

Court No. - 29

Case :- WRIT TAX No. - 354 of 2018

Petitioner :- M/S Selvel Media Services Private Limited And 11 Others

Respondent :- State Of U.P. And 4 Others

Counsel for Petitioner :- Javed Husain Khan, Gulrez Khan, W.H. Khan, W.H. Khan

Counsel for Respondent :- C.S.C.

Hon'ble Pankaj Mithal, J.

Hon'ble Prakash Padia, J.

Heard Sri W.H. Khan, Senior counsel assisted by Sri Javed Husain Khan, learned counsel for the petitioners, learned Standing counsel for the State of U.P., and Sri Alok Mishra, learned counsel for Kanpur Nagar Nigam.

The petitioners are all advertising companies. They are aggrieved by the demand of advertisement tax imposed by the Nagar Nigam, Kanpur on displaying advertisement through hording within its jurisdiction. Basically, the challenge is to the realization of the advertisement tax w.e.f. 1.7.2017 on the ground that from the said date, as the provision to levy advertisement tax has been deleted and the U.P. Goods and Service Tax, 2017 has come into force, no advertisement tax can be levied.

There is no dispute to the fact that previously Nagar Nigam Kanpur framed U.P. Municipal Corporation (Assessment and Collection of Tax on Advertisement) Rules, 2009. These Rules were struck down by the Lucknow Bench of the Allahabad High Court in the case of **Anurag Bansal Vs. State of U.P. & others 2011 (5) ADJ (LB) (FB)**. Thereafter, Kanpur Nagar Nigam made another set of rules for the purposes of levying advertisement tax known as Kanpur Nagar Nigam (Vigyapan Kar Ka Nirdharan Aur Wasuli Viniyam) Upvidhi, 2016 which were enforced w.e.f. 2.4.2016. The said bye laws were also struck down vide judgment and order dated 4.5.2017 in writ petition no. 9389 of 2017. Thereafter, no further rules or bye laws for levying advertisement tax have been made and enforced by the Nagar Nigam, Kanpur but even then demand for advertisement tax has been raised against the petitioners.

The power to levy advertisement tax was contained in Section 172 (2) (h) of the Municipal Corporation Act, 1916 which stood deleted w.e.f. 1.7.2017 by virtue of Section 173 of U.P. GST Act.

In addition to the above, even the power of the State Government to legislate regarding advertisement tax as provided under Entry 55 of List II of the VII Schedule of the Constitution of India also stood deleted w.e.f. 12.9.2016 by the Constitution (101 Amendment) Act, 2016.

Article 265 of the Constitution of India mandates that no tax shall be levied or collected except by the authority of law. Therefore, the authority to levy any tax much less the advertisement tax must be derived from the Statutes.

Since the provision of Section 2 (h) of Section 172 of the Municipal Corporation Act was omitted vide Section 173 of the U.P. GST Act w.e.f. 1.7.2017 and even the power of the State legislature to legislate with regard to advertisement tax stood deleted w.e.f. 12.9.2016, there is neither any power left with the State Government or the Municipal Corporation to legislate about the imposition of tax on advertisement.

In view of the above, after 12.9.2016 or from 1.7.2017 the Nagar Nigam, Kanpur ceased to have any jurisdiction to impose and realize tax on advertisement. Accordingly, the demand of tax on advertisement from the petitioners after 1.7.2017 is held to be illegal and without jurisdiction.

The notices of demand impugned in the petition to the above extent are quashed and the amount, if any of the advertisement tax deposited by the petitioners for the period 1.7.2017 onwards shall be refunded to the petitioners.

The writ petition is allowed and it is held that the Nagar Nigam, Kanpur shall not realize any tax on advertisement after 1.7.2017.

Order Date :- 6.5.2019

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