(1982) 03 P&H CK 0043

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition 3616 of 1973

Bakhshish Singh APPELLANT

Vs

The Municipal Committee, Garh Shankar and another RESPONDENT

Date of Decision : 08-03-1982

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (1982) 03 P&H CK 0043

Hon'ble Judges : M.M. Punchhi, J

Bench : Single Bench

Advocate : D.V. Sehgal with Mr. Vinod Kataria, for the Appellant; Sarwan Singh, for the Respondent

Final Decision : Dismissed

Judgement

M.M. Punchhi, J.—This petition under Articles 226 and 227 of the Constitution of India has arisen in these circumstances.

2. The petitioner as a Government Contractor constructed a shed type foodgrain godown at Garhshankar in the year 1969-70. The material employed for such construction was brought within the municipal limits of Municipal Committee, Garshankar and used for the purpose. Whereas the case of the petitioner is that the cement and steel was supplied by the Government in accordance with the terms of the agreement within the municipal limits itself and the bricks and sand were also delivered to him at site by the sellers of those commodities prepaid by octroi duty, the municipal Committee Garshhankar on the other hand disputes this assertion and says that the petitioner himself imported the material under the aforesaid four heads without paying the octroi duty. On that score, parties to the present petition are at extreme divergence.

3. The petitioner was prosecuted by the municipal Committee under sections 73 and 78 of the Punjab Municipal Act before the Chief Judicial Magistrate, Hoshiarpur exercising summary powers. He was convicted vide order, Annexure

P. 1, on 11th June, 1970 on his entering a plea of guilt and was sentenced to pay a fine of Rs. 10/-. Thereafter the petitioner received notice, Annexure P. 2, dated 30th October, 1972 from the Municipal Committee, Garhshankar accusing him of having not supplied to it a detail or the account of the material used in the construction of the store necessitating the Municipal Committee to get it prepared at its own end. The petitioner was further accused of not having paid octroi charges to the tune of Rs. 6,722. 50. He was thus required under the said notice to pay the said sum as also a penalty of Rs. 67,225/- and other necessary charges u/s 78 of the Act It is to challenge this notice that the petitioner approached this Court by way of this petition which came to be admitted on 9th October, 1973 The Motion Bench ordered the recovery of amount to be stayed meanwhile.

4. At the outset, it deserves pointed attention that neither u/s 73 nor u/s 78 of the Act has the Municipal Committee been given any power to impose fine. That is the prerogative of a criminal Court. Patently, the municipal Committee had no jurisdiction to undertake the exercise either u/s 73 or u/s 78 of the Act The Learned Counsel appearing for the municipal Committee candidly concedes the legal position Accordingly, the demand made by the municipal Committee on account of fine and other charges is totally without jurisdiction and is hereby quashed.

5. The next question which crops up for consideration is whether tax of Rs. 22. 50 demanded has been assessed in accordance with law. This question can only be answered if the factual controversy as noticed in the beginning of this judgment is first settled. There is no gainsaying the fact that this Court in exercise of powers under Articles 226 and 2/7 of the Constitution does not normally enter in to disputed questions of fact of this kind. This the petitioner could well have raised in appeal which remedy concededly is available u/s 84 of the Act. That provision provides that an appeal against the exemption or levy of any tax under the Act shall lie to the Deputy Commissioner or to such other officer, as may be empowered by the State Government in this behalf. As required u/s 85 of the Act, the appeal is to be preferred within one month from the date when the demand for the tax was made. The Learned Counsel for the petitioner, submits that the matter be resolved here rather than relegate the petitioner to the remedy of appeal, since it has become time-barred. The Learned Counsel stands pointed out that under the proviso to section 85, an appeal can be admitted after the expiry of the period prescribed therefore if the appellant satisfies the officer before whom the appeal is preferred that he had sufficient cause for not presenting the appeal within that period. The appellant, if relegated to the remedy of appeal, can well avail of the proviso to section 85 of the Act and point out that against the demand created on 1st December, 1972, the petitioner had approached this Court to challenge the said'' demand, that this Court had granted him interim relief by staying the recovery of the amount, that major part of the demand pertained to fine which the Municipal Committee has no jurisdiction or power to ask for, that only a fraction thereof pertained to the tax

and that the petitioner in the situation was well justified in approaching this Court under Article 226 of the Constitution of India in preference to an appeal.

6. After taking into consideration the respective contentions of the parties on the question of payment of octroi tax/duty, I have thought it fit to relegate the petitioner to his alternate remedy of appeal. The petitioner may, if so advised file an appeal before the Deputy Commissioner or any other authorised officer as the case may be, within a period of two weeks from today and may, if further advised, make an application for extension of the period of limitation under the proviso to section 85 of the Act. In the event of the appeal being filed within that duration, the Learned Counsel for the Municipal Committee concedes that the plea of limitation would not be raised. And in that event I have no doubt in my mind that the appellate authority would entertain the appeal and hear it on merits. The petition so far as it relates to the demand of octroi tax/duty is dismissed with these observations.

7. In the result, there is partial success for both sides to the extent and manner indicated above. This petition is disposed of accordingly with no order as to costs.

