IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(102) **RSA-1435-1993 (O&M)**
Date of decision:- 26.11.2024

Municipal Corporation , Amritsar **...Appellant**

Versus

Khurana Industries Limited and others **...Respondents**

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present: Mr. A.S.Manaise, Advocate, for the appellant.

Mr. Ankit Awal, Advocate, for respondent No.1.

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SUVIR SEHGAL, J. (Oral)

CM-7442-C-2024

Prayer made in the application filed under Order 6 Rule 17, CPC, is for amendment of the cause title of the appeal.

Counsel for the applicant-respondent No.1, submits that during the pendency of this RSA, name of respondent No.1, has been changed to Khurana Industries Limited and a fresh Certificate of Incorporation dated 26.10.2021, Annexure R-1, has been issued by the Registrar of Companies. In view the subsequent development, applicant-respondent No.1, seeks alteration in the cause title.

There is no opposition to the prayer made in the application.

For the reasons mentioned herein above, application is allowed.

Applicant-respondent No.1 is permitted to amend the cause title of the appeal.

Amended Memo of Parties is taken on record.

CM-7443-C-2024

For the reasons given in the application, it is allowed.

Annexures R-1 and R-2, are taken on record.

RSA-1435-1993

1. Appellant-defendant is in second appeal before this Court challenging the judgment and decree dated 08.01.1993, passed by Additional District Judge, Amritsar.

2. Briefly stated, facts leading to the filing of the appeal are that respondent No.1, a limited company, was importing a product known as Linear Alkyl Benzene, which was being used as an alternative to washing soap. The Municipal Corporation levied octroi on the imported material at one and a half per cent, i.e., Rs.3/- per 100 kgs. Consequent to notification dated 29.08.1983, the rate of octroi was enhanced to Rs.6/- per 100 kgs, under item No.65 of the schedule of octroi of 1983. The defendant-Corporation started insisting on charging octroi under item No. 100 of the schedule of octroi, which comes to Rs.20/- per 100 kgs. Challenging this demand, plaintiffs filed a suit for permanent injunction.

3. Upon being served, defendants filed a written statement taking various preliminary objections including that of the maintainability of the suit. An objection has been taken that this suit is barred under Section 149 of the Punjab Municipal Corporation Act, 1976. It has been averred that the Linear Alkyl Benzene is a petroleum/mineral oil and is liable to taxation under Item No.100 of the octroi schedule. Issues were framed on the basis of the pleadings and after the parties led evidence and were heard, Trial Court by judgment

dated 27.07.1989 dismissed the suit. Appeal filed by the plaintiffs was accepted by the learned Additional District Judge, Amritsar, vide judgment dated 08.01.1993, which has been assailed herein.

4. I have heard counsel for the parties and considered their respective submissions, besides examining the record with their able assistance.

5. Section 149 of the Punjab Municipal Corporation Act, 1976, lays down as under.

> "***149. Taxation not to be questioned except under this Act****. - (1) No objection shall be taken to any valuation or assessment, nor shall the liability of any person to be assessed or taxed be questioned, in any other manner or by any other authority than is provided in this Act.*
>
> *(2) No refund of any tax shall be claimable by any person otherwise than in accordance with the provisions of this Act and the rules thereunder.*"

6. This Section is pari materia with Section 86 of the Punjab Municipal Act, 1911, which came up for consideration before Full Bench of this Court in ***Kelash Nath and others Versus Municipal Committee, Batala, 1962 (2) ILR Punjab 133***.

7. After noticing the provisions of the Punjab Municipal Act, 1911, as well as the judicial precedents, the Full Bench has held as under:

> *"Section 84 of the Punjab Municipal Act provides for an appeal against assessment or levy of any tax. It also makes a provision for reference to the High Court. Section 86 says that no objection can be taken to any valuation or assessment, nor can the liability of any*

person to be assessed or taxed be questioned except as provided in the Act. This section certainly provides a bar which is confined to matters (covered) by the Act. When the matter for decision is whether the octroi should be levied under one item or the other of the Octroi Schedule on particular goods and the assessing authority comes to the conclusion that it is leviable under a particular item, e.g., item 122 in the present case, it cannot possibly authority is in excess of or in contravention of the powers conferred on it by the statute. As it is a clear case of mistake and as no question of jurisdiction is involved, the aggrieved party must seek his remedy under Section 84 which provides the forum for appeal and reference in the matter of a wrong assessment. The assessing authority is not doing something which it is not empowered to do under the statute because it is not denied that the statute does authorize it to levy duty on particular classes and types of goods at such rates as may be fixed……. "

8. Full Bench has clarified that when the matter to be decided is as to whether octroi has to be levied under one item or the other of the octroi schedule on a particular good, and the assessing authority is insisting on the charging of the octroi under a particular item, it is a case of error, and the question of jurisdiction is not involved. In such circumstances, the remedy with the aggrieved party is to file an appeal provided under Section 84 of the Punjab Municipal Act, 1911.

9. Similar is the position in the case at hand. The question involved is as to whether the octroi on Linear Alkyl Benzene is to be charged on Item No.65

or under Item No.100 of the octroi schedule and as the taxing authority is insisting on charging the octroi on Item No.100, the remedy with the respondents-plaintiffs is to file an appeal, which is provided under Section 146 of the Punjab Municipal Corporation Act, 1976. The bar under Section 149 *ibid,* would come into play and the respondents-plaintiffs cannot be permitted to take any objection as to the valuation or assessment of octroi except as provided in the statute. Respondents are debarred from challenging the same by filing the civil suit. The judgment of this Court in ***Municipal Corporation, Ludhiana Versus Ralson (India) Ltd., MANU/PH/2456/2019,*** would not come to the aid of the respondents-plaintiffs as the Full Bench judgment was not brought to the notice of the co-ordinate bench. Ergo, the finding recorded by the Courts below under issue No.3, is reversed, and it is held that the suit filed by the respondents-plaintiffs is not maintainable. As a consequence, the judgment and decree passed by the learned Lower Appellate Court cannot be sustained.

10. For the reasons recorded above, appeal is allowed. Judgment and decree passed by the Lower Appellate Court is set aside and that of the Trial Court is restored. Suit filed by the respondents-plaintiffs is dismissed, leaving the parties to bear their own cost.

11. It is clarified that in case the plaintiffs avail the statutory remedy, the findings recorded by the Civil Court would not come in their way.

(SUVIR SEHGAL)
JUDGE

26.11.2024
Pardeep

Whether Speaking/Reasoned	Yes
Whether Reportable	Yes