(1999) 04 AHC CK 0167

In the Allahabad High Court

Case No : C.M.W.P. No. 587 of 1986

Acqueous Victuals (P.) Ltd., Bareilly — APPELLANT

Vs

Nagar Mahapalika, Bareilly — RESPONDENT

Date of Decision : 16-04-1999

Acts Referred:

Uttar Pradesh Municipalities Act, 1916 — Section 128(1)
Uttar Pradesh Nagar Mahapalika Act, 1959 — Section 172(2)

Citation : (1999) 2 AWC 1747

Hon'ble Judges : R. K. Agrawal, J;M. C. Agrawal, J

Bench : Division Bench

Advocate : Navin Sinha, for the Appellant;

Final Decision : Allowed

Judgement

R.K. Agrawal, J.—By means of the present writ petition, the petitioner seeks writ, order or direction in the nature of mandamus directing Nagar Mahapalika, Bareilly, not to charge octroi from the petitioner-company on empty bottles which it brings within the limits of Nagar Mahapalika. Bareilly, for refilling and again sends back to the distributors outside the municipal limits of opposite party. The petitioner further seeks writ of mandamus quashing the octroi bye-law and Rules framed thereunder by the Nagar Mahapalika. Bareilly, to the extent it authorises the levy of octroi on the empty bottles which are brought for being refilled and to refund the amount realised in respect of such octroi from the petitioner-company.

2. The facts of the case arc that the petitioner is a private limited company incorporated under the Companies Act. 1956, and has its bottling plant at Bareilly. It is engaged in the business of bottling soft drinks like Gold Spot, Limca, Thums-up, Soda, Rim-Zim, etc., for which the petitioner entered into an agreement with M/s. Parle (Exports) Private Limited. Bombay. The petitioner distributes bottled soft drinks to the wholesalers appointed by it in 10 districts in the State of Uttar Pradesh, including the municipal limits of Bareilly Nagar Mahapalika. The wholesalers return the empty bottles to the petitioner after the

beverage filled in the said bottles are consumed or used by the consumers. The empty bottles so received by the petitioner, are again re-filled by it and once again the petitioner sends the same to its whole-sellers in various districts. Thus, the said bottles remain in circulation.

3. The Nagar Mahapalika, Bareilly opposite party has framed rules to levy the octroi duty. Entry 17 of List 1 of the Octroi Schedule framed by the opposite party provides for levy of Rs. 5 per quintal as octroi on alt kinds of soft-drinks like Double-Seven, Limca, Gold Spot etc., (including bottles'' weight). However, in item No. 39 of List IV of the Octroi Schedule, it is provided that octroi duty on empty bottles are chargeable at the rate of Rs. 2 per quintal as Sheeshe Kee Bottles, etc. The petitioner has stated that glass bottles which the petitioner uses for filling/re-filling soft drinks, are manufactured by various firms at Bombay, Baroda, Bahadurgarh (Haryana) as per specifications prescribed by M/s. Parle (Exports) Limited and they are purchased directly by the petitioner from such manufacturers. The petitioner pays the octroi duty on these new bottles when it brings them within the municipal limits of Bareilly. The Nagar Mahapalika, Bareilly, opposite party, is levying octroi on the empty glass bottles which the petitioner receives from outside the municipal limits of Nagar Mahapalika, for being refilled. The contention of the petitioner is that such bottles which the petitioner receives for being refilled within the municipal limit of Nagar Mahapalika, Bareilly, is not meant for consumption, use or sale, within the municipal limits of Nagar Mahapalika. Bareilly, and therefore, no octroi duly can be levied under law on such empty bottles. It has been stated by the petitioner that the ownership of bottles which keep on circulating continuously remains with the petitioner throughout and in the event of any damages being caused to the bottles in the course of sale by the whole-sellers/retail shop keepers, the petitioner is compensated.

4. In the counter-affidavit filed by one Sri Radha Krishna Das. Octroi Inspector Nagar Mahapalika on behalf of the respondent, it has been staled that the octroi duty is being charged on the empty bottles brought within the municipal limits of Nagar Mahapalika. Bareilly, in accordance with the item No. 39 of List 4 of Nagar Mahapalika Octroi Rules. 1985. It has been further stated that the empty bottles are brought within the limits of Nagar Mahapalika Bareilly, for being filled in again with some contents when the process of use starts. It is inconceivable that the empty bottles are being brought within the limits for any other purpose except that for use and consumption,

5. In the rejoinder-affidavit of Shri N.C. Agnihotri, Administrative Officer of the petitioner Company, it has been denied that octroi can be charged on the empty bottles every time when they are brought within the Nagar Mahapalika. Bareilly, for being refilled. Hem No. 39 of Schedule IV of the Octroi Rules apply only on new bottles or on such bottles which are brought within the municipal limits for the first time.

6. We have heard Shri Navin Sinha learned counsel for the petitioner. However,

no one had appeared on behalf of the opposite party though the case has been taken in the revised list.

7. It is not in dispute that when the petitioner brings new bottles, after they are purchased from the manufacturers, within the municipal limits of Nagar Mahapalika, Bareilly, it pays octroi duty leviable thereon. The dispute is only with regard to those empty bottles which it brings within the municipal limits of Nagar Mahapalika. Bareilly, for the purposes of re-filling of soft beverages. These bottles have already been subjected to octroi once. Section 172 of the Nagar Mahapalika Adhiniyam, 1959 (hereinafter referred to as the Adhiniyam), authorises the Nagar Mahapalika to impose certain tax. Clause (b) of sub-section (2) of Section 172 of the Act provides for levy of octroi. Relevant portion of Section 172 of the Act reads :

"172. Taxes to be imposed under this Act-

.... (2) In addition to the taxes specified in sub-section (1) the Mahapalika may for the purposes of this Act and subject to the provisions thereof impose any of the following taxes namely :

(b) an octroi on goods or animals brought within the city for consumption, use or sale therein ;

.... Provided that octroi on such goods under clause (b) and a tax under clause (c) shall not be levied at the same time.

....

8. Thus, for levy of octroi, two conditions have to be satisfied :

(i) goods should be "brought within" the limits of Nagar Mahapalika, and

(ii) they should be brought for "consumption, use or sale therein",

9. In the present case, the first condition, i.e., brought within the municipal limits of Nagar Mahapalika. Bareilly, is satisfied inasmuch as the empty bottles are brought by the petitioner for being refilled within the municipal limits of Nagar Mahapalika. Bareilly.

10. The only question remains as to whether the second condition, namely, they should be brought for consumption, use or sale therein apply on these empty bottles which have been brought within the municipal limits of Nagar Mahapalika, Bareilly, or not when the empty bottles are being brought within the municipal limits of Nagar Mahapalika, for the purposes of refilling of soft drinks by the petitioner. These empty bottles had not been brought for consumption or sale. On the question as to whether these bottles are being brought for use within the municipal limits of Nagar Mahapalika as alleged by the opposite party, we are of the opinion that merely because these empty hollies are being brought within the municipal limits of Nagar Mahapalika. Bareilly, for the purposes of refilling, it cannot be said that empty bottles are being used within the municipal limits of

the opposite party. These empty bottles after being re-filled, are, either sent outside the municipal limits or they are sent to the wholesalers or the retailers within the city itself. What is being sold by the petitioner, is the beverages contained in the bottles and not the bottles themselves. After the beverages or soft drinks contained in these bottles are consumed or used, the empty bottles arc once again returned to the petitioner. Thus, it cannot be said that they are being used within the municipal limits of the opposite party.

11. The learned counsel for the petitioner has placed reliance upon the decision of the Hon''ble Supreme Court rendered in the case of M/s. Acqueous Victuals Pvt. Ltd. v. State of U. P. and others. JT 1998 14 SC 195, in support of his submission that the octroi duty cannot be levied on such empty bottles which the petitioner receives for the purposes of refilling within the municipal limits of the opposite party as it cannot be said that such empty bottles are being used within the municipal limits of the opposite party.

12. The Hon''ble Supreme Court in the case of Burmah Shell Oil Storage and Distributing Company India Ltd. v. Belgaum Borough Municipality 1963 (2) SCR 216, while interpreting the words found in Entry 52 of the State List in the Constitution dealing with taxes on the entry of goods into local area for consumption, use or sale therein, held that the two expressions ''use'' and ''consumption'' together, therefore. connote the bringing in of goods and animals not with a view to taking them out again but with a view to their retention either for use without using them up or for consumption in a manner which destroys, wastes or uses them up. In view of the aforesaid decision of Hon''ble Supreme Court, the word retention is held to be synonym with the word ''repose'', meaning thereby the article concerned must finally rest within the municipal limit. The Hon''ble Supreme Court in the case of M/s. Acqueous Victuals Pvt. Ltd. (supra), while considering the similar provisions, i.e., Section 128 (1) (viii) of the U. P. Municipalities Act, 1916, held as under :

"It is, therefore, obvious that the underlying common idea behind all the three relevant words ''sale'', ''consumption'', or ''use'' within the municipal limits of the imported commodity so as to attract the levy of octroi thereon would require proof of the fact that the concerned commodity got consumed completely within the municipal limits or was used for an indefinite period in such a way that it came to rest finally and permanently within the municipal limits or was sold within the municipal limits."

13. The Hon''ble Supreme Court in the aforementioned case, did not approve the view of this Court that the bottles till they are emptied of their contents by the consumers would remain filled with liquid beverages contained therein and, therefore, to that extent bottles could be said to have been brought within the municipal limits for the purpose of use for storage. The Hon''ble Supreme Court in the aforesaid case held that if the beverage in liquid form contained in bottles are brought within the municipal limits and after such beverages are taken out of these bottles, those very empty bottles are found to have been re-exported from

the municipal limits without being sold therein, the octroi duty paid on the weight of such bottles earlier could be subjected to claim for refund by the exporter of such empty bottles if the relevant factual data is found to the satisfaction of the authorities before whom such claim is lodged.

14. Applying the principles laid down by Hon''ble Supreme Court to the facts and circumstances of the present case, we find that the petitioner is bringing empty bottles within the municipal limits of Nagar Mahapalika. Bareilly, for the purpose of refilling. After refilling the bottles with the beverages, the same are sent by the petitioner to its wholesalers or retailers for the purposes of selling the beverages. Empty bottles are once again returned back to the petitioner after the beverages or soft drinks filled in these bottles are consumed or used. Thus, it cannot be said that these empty bottles remained for indefinite period within the municipal limits of Nagar Mahapalika, Bareilly, in such a way that it came to rest finally and permanently within the municipal limits of Nagar Mahapalika, Bareilly. Thus, it cannot be said that these empty bottles are used within the municipal limits of Nagar Mahapalika. Bareilly, when they are refilled and sent for sale to other places for the purposes of levy of octroi duty u/s 172 (2) (b) of the Act.

15. We, therefore, allow the writ petition and hold that no octroi duty can be levied by the Nagar Mahapalika, Bareilly opposite party, on such empty bottles which the petitioner receives from outside for the purposes of refilling them with beverages/soft drinks and again sends to its wholesalers/distributors for the purposes of selling the soft drinks/beverages contained in those bottles.

16. We are informed that the State Government of U. P. had abolished levy of octroi duty in the State. This Court on 4th September. 1986, passed the following order in this case :

"Issue notice.

Meanwhile, the petitioner may go on making payment of octroi on and when it becomes due. The octroi deposited by the petitioner would be kept in a separate amount by the Nagar Mahapalika, Bareilly. In the event of this writ petition succeeding, the aforesaid Nagar Mahapalika would return the amount deposited by the petitioner as octroi without interest within two months of the judgment."

17. However, we find that the petitioner has not stated anywhere in the writ petition that it had not realised octroi duty on such empty bottles from its customers or any other persons. The petitioner will be entitled for the refund of the amount of octroi paid in terms of the order of this Court dated 4.9.1986 only if it is shown that the octroi duty on such empty bottles had not been passed on to the customers or any other persons/consumers either in the form of octroi duty or in any other name so that it may not amount to unjust enrichment by getting such refund in the light of decision of the Constitution Bench of the Hon''ble Supreme Court in the case of Mafatlal Industries Ltd. and Others Vs. Union of India (UOI) and Others, . The petitioner will lodge its claim for refund before the opposite party who shall examine as to whether the petitioner has

passed on octroi duty paid by it on empty bottles to its customers or any other persons or not. If the petitioner had not passed on the octroi duty to its consumers or any other persons then in that event the petitioner shall be entitled for refund, otherwise not. No other point has been pressed by the petitioner.

18. In the result, the writ petition succeeds and is, therefore, allowed. There shall be no order as to costs.

