC and distinguished those judgments, observing that those were not applicable to the facts of the present case. Learned ADJ found merit in the arguments advanced by learned counsel for the respondent/plaintiff that when the MC act beyond its jurisdiction and do any illegal act that can be challenged by filing suit in the Civil Court and jurisdiction of civil Court is not barred. The case law in support of that contention had also been cited. Learned counsel for the appellant-MC has raised those very contentions which had been put forward before the Courts below and have been dealt with in a very proper and appropriate manner by them in detail. Learned counsel for the appellant had also referred to case law also by citing various judgments i.e. **Romesh Kumar Vs. Municipal Committee, Gurdaspur 1986 RRR 420, Munshi Ram Vs. Municipal Committee, Chheharta, 1986 RRR 330, State of Kerala Vs. M/s N. Ramaswami Iyer & Ors. 1966 AIR (SC) 1738, Brij Mohan Gupta Vs. State of Haryana & Anr., 2015(4) RCR (Civil) 318, Saraswati Vs. Lachanna (dead) thr. LRs. 1994(3) LJR 24, M/s Mohan Meakin Breweries Ltd. Vs. Municipal Corporation of Jullundur City & Ors. 1979 AIR 142, M/s Sandika (P) Ltd. Vs. The Municipal Corporation of Ludhiana, Punjab Legal Report and Statutes 723**

On the other hand, learned counsel for the respondent has defended the judgments passed by the Courts below, submitting that no fault can be found with the same and no reason was there to upset those judgments. Furthermore, the jurisdiction of the civil court was not barred under Section 149 of the Punjab Municipal Corporation Act as submitted by learned counsel for the appellant in support of his contentions. He had also referred to various judgments i.e. **Dilip Jain & Anr. Vs. State of Rajasthan 2007 AIR (Raj) 206, Dabur India Ltd. Vs. State of Punjab & Ors. 2010(2) PLR 519, Municipal Committee, Ladwa Vs. Daryat Lal, 1986 RRR 358, Brij Mohan Vs. Municipal Corporation of Amritsar, 1986 RRR 262, Municipal Committee, Bathinda Vs. Krishan Lal, 1986 RRR 40, M/s Modi Business Machines Ltd. Vs. State of Punjab & Ors., 1991 (2) RRR 253, National Fertilizers Ltd. Vs. Municipal Committee, Bathinda, 1997(1) RCR (Civil) 52, Birla Cement Works Vs. State of Punjab, 1993(2) RRR 109, Indian Oil Corporation Vs. Municipal Corporation, Jullundhar, 1993(1) RRR 174.**

After hearing the rival contentions of counsel for the parties, I find that the judgments passed by the Courts below are quite detailed, well reasoned. They do not suffer from any illegality or infirmity. I do not see any reason to differ with the concurrent findings recorded by the Courts below. The action of the MC in demanding octroi on the bill amounts after adding the custom duty has not been found to be as per law. Therefore, there was no justification for the defendants to detain the trucks of plaintiff containing the material to be taken to the factory premises of plaintiff insisting that octroi duty more than at the rate of 1% on the value of the bills be paid when no custom duty had been charged on the bills since the same was exempted as per orders of the Central Govt. Therefore, the civil court was justified in interfering in the matter by granting permanent and mandatory injunction. No substantial question of law arises. The appeals are found to be without merit and are dismissed accordingly.

18.12.2019 **(H.S. MADAAN)**
sumit.k **JUDGE**

Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No