

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-6458-2019 (O&M)
Date of Decision : 3.2.2020

S.M.Sehgal Foundation

..... Petitioner

Versus

Municipal Corporation of Gurugram

..... Respondent

CORAM : HON'BLE MR.JUSTICE AJAY TEWARI
: HON'BLE MR.JUSTICE AVNEESH JHINGAN

Present : Mr.Vikas Chaudhary, Advocate and
Mr. Sudershan Thakur, Advocate
for the petitioner.

Mr. Lokesh Sinhal, Advocate
for the respondent.

AJAY TEWARI, J. (Oral)

1. This petition has been filed under Articles 226 and 227 of the Constitution of India praying for direction to the Municipal Corporation of Gurugram, through its Commissioner to act and adjudicate upon the representation dated 26.9.2018 (Annexure P-1) made by the petitioner and to pass a speaking order on the said representation.

2. By way of this petition, the petitioner has challenged a notice under Section 130 of Haryana Municipal Corporation Act, 1994 (for short 'the Act') demanding tax of Rs. 5,83,960/-.

3. But as per Section 138 of the Act, it provides a remedy to file an appeal. Section 138 of the Act is reproduced below :-

“138. Appeal against assessment etc.- (1) An appeal against the levy or assessment of any tax under this Act, shall lie to

the Divisional Commissioner, and every such appeal shall subject to the provisions of this Act, be received, heard and disposed of by him.

(2) In every appeal, the cost shall be in the discretion of the appellate authority.

(3) Costs awarded under this section to the Corporation shall be recoverable by the Corporation as an arrear of tax due from the appellant.

(4) If the Corporation fails to pay any costs awarded to an appellant within ten days after the date of the order for payment thereof, the appellate authority may order the Commissioner to pay the amount to the appellant.”

4. In our considered view, the impugned notice would come in the ambit of expression 'levy'. Consequently, the petition stands dismissed as not maintainable with liberty to file an appeal before the appropriate authority as per law. It is directed that in case appeal is filed within 15 days from the date of receipt of certified copy of this order, the appellate authority would decide it without going into the issue of limitation.

5. Since the main case has been decided, the pending application, if any, also stands disposed of.

(AJAY TEWARI)
JUDGE

(AVNEESH JHINGAN)
JUDGE

3.2.2020
anuradha

Whether speaking/reasoned	-	Yes/No
Whether reportable	-	Yes/No