2019 S C M R 1099

[Supreme Court of Pakistan]

Present: Manzoor Ahmad Malik,Syed Mansoor Ali Shah and Qazi Muhammad Amin Ahmed, JJ

DIRECTOR GENERAL EXCISE AND TAXATION LAHORE and others---Petitioners

Versus

MARKET COMMITTEE, MULTAN and another---Respondents

Civil Petitions Nos. 1926-L and 1927-L of 2015, decided on 15th May, 2019.

(On appeal from the judgment of Lahore High Court, Multan Bench dated 02.6.2015, passed in W.Ps. Nos. 4627/2002 and 8421/2002)

Punjab Urban Immovable Property Tax Act (V of 1958)---

----S. 4(b) [as it stood before amendment by the Punjab Finance Ordinance, XXXVII of 2002]---Market committee---Exemption from tax---Market committee was exempt from the chargeability of tax prior to the amendment in S. 4(b) of Punjab Urban Immovable Property Tax Act, 1958 ('the Act') brought through the Punjab Finance Ordinance, 2002 ('the Ordinance')---After the said amendment the term "local authority" had been deleted and exemption was only available to "Provincial Government" or to a "local government" as defined under the Local Government Ordinance, 2001---Market committee did not fall into either of the two, therefore, it was liable to pay tax under the Act after the amendment in S. 4(b) of the Act brought about through the Ordinance on 25-6-2002.

Province of Punjab v. Market Committee 2011 SCMR 1856 ref.

Rana Shamsad Khan, Additional A.-G. for Petitioners.

Syed Shahid Hussain Shah, Advocate Supreme Court and Izhar Saleem, Secy., Market Committee for Respondents (in C.P. 1926-L of 2015).

Nemo for Respondents (in C.P. 1927-L of 2015).

Date of hearing: 8th May, 2019.

JUDGMENT

SYED MANSOOR ALI SHAH, J.---Through this consolidated judgment, the titled cases are decided as they raise common question of law and facts.

2. Respondents (Market Committees) challenged the demand of tax raised by the petitioners (Department) under the Punjab Urban Immovable Property Tax Act, 1958 ("Act") for a period, before and after, the year 2002. Respondents have argued that as a "Market Committee" they stand exempt from tax under section 4(b)(ii) of the Act and placed reliance on Province of Punjab v. Market Committee (2011 SCMR 1856). While the case of the Petitioners is limited to the period after the amendment brought about in section 4 of the Act through Punjab Finance Ordinance, 2002 ("Ordinance") when the said exemption was no more available.

3. We have heard the learned counsel for the parties and have examined the law. Section 4 before the amendment in 2002 stood as follows:

"4. Exemptions.-The tax shall not be leviable in respect of the following properties, namely:-

(a) …

(b) buildings and lands other than those leased in perpetuity;

(i) vesting in Government of West Pakistan and not administered by a local authority.

(ii) owned or administered by a local authority when used exclusively for public purposes and not used or intended to be used for purposes of profit,"

Market committees enjoy exemption from tax under the above unamended section 4(b)(ii) of the Act as has already been settled by this Court vide judgment dated 21.7.2011 in the case of Province of Punjab v. Market Committee (2011 SCMR 1856), wherein it was held that the Market Committee falls within the definition of "Local Authority," and is, therefore, exempt from tax under section 4(b)(ii) of the Act. The impugned judgment correctly follows that judgment of this Court cited above to hold that the market committee is exempt from the chargeability of tax prior to the amendment brought through the Ordinance. The impugned judgment, however, does not discuss the liability of tax after the said amendment.

3(sic.) The Ordinance amended section 4(b) of the Act and replaced it in the following manner:

"4. Exemptions.-The tax shall not be leviable in respect of the following properties, namely:-

(a) …

(b) buildings cafe/lands other than those leased in perpetuity, owned and administered by the Government of the Punjab or a local government as defined in section 2 clause (xvi) of the Punjab Local Government Ordinance, 2002 (XIII of 2001)." (emphasis supplied)

After the amendment the term "local authority" has been deleted and exemption is only available to Government of the Punjab or to a local government as defined under the Local Government Ordinance, 2001. Market committee does not fall into either of the two. Therefore, respondents are liable to pay tax under the Act after the amendment in section 4(b) of the Act brought about through the Ordinance on 25.6.2002.

4. Faced with this situation, learned counsel for the respondents submits that the petitioners should have filed an intra court appeal before the High Court under section 3 of the Law Reforms Ordinance, 1972 instead of approaching this Court directly. This argument has little force in the light of section 10 of the Act, which provides for an appeal before the authority, especially when the name of the respondents is wrongly included in the valuation list, prepared for the purposes of collection of tax.

5. For the above reasons we hold that the respondents are liable to pay tax under the Act after the amendment in section 4(b) of the Act w.e.f 25.06.2002, therefore, both these petitions are converted into appeals and partially allowed.

MWA/D-3/SC Order accordingly.