203 **IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**

2024:PHHC:019927-DB
CWP-14327-2001 (O&M)
Date of Decision: 13.02.2024

Union of India …Petitioner

Vs.

State of Haryana and others …Respondents

CORAM: HON’BLE MR. JUSTICE SANJEEV PRAKASH SHARMA
HON’BLE MRS. JUSTICE SUDEEPTI SHARMA

Present None for the parties.

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SANJEEV PRAKASH SHARMA, J.(Oral)

1. No one appears for the parties.

2. This is a writ petition filed in the year 2001 and is pending since long for final disposal.

3. The petitioner-Ministry of Railways has assailed the order passed by the Commissioner, Municipal Corporation, Faridabad dated 11.08.1998 and also the order passed in Appeal by the Commissioner-cum-Secretary, Urban Development Department, Haryana dated 08.06.2001, whereby octroi was held to be paid on the consignment in view of Clause XV of the Exemption Notification dated 07.04.1972. The consignment has been further parted with for use within the limits of Municipal Corporation, Faridabad. The petitioner in its regular course of business and functions has imported points and crossing/tamping machines, tamping express machines and other non-indigenous machines, and the machinery being the property of the Union of India enjoy the general exemption in terms of Article 285 of the

Constitution of India and special protection under Section 184 of the Railways Act, 1989.

4. The respondent No.5 was allotted the contract on F.O.B. basis for supply of goods for the purposes of railways. The Controller of Stores (Shipping), Central Railways, Mumbai, with the aid of Ministry of Surface Transport dispatched the machinery imported on several trucks to respondent No.5 for the purpose of assembling and mounting on railway track in order that the machine brought/imported in C.K.D. condition may be put to use by railways. It is worth while mentioning here that the tender for assembling the consigned machines was awarded to respondent No.5. It may further be mentioned that the factory premises of respondent No.5 where the said machines were to be assembled is situated within the municipal limits of respondent No.3.

5. On 16.02.1998, while the consignment loaded on different trucks was heading towards the factory premises of respondent No.5 for its assembling, the same was intercepted at the octroi barrier by the octroi authorities under the respondent No.3. A sum of Rs.18,186/- as octroi was levied in a most mechanical manner, overlooking the documents of title and certificate issued by the Controller of Stores (Shipping) Central Railways, Mumbai clearly indicating the goods/consignment belongs to Railways/Government of India and the objections of the petitioner was ignored.

6. The petitioner vide its representations dated 17.02.1998, 23.02.1998 and 04.03.1998 amongst others, requested respondents No.3 and 4 for releasing the consignment without imposition of octroi in view of the ownership of consigned machines vesting in Union of India.

7. Aggrieved of the decision taken by the respondents, holding the Ministry of Railways liable to pay octroi on goods transported by road for use and consumption within the limits of Municipal Corporation, the present writ petition has been filed.

8. The respondents although were served but have not filed any reply to the petition.

9. For adjudication of the issue raised by the petitioner, it would be appropriate to quote Article 285 of the constitution of India which reads as under:-

> *Exemption of property of the Union from State taxation.*
> *(1) The property of the Union shall, save in so far as Parliament may by law otherwise provide, be exempt from all taxes imposed by a State or by any authority within a State.*

Section 184 of the Railways Act, 1989 provides as under:-

> *Section 184:-*
> *(1) Notwithstanding anything to the contrary contained in any other law, a railway administration shall not be liable to pay any tax in aid of the funds of any local authority unless the Central Government, by notification, declares the railway administration to be liable to pay the tax specified in such notification.*

Section 3 of the Railways (Local Authorities Taxation) Act, 1941, provides as under:-

> *3. Liability of Railways to taxation by local authorities:-*
> *(1) In respect of property vested in the central government, being property of a railway, a railway administration shall be liable to pay any tax in aid of the funds of any local authority, if the central Government, by notification in the official gazette, declares it to be so liable.*

9. From above, it is apparent that Section 184 of the Railways Act, 1989, is an non-obstante clause and would, therefore, override all other laws of the State for the purposes of transportation for the purposes of railways in any State or any District or any municipal limits.

10. For the said purpose, therefore, the State authorities or the Municipal Corporation authorities would not be entitled to claim octroi as the goods which are supplied by the railways would be solely for the purpose of the railways alone and the railway line area falling within the jurisdiction of Union of India or any of the States, would, therefore be exempted from octroi.

11. Having answered the question as noticed above, this Court does not find the impugned orders to be in consonance with law. Accordingly, orders dated 11.08.1998 and 08.06.2001, passed by the respective respondents are quashed and set aside and the appellant would be entitled to refund of octroi amount paid along with interest at the rate of 6% per annum.

12. All pending misc. application(s) also stand disposed of.

(SANJEEV PRAKASH SHARMA)
JUDGE

(SUDEEPTI SHARMA)
JUDGE

13.02.2024
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1. Whether speaking/reasoned? : Yes/No
2. Whether reportable? : Yes/No