

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.1665/2012

COMMISSIONER OF INCOME TAX

APPELLANT(S)

VERSUS

HARYANA WAREHOUSING CORPORATION

RESPONDENT(S)

WITH

CIVIL APPEAL NOS. 1666-1667/2012

O R D E R

Learned panel advocate appearing for the appellant-Revenue as well as learned counsel for the respondent(s) jointly submitted that they relied upon judgment in the order passed by the High Court namely Commissioner of Income Tax vs. Gujarat Maritime Board [(2007] 14 SCC 704] came up for consideration before this Court. They jointly submitted that these appeals are covered by the judgment of this Court in Assistant Commissioner of Income Tax vs. Ahmedabad Urban Development Authority (Civil Appeal No.21762/2017) reported in (2022) SCC Online SC 1461: (2023) 4 SCC 561.

It was further submitted at the Bar that the respondent(s) herein which has been registered for conducting an activity, in the nature of a General Public Utility, which is charitable in nature under Section 10(29) of the Income Tax Act is entitled to exemption from tax under Sections 11 and 12 of the said Act, therefore, appropriate an order may be made in these appeals.

Considering at length the nature of activity discharged by entities such as the respondent(s) herein, this Court observed in Ahmedabad Urban Development Authority (supra) at paragraphs 274 to 277 as under:-

"274. The amounts or any money whatsoever charged by a statutory corporation, board or any other body set up by the State Governments or Central Government, for achieving what are essentially "public functions/services" (such as housing, industrial development, supply of water, sewage management, supply of food grain, development and town planning, etc.) may resemble trade, commercial, or business activities. However, since their objects are essential for advancement of public purposes/functions (and are accordingly restrained by way of statutory provisions), such receipts are prima facie to be excluded from the mischief of business or commercial receipts. This is in line with the large Bench judgments of this Court in *Shri Ramtanu Coop. Housing Society and NDMC.* [(NDMC v. State of Punjab, (1997) 7 SCC 339]

275. However, at the same time, in every case, the assessing authorities would have to apply their minds and scrutinise the records, to determine if, and to what extent, the consideration or amounts, charged are *significantly higher* than the cost and a nominal markup. If such is the case, the then the receipts would indicate, that the activities are in fact in the nature of "trade, commerce or business" and as a result, would have to comply with the quantified limit (as amended from time to time) in the proviso to Section 2(15) of the IT Act.

276. In clause (b) of Section 10(46) of the IT Act, "Commercial" has the same meaning as "trade, commerce, business" in Section 2(15) of the IT Act. Therefore, sums charged by such notified body, authority, board, trust or commission (by whatever name called) will require similar consideration- i.e. whether it is at cost with a nominal markup or significantly higher, to determine such notified bodies, there is no quantified limit in Section 10(46). Therefore, the Central Government would have to decide on a case-by-case basis whether and to what extent, exemption can be awarded to bodies that are notified under Section 10(46).

277. For the period 1-4-2003 to 1-4-2011, a statutory

corporation could claim the benefit of Section 2(15) having regard to the judgment of this Court in the Gujarat Maritime Board Case [(CIT v. Gujarat Maritime Board, (2007) 14 SCC 704]. Likewise, the denial of benefit under Section 10(46) after 1-4-2011 does not preclude a statutory corporation, board, or whatever such body may be called, from claiming that it is set up for a charitable purpose and seeking exemption under Section 10(23-C) or other provisions of the Act.”

The aforesaid observations of this Court are squarely applicable to the respondent-Corporation herein.

In the circumstances, the appeals are dismissed.

Pending application(s), if any, shall stand disposed of.

.....J.
(B.V. NAGARATHNA)

.....J.
(UJJAL BHUYAN)

NEW DELHI;
AUGUST 9, 2023

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G SCIVIL APPEAL NO(S). 1665/2012

COMMISSIONER OF INCOME TAX

Appellant(s)

VERSUS

HARYANA WAREHOUSING CORPORATION

Respondent(s)

WITH

C.A. NOS. 1666-1667/2012 (IV)

Date : 09-08-2023 These appeals were called on for hearing today.

CORAM :

HON'BLE MRS. JUSTICE B.V. NAGARATHNA
HON'BLE MR. JUSTICE UJJAL BHUYANFor Appellant(s) Mr. N Venkatraman, A.S.G.
Mr. Arijit Prasad, Sr. Adv.
Mr. Raj Bahadur Yadav, AOR
Mr. Rupesh Kumar, Adv.
Mrs. Gargi Khanna, Adv.
Mr. Ak Kaul, Adv.
Mr. Adit Khorana, Adv.
Mr. V C Bharathi, Adv.For Respondent(s) Mr. T. Mahipal, AOR
Mr. Rohit Amit Sthalekar, AORUPON hearing the counsel the Court made the following
O R D E RThe appeals are dismissed in terms of the signed order which
is placed on the file.

Pending application(s), if any, shall stand disposed of.

(RADHA SHARMA)
COURT MASTER (SH)(RENU BALA GAMBHIR)
COURT MASTER (NSH)