
(2004) 06 BOM CK 0032

In the Bombay High Court

Case No : Writ Petition No. 3624 of 1991

Amalner Municipal Council

APPELLANT

Vs

Wipro Limited

RESPONDENT

Date of Decision : 15-06-2004

Acts Referred:

Maharashtra Municipalities Act, 1965 — Section 170

Citation : (2005) 1 BomCR 375

Hon'ble Judges : Marlapalle B.H., J

Bench : Single Bench

Advocate : R.N. Dhorde, for the Appellant; P.M. Shah, Sr. A., for the Respondent

Final Decision : Dismissed

Judgement

Marlapalle B.H., J.—This is petition filed under Article 227 of the Constitution of India by the Municipal Council at Amalner challenging the common judgment dated 30-1-1991 of the learned Judicial Magistrate, First Class, Amalner, in Municipal Council Appeal Nos. 1 to 14 of 1985 as well as the common judgment dated 24-9-1991 of the learned Additional Sessions Judge, Amalner, in Criminal Misc. Application Nos. 20 to 31 of 1991 and 59 to 72 of 1991. The first batch of the criminal applications was filed by the Municipal Council, whereas, the second batch of the said application was filed by the company namely; Wipro Limited registered under the Companies Act. The said company has a factory for manufacture of "Vanaspati" which is packed in a tin container and sold in the market. These containers are made out of the tin plates which used to be imported and the company has a separate factory for the manufacture of these tin containers. It was popularly known as "fabrication plant" employing about 150 employees and a separate factory registered under the Factories Act, 1948. The manufacturing of these tin containers from the tin plates is a process involving cutting, trimming, flanging, seaming, soldering etc. Though the tin container was a new commodity so manufactured by way of fabrication from the tin plates, it was utilised as captive requirement and it was not sold in the open

market. The company was, therefore, claiming octroi concession in view of Entry No. 77 in Schedule read with Schedule II, Part 1-A(1) which reads as under :

"All goods specified in Entries 6(c), 35, 40, 64, 65, 71, 77 and 86 in Schedule 1 and khobra mentioned in Entry 25, raw rubber and latex mentioned in Entry 70 in that Schedule, when imported by an industrial undertaking for use as raw material for proceeding within that undertaking and when declaration in respect thereof is issued by the undertaking in form No. 14, shall be subject to octroi by any Council at a rate not exceeding 1.25 per cent and not less than 0.25 per cent."

2. On 28-4-1980 the Municipal Council issued a public notice and informed that the raw commodities made out of the metals listed in Item No. 77 of Schedule 1 shall be levied octroi at the rate of 2% with effect from 16-6-1980. On 16-4-1981 or there about the Municipal Council issued notice to the company calling upon it to pay the octroi at the rate of 2% on the tin containers manufactured and utilised for packing of Vanaspati. But subsequently, the Council demanded octroi at the rate of 3.5% and issued the bills accordingly for the period from 1970 to 1984.

3. The company approached this Court in Writ Petition No. 2056 of 1985 filed before the Principal Bench and subsequently re-registered as on its transfer to this Bench as Writ Petition No. 768 of 1992. At the same time, the bills numbering twenty came to be challenged by filing appeals u/s 170 of the Maharashtra Municipalities Act. These appeals were numbered as Appeals Nos. 15 to 36 of 1985 before the learned Judicial Magistrate, First Class at Amalner.

4. The Municipal Council issued fresh bills for the period from December, 1984 onwards and upto 6th April, 1985, demanding the payment of octroi at the rate of 3.5% thereby indicating that the tin containers fell under Item No. 71 of Schedule 1 of the Octroi Rules framed by Amalner Municipal Council and brought into force with effect from 7-12-1968. These demands came to be challenged by the company in Municipal Tax Appeal Nos. 1 to 14 of 1985 filed u/s 170 of the Maharashtra Municipalities Act, 1965, before the learned Judicial Magistrate, First Class, Amalner.

5. By common judgment dated 30th June, 1991, all these appeals came to be allowed by holding that the Municipal Council was not authorised to levy octroi at the rate of 3.5% but the octroi was to be recovered charged at the rate of 1.25% and therefore, the Municipal Council was directed to refund the excess amount recovered from the company. The Municipal Council challenged this decision by filing Criminal Misc. Application Nos. 20 to 33 of 1991, whereas, the company also challenged this judgment by filing Criminal Misc. Application Nos. 59 to 72 of 1991 for the consequential reliefs like interest, etc. on the excess amount recovered from it. By this common judgment dated 24-9-1991, the Revisional Court dismissed both the sets of appeals and thus, confirmed the decision of the learned Magistrate.

6. Shri R.N. Dhorde, learned Advocate for the Municipal Council, submitted that the courts below had committed manifest errors in holding that the Municipal Council had no authority to levy octroi at the rate of 3% on the tin containers and instead it could levy octroi on the said commodity only at the rate of 1.25%. He submitted that (a) there was no evidence to show that the tin containers were in fact manufactured from the tin plates and utilised as a captive requirement, (b) in the appeal memo it was admitted by the Municipal Council that Form No. 14 was not filed in and submitted to the Municipal Council for claiming the octroi concession under Schedule II (Part 1-A) of the Maharashtra Municipalities (Octroi) Rules, 1988, (hereinafter referred to as the "Octroi Rules" for short) and unless this mandatory requirement was complied with the company was not entitled to seek the concession for payment of octroi on the basis of the captive requirement and (c) in the appeal memo it was conceded that no such forms were submitted but in Appeal No. 1 of 1985 an amendment application was moved which was allowed by the learned Judicial Magistrate, First Class, but no such amendment was in fact carried out in the appeal memo. In addition, in Appeal Nos. 6 to 14 of 1991 no such amendment was ever moved and therefore, it was necessary to hold that so far as the period covered under the said bills is concerned, the company had not submitted Form No. 14. Shri R.N. Dhorde also urged that unless the benefits of concession were passed on to the consumer and such a proof was brought on record, at this point of time the company was not entitled to claim payment of octroi at the concessional rate of 1.25%. In support of these contentions he has placed reliance in the cases of P.C. Cheriyan Vs. Mst. Barfi Devi, and Indian Aluminium Company Limited Vs. Thane Municipal Corporation, .

6-A. Shri P.M. Shah, learned Senior Advocate for the company, on the other hand, has supported the view taken by both the courts below and submitted that the challenge raised by the Municipal Council to these orders is devoid of merits. The amendments were sought and duly allowed. In fact, the Municipal Council had conceded that such Form No. 14 was submitted for the entire period covered by the bills under challenge in the appeals. He also pointed out that the rates of Vanaspati are fixed as is evident from the circular dated 20-11-1985,

7. The lower Appellate Court had framed three main issues namely;

(i) Whether the respondent Municipal Council is entitled to claim octroi at 3.5% on tin plates?

(ii) Whether the rate of octroi at 3.5% is liable to be reduced and if yes, what is the rate of octroi for tin for the tin plates in the circumstances?

(iii) Whether the appellant is entitled to refund of the excess amount deposited?

The first issue was answered in the negative. While answering the second and third issues in the affirmative it was held that the rate of octroi for the tin plates was 1.25% and therefore, the Municipal Council was liable to refund the excess amount recovered by it.

8. The evidence both oral as well as documentary was led by the respective parties. On behalf of the Municipal Council, the-Chief Officer was examined, whereas, on behalf of the company some of its Managers and the Factory Inspectors were examined as witnesses. P.W. 1 R. Radhakrishnan was the Manager (Accounts) since October, 1982, working in the company factory at Amalner. In his depositions, he stated that the company was having licence from the Ministry of Industrial Development. Government of India, for fabrication plant under the Industrial Development and Regulations Act, 1951 (Exhibits 51 to 53). The tin fabrication plant was on one side of the road, whereas, the other plants are on the other side of the road in one campus. The fabrication plant has a separate building with about 140 to 150 employees working therein. On an average, 5000 tin containers were produced daily from the imported tin sheets in the fabrication plant. He also explained the various operations that the tin plate processing undergoes so as to manufacture the tin containers. The company had also licences under the Central Excise and Salt Act (Exhibit 56). In the cross-examination, he was given suggestions to the effect that the tin containers were not manufactured, old tin containers were reprocessed and new ones were manufactured, the tin plates were imported and the tin containers were manufactured by some-one else and not as a captive consumption. All these suggestions were refuted by the witness.

9. At Exhibit 83 is the affidavit filed by the Inspector of Factories. He stated that he was officiating as Inspector of Factories, Jalgaon, since May, 1986. In his official capacity, he had visited the fabrication plant and noted that the tin containers were being manufactured from the tin plates with the help of different machines and the tin plates were utilised as raw materials for the manufacturing of these containers. The said fabrication unit was located in a separate and independent building and registered as a factory under the Factories Act, 1948.

10. In Writ Petition No. 94 of 1991 decided by a "Division Bench of this Court on 5-4-2002, we upheld, inter alia, the company's contentions that the tin containers were manufactured from the tin plates and they were being used as captive commodity for packing of vanaspati. It is thus clear that the company manufactured tin containers from the imported tin plates and these containers were used as captive commodity by the same company for packing vanaspati. Thus, the provisions of Schedule II (Part I-A) were attracted for levying octroi on the tin containers manufactured by the company in its fabrication plant at Amalner.

11. The Municipal Council persisted in its opposition to the appeals on the ground that the mandatory requirement of submitting Form No. 14 was not complied with and therefore, there was no scope for it to cause an inquiry as to whether the provisions of Schedule II (Part I-A) were applicable. Emphasis was placed on the appeal memo. However, it is seen from the record that an application was moved by the company for amendment of its appeal memo. It was allowed. Though it is a fact that these amendments were not carried out, the Chief Officer

submitted a purshis at Exhibit 25 in Municipal Appeal No. 1 of 1985 in the following words :

"It is, therefore, prayed that the respondent be kindly permitted to delete the respondent's contentions regarding the issue of declaration in Form No. 14 in its say and affidavit and to amend say and affidavit as follows:

The contentions of the appellant that the declaration in Form No. 14 is made is not disputed."

It is also pertinent to note that another purshis at Exhibit 112 has been filed for treating the evidence recorded in one appeal as the evidence in all other appeals. In the oral depositions, the Chief Officer admitted that the company had submitted Form No. 14. This evidence in terms of Exhibits 25 and 101 is required to be read as oral and documentary evidence in all the appeals in view of the purshis at Exhibit 112. In view of the evidence so placed on record the Municipal Council is deemed to have accepted subsequently that the filling of declaration in Form No. 14 by the company was not disputed and therefore, the arguments advanced by Shri R.N. Dhorde regarding failure of the company in submitting the declarations in Form No. 14 is unsustainable.

12. This evidence also shows that filing of declarations in Form No. 14 in Appeal Nos. 6 to 14 of 1991 was also accepted by the Municipal Council alongwith the amendments as were sought and allowed in Appeal No. 1 of 1991. The requirement of filing the declaration in Form No. 14 for being eligible to the octroi rate of 1.25% is no doubt mandatory but in the instant case the Municipal Council unequivocally had stated in Exhibit 25 that it did not dispute the filing of such declarations by the company. In view of this admitted position, the Municipal Council now cannot take a stand that the mandatory requirement of submitting the declaration in Form No. 14 was not fulfilled in all the appeals or in some of them.

13. The next point regarding the passing of the benefit of octroi concession to the actual consumers, it needs to be stated by way of reminder that this issue was not taken up before the lower Court or the Revisional Court. Nevertheless in the evidence of the company it has come on record that the prices of vanaspati were fixed by the Government of India and therefore, the question of passing on the benefits of concessions to the consumer does not arise.

14. Both the courts below on examining the issues raised by the respective parties recorded concurrent findings to hold that the company was required to pay octroi at the rate of 1.25% under Entry No. 77 of Schedule I read with Schedule II (Part 1-A)(1) of the Octroi Rules and the Municipal Council had no authority to levy octroi at the rate of 3.5% or in excess of 1.25%. This view taken by the courts below cannot be held to be patently erroneous calling interference at the hands of this Court while exercising the supervisory powers and therefore, the challenge to these orders is devoid of merits.

15. In the result, the writ petition is dismissed. Rule is discharged. Interim order, if any, stands vacated.

16. Civil application does not survive because while granting rule by order dated 30-7-1992, the earlier ad interim order dated 25-11-1991 was not continued. Hence, the civil application is rejected.