IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No.9817 of 2018 (O&M)
Decided on : 15.03.2019

M/s Saggi Electric Company ...... Petitioner

Versus

Cantonment Board, Jalandhar and ors. ...... Respondents

CORAM : HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Mr. Arun Jain, Sr. Advocate with
Mr. Vikas Mohan Gupta, Advocate`
for the petitioner.

Mr. M.S.Sachdeva, Advocate
for respondent No.1.

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Manjari Nehru Kaul, J.

The instant writ petition has been filed under Articles 226/227 of the Constitution of India inter alia for issuance of writ in the nature of Certiorari for quashing the impugned letter dated 22.03.2010 (Annexure P-6) issued by respondent No.1 and order dated 21.02.2018 (Annexure P-13) passed by Addl. District Judge, Jalandhar.

2. The petitioner is a partnership firm engaged in dealing with the work of Electrical Engineers and Contractors. In the year 2006, the respondent-Board invited tenders for work of 'C/o Married Accommodation Project at Jalandhar, Phase – 1(SH:- Providing and Installing HT Equipments in Sub Station)'. The petitioner-firm participated in the said tender process and being the lowest tenderer the said work was allotted to it.

On 10.10.2007, the petitioner-firm successfully completed the allotted work and the security amount, which had been deposited by it, was refunded back. It would be relevant to mention that the work executed by the petitioner-firm included supply of goods (electric goods), erection of electric sub-station, cost of labour/salaries to employees etc., taxes, maintenance during defect liability period and other miscellaneous expenditure required for completion of the work. On 22.03.2010, the respondent-Board purportedly sent impugned letter (Annexure P-6) to the petitioner-firm to the effect that as it had failed to discharge its liability to pay the octroi of ₹ 3,91,365/-, an amount of ₹ 43,05,015/- (i.e. octroi tax and the composition amount equivalent to 10 times of Octroi) had thus become due. The petitioner-firm was given 7 days to submit attested copies of octroi receipts in case payment had been made else it was to be treated as evasion of octroi tax. Thereafter, on 26.04.2010, the respondent-Board filed an application (Annexure P-7) under Section 324 of the Cantonment Act, 2006 (for brevity 'the Act') for the recovery of the above referred amount. Thereafter, the petitioner-firm filed an appeal under Section 93 of the Act along with an application for condonation of delay against the impugned letter dated 22.03.2010(Annexure P-6) before the learned Addl. District Judge, Jalandhar. Learned Addl. District Judge vide impugned order dated 21.02.2018 (Annexure P-13) dismissed the appeal on the ground of limitation. Feeling aggrieved, the petitioner firm has approached this Court by way of filing the present writ petition.

3. Learned counsel for the petitioner-firm submitted that the letter

dated 22.03.2010(Annexure P-6) was never received by it and it was only on 23.04.2015, the petitioner came to the know for the first time about the pendency of recovery proceedings. He further submitted that it had challenged letter dated 22.03.2010 (Annexure P-6), and the application filed under Section 324 of the Act (Annexure P-7) before the Court below on the ground that the respondent-Board exceeded its jurisdiction to impose fine by way of a punishment as the same could only be imposed by a Criminal Court as per the settled law. Learned counsel for the petitioner urged that the respondent-Board had gravely erred in not taking into account that octroi was payable only on the purchase price of the goods, which were required to be purchased by the petitioner-firm for execution of the work and that on such amount of goods purchased, which had been imported from outside the jurisdiction of the Cantonment Area/Municipal Area of Jalandhar. Hence, the impugned order was against both the provisions of Cantonment Act, 2006 and Punjab Municipal Corporation Act, 1976 (for short '1976 Act') but also against the principles of levy of octroi. He also submitted that under Section 324 of the Act, Judicial Magistrate, Jalandhar had no territorial jurisdiction to entertain any such application and hence, the entire proceedings initiated by the Court was beyond its jurisdiction.

4. Per contra, learned counsel for the respondent submitted that the contention of the petitioner-firm that it had no knowledge about the letter dated 22.03.2010 (Annexure P-6) and the proceedings thereafter was against the facts on record is untenable. It was urged that the said letter had been sent to the petitioner-firm on its address through registered post vide postal receipt. The letter dated 22.03.2010 was challenged only on

22.09.2015 i.e. after a delay of 5 years by the petitioner-firm by filing an appeal and hence, the learned Appellate Court had rightly dismissed the appeal. Learned counsel contended that vide letter dated 22.03.2010, the petitioner-firm had been asked to submit attested copies of octroi receipts within a period of 7 days qua payment of octroi in respect of the work carried out for the respondent, failing which, it would be treated as evasion of Octroi. Since the petitioner had failed to submit any octroi receipts the petitioner-firm was therefore, rightly directed to pay an amount of ₹ 43,05,015/-.

5. We have heard learned counsel for the parties and with their assistance perused the material available on record.

6. We find substance in the contention of the petitioner-firm that it had never in fact received the impugned letter dated 22.03.2010 (Annexure P-6) and it was only on 23.04.2015 that they came to know about the pendency of the recovery proceedings. The levy of octroi without affording any opportunity of hearing to it and thereafter filing an application under Section 324 of the Act for recovery amounts to infringing the valuable rights of the petitioner-firm. A perusal of Annexure P-11 i.e. postal receipt reveals that the impugned notice dated 22.03.2010 had been addressed to one M/s Sagar Electric Co., Sector 7-C Chandigarh and the date and time of despatch mentioned on the same is 05.04.2010 and 15.29 hours. On the other hand, the name and address of the firm of the petitioner, which was allotted the tender was M/s Saggi Electric Company, 1630, Sector 7C, Chandigarh as is clearly reflected in Annexure P-3. Hence, in this

background, once there is a question mark, whether the impugned notice had been received by the petitioner-firm or not, the onus would squarely rest on the respondent to prove the dispatch of the notice at the correct address of the petitioner-firm. In the facts and circumstances of the case, the submission of the petitioner-firm that in fact it came to know about the letter dated 22.03.2010 and subsequent proceedings initiated for recovery under Section 324 of the Act only on 23.04.2015, cannot be brushed aside and rather is plausible and believable.

7. We find merit in the next submission of the learned counsel for the petitioner-firm as well that the respondent-Board could not have imposed composition amount of offence equivalent to 10 times of octroi payable as the same was beyond its jurisdiction and had been illegally levied upon it by the respondent-board. It would be relevant to notice that Section 91 of the Act is para materia to the provisions of Section 116 of Punjab Municipal Corporation Act, 1976 (for short 'the 1976 Act'). As per settled law, under the provisions of Section 116 of the 1976 Act punishment of fine can be imposed only by a Criminal Court and not by any other authority. It would be relevant to refer to the relevant findings of Supreme Court in ***Municipal Corporation, Ludhiana vs. Commissioner of Patiala Division, Patiala, 1995(1) SCC 304***, which are reproduced as under:

> *"5. It appears that the Punjab and Haryana High Court has consistently taken the view that the imposition of fine under Section 116 (and the corresponding provision in the preceding enactments) can be only by a Criminal Court vide* ***Nitco Roadways Private Limited v. Municipal corporation of***

Ludhiana (C.W.P. No.1804 of 1977) *disposed of on Act September, 1965 and* ***Gian Chand v. The State (1958 Punjab Law Reporter 539)****. We are of the opinion that the said view is correct in law. The normal rule of legislative drafting is that wherever it says that a particular Act shall be "punishable with fine", it contemplates its imposition by a Criminal Court only. Be that as it may, both Section 116 and 380 speak of "punishable with fine". Section 388 provides not only for fine but also for imprisonment. It cannot be suggested that the punishment of imprisonment contemplated by Section 388 can be awarded by the Officer of the Corporation. If so, the punishment of fine can also not be imposed by them. The same logic applies to Section 116 as well. We, therefore, agree with the High Court that punishment of fine provided by Section 116 can be imposed only by the Criminal Court and cannot be imposed by the Officer of the Corporation."*

9. In view of the discussion made above, we remand the matter back to respondent No.1 -Cantonment Board, Jalandhar for fresh adjudication. The Cantonment Board, Jalandhar shall adjudicate the matter afresh after affording an opportunity of hearing to the parties. Parties are directed to appear before the Board on 09.05.2019 or any other date convenient thereafter.

(AJAY KUMAR MITTAL)
JUDGE

(MANJARI NEHRU KAUL)
JUDGE

15.03.2019
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Whether speaking/reasoned: Yes/No
Whether reportable : Yes/No