Court No. - 29

Case :- WRIT TAX No. - 562 of 2018

Petitioner :- M/S Dm Advertisers Agency Thru. Its Managing Partner And 7 Ors.
Respondent :- State Of U.P. And 3 Ors.
Counsel for Petitioner :- C.K.Parekh
Counsel for Respondent :- C.S.C.,Vashishtha Tiwari

Hon'ble Pankaj Mithal,J.
Hon'ble Saumitra Dayal Singh,J.

Heard Sri C.K. Parekh, learned counsel for the appellants. Sri Vashistha Tiwari has appeared for Mathura Vrindavan Nagar Nigam whereas learned Standing counsel for the State of U.P. The Additional Advocate General is also present but he has choosen not to add anything.

The petitioners are advertising companies. They have challenged the vires of the Mathura Vrindavan Nagar Nigam (Vigyapan Kar Ka Nirdharan and Wasuli Viniyaman) Upvidhi, 2017 as ultra-vires to the provisions of the U.P. Municipal Corporation Act, 1959 Central GST Act as well as U.P. GST Act and Articles 14 and 19 of the Constitution of India.

The submission is that the aforesaid bye-laws were notified in the Official Gazette and were enforced w.e.f. 6.1.2018 but on the said date the Municipal Corporation had no authority in law to impose any advertisement tax.

It is submitted that Advertisement tax has been levied in view of Section 172 (2) (h) of the U.P. Municipal Corporation Act which stood deleted w.e.f. 1.7.2017 by virtue of Section 173 of the U.P. GST Act.

It is also submitted that the power of the State to legislate regarding advertisement tax under Entry 55 of List-II of the VIIth Schedule of the Constitution of India also stood deleted w.e.f. from 12.9.2016 by the Constitution (101st Amendment) Act 2016.

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

The Mathura Vrindavan Nagar Nigam framed the said bye-laws in exercise of its powers under Sub-Section (2) (h) of the Section 172 of the U.P. Municipal Corporation

Act which enabled it to impose tax on advertisement not being advertisement published in the news papers.

The aforesaid provision of Sub-Section (2)(h) of Section 172 of the U.P. Municipal Corporation Act was omitted vide Section 173 of the U.P. G.S.T. Act which was enforced w.e.f. 01.07.2017. It may be pertinent to note that not only the G.S.T. Act was implemented w.e.f. 01.07.2017 but even the provision of Section 173 thereof was enforced with effect from the said date. Thus, Section 172 (2) (h) of the U.P. Municipal Corporation Act stood omitted w.e.f. 01.07.2017.

In view of the aforesaid omission of Section 172 (2) (h) of the U.P. Municipal Corporation Act by the U.P. G.S.T. Act, all Municipal Corporations in the State of U.P. were denuded of the power to impose tax on advertisement after 01.01.2017. Once the said power of imposing tax on advertisement itself was taken away, no bye-law in that regard could have been framed and promulgated.

Apart from the above, the State legislature was invested with the power to make laws in respect of taxes on advertisement vide Entry 55 of List II to the 7th Schedule of the Constitution but the said Entry was deleted by the Constitution (101st Amendment) Act, 2016 w.e.f. 12.09.2016. The said Amending Act vide Section 17 amends 7th Schedule and provides for the omission of Entry 55 of List II of the said Schedule. Thus, deleting the power of the State to make laws in respect of taxes on advertisement.

Accordingly, when the State was divested of the power to make laws in respect of tax on advertisement obviously the Municipal Corporations also ceased to have power to impose any tax on advertisement.

In short, the Mathura Vrindavan Nagar Nigam had no legislative competence on 6.01.2018 to promulgate the aforesaid bye-laws in view of omission of Section 172 (2) (h) of the U.P. Municipal Corporation Act by virtue of Section 173 of the U.P. G.S.T. Act which was enforced on 01.07.2017 as also due to the omission of Entry 55 of List II of 7th Schedule to the Constitution of India empowering the State to make bye-laws in respect of tax on advertisement vide Section 17 of the Constitution (101st Amendment) Act, 2016 enforced w.e.f. 16.09.2016.

On these very grounds a challenge was made to the bye-laws pertaining to Advertisement Tax of the Nagar Palika Parisad, Hathras enforced w.e.f. 19.8.2017. A Division Bench of this Court of which one of us (Pankaj Mithal,J) was a member vide judgement and order dated 8.2.2019 passed in Writ Tax No. 577 of 2018 (M/s. Pankaj Advertising Vs. State of U.P., and 7 others) allowed the said writ petition and declared the said bye-laws to be ultra-vires not only to the Constitution but also to the provisions of the U.P. Municipalities Act and the U.P. GST Act on the aforesaid grounds.

In view of the above reasoning and the aforesaid decision, we hold that the Mathura Vrindavan Nagar Nigam (Vigyapan Kar Ka Nirdharan and Wasuli Viniyaman) Upvidhi, 2017 to be ultra-vires, in as much as, Entry 55 of list II of the VII Schedule to the Constitution empowering the State Government to make bye-laws in respect of tax on advertisement stood deleted vide Section 17 of the Constitution 101st (Amendment) Act w.e.f. 16.9.2016 and at the same time Section 172 (2) (h) of the U.P.Municipal Corporation Act authorizing framing of bye-laws in respect to the tax on advertisement also stood omitted by virtue of Section 173 of the U.P. GST Act w.e.f. 1.7.2017.

Thus, the Municipal Corporation on the relevant date lacked the necessary legislative competence to make and promulgate the said bye-laws.

Accordingly, the aforesaid bye-laws are struck down as ultra-vires.

The writ petition is allowed. No order as to costs.

Order Date :- 14.2.2019
SKS