APPELLATE CIVIL.

Before Hilton J.

MUNICIPAL COMMITTEE, AMRITSAR,
(DEFENDANT) Appellant

versus

HUKAM CHAND-KANSHI RAM (PLAINTIFFS)
Respondents.

1934
Jan. 10.

Civil Appea No. 1095 of 1

Punjab Municipal Act, III of 1911, sections 84, 86—Assessment or levy of a tax under the Act—Jurisdiction of Civil Courts.

The plaintiffs sued the Municipal Committee for a declaration that on a consignment of spangles the terminal tax chargeable is 8 annas per maund only and not Rs. 10 per maund demanded by the Committee.

Held, that the Civil Courts had no jurisdiction to entertain the suit. According to sections 84 and 86 of the Punjab Municipal Act an appeal against the assessment or levy of any tax under the Act lies to the Commissioner and no objection can be taken to any valuation or assessment in any other manner than is provided in the Act.

Municipal Committee, Ambala v. *Mohinder Singh* (1), relied upon.

Second appeal from the decree of Sardar *Indar Singh, Senior Subordinate Judge, with appellate powers, Amritsar, dated 27th March, 1933, affirming that of* Bakhshi *Sher Singh, Subordinate Judge, 2nd Class, Amritsar, dated 3rd December, 1932, granting the plaintiff a decree for declaration to the effect that the tin spangles are chargeable with terminal tax at annas 8 per maund.*

SHAMAIR CHAND and SHAM DAS, for Appellant.

NIHAL SINGH, for S. L. PURI, for Respondents.

HILTON J.—The plaintiff firm imported two cases of spangles weighing $3\frac{1}{2}$ maunds into the Amritsar Municipality. The Terminal Tax authorities de- HILTON J.

(1) 38 P. R. 1911.

1934

MUNICIPAL COMMITTEE, AMRITSAR v. HUKAM CHAND-KANSHI RAM.

HILTON J.

manded terminal tax at the rate of Rs. 10 per maund, that is Rs. 35. and detained one case of spangles by consent. The plaintiff firm sued for a declaration that the spangles were chargeable with terminal tax at 8 annas a maund only and they also asked for damages for wrongful detention of the one case. The trial Judge gave a decree for a declaration as asked for and for Rs. 30 as damages and the learned Senior Subordinate Judge has dismissed an appeal by the defendant Municipal Committee, who now come here on second appeal.

It has been argued before me on behalf of the defendant Committee that the Civil Court had no jurisdiction to entertain the suit. that the terminal tax leviable was at the rate of Rs. 10 per maund and finally that damages should not have been granted.

In my opinion the contention of Mr. Shamair Chand, on behalf of the defendant Committee, that the Civil Court had no jurisdiction, should be upheld. The relevant sections are sections 84 and 86 of the Punjab Municipal Act, 1911. It is therein provided that an appeal against the assessment or levy of any tax under the Act lies to the Commissioner and further that no objection shall be taken to any valuation or assessment in any other manner than is provided in the Act. The assessment of Rs. 10 per maund on the spangles instead of 8 annas per maund was, in my opinion, clearly an assessment against which an appeal lay under section 84 to the Commissioner and section 86, therefore. *primâ facie* bars a suit. An authority in this connection is *Municipal Committee, Ambala* v. *Mohinder Singh* (1), which lays down that where an appeal lay to the Commissioner from an order refusing refund of a tax lawfully levied the plaintiffs were bound to exhaust

(1) 38 P. R. 1911.

1934

MUNICIPAL COMMITTEE, AMRITSAR v. HUKAM CHAND-KANSHI RAM.

HILTON J.

their remedy by appeal before suing for refund. The present case of an assessment is on all fours. It is true that it has been argued before me for the plaintiff-respondents that the action of the Municipal authorities in assessing spangles at Rs. 10 a maund was *ultra vires* and not lawful, but it cannot be said, in my opinion, that the Municipal authorities were acting in excess of their powers in making an assessment of Rs. 10 a maund, which is an assessment permitted by the Terminal Tax Schedule on articles which are described therein as spangles; the only question in the present case being whether the spangles which were imported by the plaintiff firm should not have been excluded from the Rs. 10 a maund category and included in another category. In any case, there is no question of the Municipal authorities having acted *ultra vires* in making an assessment under the Rs. 10 a maund category. I, therefore, see no reason for not following *Municipal Committee, Ambala* v. *Mohinder Singh* (1).

The next question is whether the spangles should have been assessed at Rs. 10 a maund or 8 annas a maund. It has been found as a fact that these spangles are made of tin and the 71st category of the Terminal Tax Schedule provides that "brass and copper and German silver sheets and wire also tin, zinc, lead and articles made thereof" should be assessed at 8 annas a maund while category No. 75 provides that "Kalabatun, Kaitun, Salma, Mokaish and Spangles, gold and silver thread, Gota and Patha" should be assessed at Rs. 10 a maund. It will be noticed that there is no distinction in the 75th article between spangles made of different kinds of metal but rather all kinds of spangles seem to be in-

(1) 38 P. R. 1911.

1934

MUNICIPAL COMMITTEE, AMRITSAR v. HUKAM CHAND-KANSHI RAM.

HILTON J.

cluded in this article. I can see no reason at all why the spangles, which were imported by the plaintiffs should be excluded from this article and included in Article 71 merely on the ground that they are made of tin. The principle should be followed that *generalia specialibus non derogant*. The opinion of the lower appellate Court that Article 75 comprises only articles made of precious metals is not justified by the wording of the said article. It has been argued for the plaintiff-respondents that in case of doubt fiscal enactments should be interpreted in the manner more favourable to the subject [*Khushi Ram-Karam Chand* v. *The Commissioner of Income Tax* (1) and *In the matter of Khairati Ram* (2)], but in my opinion no room for doubt exists in the present case. The fact that spangles made of tin are of less value than spangles made of gold and ought not to be assessed at the same rate is not important, seeing that gold thread and silver thread, which are not articles of the same value, are also assessed at the same rate. I, therefore, hold that the spangles in question were assessable according to the Schedule under Article 75.

In view of my finding on the question of the assessment of the spangles the plaintiff firm is not entitled to recover damages and, in any case, the firm appears to have allowed the detention of the case of spangles voluntarily.

For the above reasons, I accept the appeal of the defendant Municipal Committee and setting aside the judgments and decrees of the Courts below I dismiss the suit of the plaintiff firm with costs in all Courts.

P. S.

Appeal accepted.

(1) 1928 A. I. R. (Lah.) 219. (2) 1931 A. I. R. (Lah.) 476.