(2010) 08 P&H CK 0178

In the Punjab And Haryana At Chandigarh

HCL Infinet Ltd. APPELLANT

Vs

Municipal Corporation and Another RESPONDENT

Date of Decision : 11-08-2010

Acts Referred:
Punjab Municipal Corporation Act, 1976 — Section 116

Citation : (2010) 08 P&H CK 0178

Hon'ble Judges : Ajay Kumar Mittal, J;A.K. Goel, J

Bench : Division Bench

Judgement

Adarsh Kumar Goel, J.—This petition seeks quashing of order dated 29.5.2004, Annexure P-13, passed by the Additional Commissioner, Municipal Corporation, Jalandhar under the provisions of the Punjab Municipal Corporation Act, 1976 (for short, "the Act").

2. Case of the petitioner is that it is engaged in sale and purchase of mobile phones. One of its offices is at Mohali from where goods are sent to different places in the State of Punjab. One of its distributors is located at Jalandhar having its godown outside the municipal limits of Jalandhar. On 25.5.2004, the petitioner sold certain goods to be delivered to the Jalandhar distributor for onward sale outside the Municipal limits of Jalandhar. The goods were reported at the Information Collection Centre on the way to Jalandhar. Finally, the goods were unloaded outside the municipal limits of Jalandhar on 26.5.2004. On 27.5.2004, the vehicle was taken to Jalandhar for taking fuel from the Petrol Pump. The same was checked by the Octroi staff. Necessary documents were shown to the said staff, but the said staff did not accept the plea of the petitioner that goods are meant to be taken outside the Municipal limits of Jalandhar. They made a report which led to passing of impugned order, directing the petitioner to pay Octroi duty and 10 times thereof as Composition Fee. The petitioner filed a suit on 31.5.2004 for injunction against imposition of Octroi duty and penalty and also for release of the goods. Under interim order, the goods were released on furnishing security to the tune of Rs. 5 lacs. Finally, the suit was dismissed for

want of evidence and appeal against the said order was also dismissed by the appellate Court. However, while dismissing the second appeal, this Court vide order dated 21.8.2009, held that dismissal of the suit on the ground of maintainability will not debar the petitioner from taking any other remedy. Thereafter, this writ petition was filed.

3. Contention raised in the petition is that there was no power to unilaterally levy the Composition Fee. Reliance has been placed on judgment of the Hon''ble Supreme Court in Municipal Corporation, Ludhiana v. The Commissioner of Patiala Division. Patiala Vol.CX 1995 (2) PLR 249, holding that u/s 116 of the Act, penalty could not be levied except by a Criminal Court. He also submitted that Composition Fee could not be levied unilaterally, as held in the judgment of this Court in Brij Mohan v. Municipal Corporation, Amritsar 1985 RLR 155.

4. Stand taken by the Municipal Corporation is that Composition Fee was validly levied, as the driver of the vehicle agreed for the said levy. He also submitted that the goods were brought to the Municipal limits of Jalandhar for sale.

5. We have heard learned counsel for the parties and considered the rival submissions.

6. The legal position that Composition Fee required consent of the person proceeded against is undisputed. Only dispute is on the question whether any consent was given on behalf of the petitioner. According to the Municipal Corporation, the consent was given by the driver, while according to the petitioner, the driver did not give any consent and that the goods were not meant for sale at Jalandhar and no octroi was attracted.

7. We find from proceedings, Annexure P-13, that except for signatures of the driver, there is nothing to indicate his consent. Thus, even if the driver is accepted to be representative of the petitioner, it was necessary to record clear consent of the representative of the petitioner that he agreed for payment of 10 times of the Composition Fee. There is nothing to show that any such proposal was put to the said driver or the said proposal was accepted by the driver and in absence thereof, the Composition Fee appears to have been levied unilaterally.

8. Learned Counsel for the petitioner has no objection to the amount of octroi duty, as mentioned in order, Annexure P-13, i.e. Rs. 55087/- being paid with 10% Simple Interest from the date the amount was due and till the date of payment. In view of stand of the petitioner, we do not consider it necessary to remand the matter to examine whether octroi duty was leviable and if so, what further action could be taken. On payment being made, the bank guarantee furnished by the petitioner will be released.

9. The petition is disposed of accordingly.

