(1990) 10 BOM CK 0008

In the Bombay High Court

Case No : Writ Petition No. 291 of 1983

American Refrigerator Company Ltd. APPELLANT

Vs

Pimpri Chinchwad Municipal Corporation RESPONDENT

Date of Decision : 30-10-1990

Acts Referred:
Maharashtra Municipalities Act, 1965 — Section 142

Citation : (1991) 2 BomCR 642 : (1990) 92 BOMLR 575

Hon'ble Judges : Sujata Manohar, J;M.F. Saldanha, J

Bench : Division Bench

Advocate : S.M. Gorwadkar and N.B. Shah, for the Appellant; P.S. Patankar, for the Respondent

Judgement

Sujata Manohar, J.—The petitioners are a company registered under the provisions of the Companies Act, 1956 having their registered office at Calcutta. The petitioners have a factory at Pune. The 1st respondent is a Municipal Council established u/s 8 of the Maharashtra Municipalities Act, 1965. The area where the petitioners'' said factory is situate is under the jurisdiction of the 1st respondent Municipal Council. By a notification dated 11th October, 1982 the said Municipal Council has been converted into a Municipal Corporation under the Bombay Provincial Municipal Corporation Act, 1949. At all times material to the present petition, the respondent was a Municipal Council under the provisions of the Maharashtra Municipalities Act, 1965.

2. The petitioners manufacture hydraulic equipment such as punches, shears, mobile fabricators, N.B.C. open throat presses and hydraulic cylinders in the factory at Pune. The raw material required for the manufacture of these items consists of steel plates, C.I. castings, hydrolic punches etc. This raw material is imported by the petitioners into the limits of the respondent Council from outside and the petitioners are liable to pay octroi in respect of the material so imported.

3. u/s 142 of the Maharashtra Municipalities Act, 1965 it is provided as follows:

"A Council, if it thinks fit, instead requiring payment of octroi due from any person, mercantile firm or public body to be made at the time when the animals or goods in respect of which the octroi is leviable are introduced within its octroi limits, may at any time direct that an account-current shall be kept on behalf of the Council of the octroi so due from such person, firm or body. Such account shall be settled at intervals not exceeding one month, and such person, firm or public body shall give such information or details and make such deposit or furnish such security as the Council or any officer authorized by it in this behalf shall consider sufficient to cover the amount which may at any time be due from such person, firm or body in respect of such dues. Any amount so due at the expiry of any such interval shall, for the purposes of Chapter X, be deemed to be, and shall be recoverable in the same manner as, an amount claimed on account of any tax recoverable under the said chapter."

The petitioners were given the benefit of the facility u/s 142 of the said Act. They were granted an account-current bearing Account No. 127 for the payment of octroi duty on the material imported within the limits of the respondent-Municipal Council. According to the petitioners, they have accordingly paid all octroi duty on all the goods so imported and have submitted a monthly statement of payments made in the prescribed form as required under the Maharashtra Municipalities (Octroi) Rules, 1968. According to the petitioners, they have, right from the year 1973 onwards, regularly submitted, the monthly statements and have made payments of octroi dues as per the statements. According to the petitioners, at no time the correctness of the monthly statements submitted by the petitioners was questioned by the respondent- Council.

4. On 23rd July, 1982 the Octroi Inspector of the respondent visited the factory of the petitioners and sought to verify the octroi account of the petitioners right from May, 1973 up to March,1982. The petitioners thereafter received a letter dated 7th August, 1982 from the respondents setting out, inter alia, that on checking of accounts for the period 1973-74 upto March, 1982 it is found that a sum of Rs. 26,747.04 is payable by way of octroi. The petitioners were called upon to pay this amount within 7 days, failing which recovery proceedings would be taken under the provisions of sections 150, 151 and 152 of the Maharashtra Municipalities Act, 1965. On 30th August 1982 a bill for the said amount was served on the petitioners along with a covering letter of the same date. By their reply dated 6th September, 1982 the petitioners have pointed out to the respondents that the said claim was not acceptable to them and requested the respondents to check their records. They also pointed out that the inspection of the past records had already been carried out and it was doubly carried out in July, 1982. Thereafter the petitioners have filed the present writ petition for setting aside the demand made by the respondents under their bill dated 30th August, 1982.

5. u/s 142 of the Maharashtra Municipalities Act, 1965 when an account-current is permitted to be kept in respect of octroi due from any person, firm or body,

such account shall be settled at intervals not exceeding one month. The section further provides that any amount so due at the end of the month shall, for the purposes of Chapter X, be deemed to be and shall be recoverable under Chapter X. Under the Maharashtra Municipalities (Octroi) Rules, 1968 which have been framed in exercise of powers conferred by section 321, sub-section (2), read with the proviso to section 105, sub-section (1) of the Maharashtra Municipalities Act, 1965, rule 14 deals with declarations to be made by an importer. Under Rule 14(e), on arrival of any dutiable goods at the Octroi Naka, the importer or the driver of the vehicle or conveyance or the person bringing the goods is required to make a declaration in Form 5 in respect the goods so imported for which the importer has been permitted by the Municipal Council to keep an account current u/s 142, Form 5 which is so prescribed requires the importer to submit a declaration to the Octroi Officer setting out the details of value, weight/quantity of goods as per the original invoice a true copy of which is required to be filed along with the Form. It also requires an undertaking to produce the said invoice for inspection whenever demanded within one year. This declaration is required to be checked by the Inspector at the Octroi Naka, who is required to sign it. Under rule 15(4) of these Rules, on receipt of a declaration in Form 5, the Octroi Officer is required to ascertain whether the person concerned has been allowed to keep an account current, and if so, to check the goods with the detail entered in the declaration and to fill up the certificate below the declaration and issue a pass in Form 6. This rule further requires that the Octroi Officer shall forward all such declarations together with a list in duplicate to the Central Octroi Officer for further action in accordance with the provisions of section 142. Form 6 is a pass for goods imported on behalf of the importer who has been allowed to keep an account current. Accordingly the petitioners have been filing declarations under Form 5 and have cleared the goods at the octroi naka under passes issued under Form 6.

6. Upto July 1982 the respondents did not insepct any records of the petitioners. They are required, u/s 142, to settle accounts at intervals of one month. It is not their case that any time the petitioners refused to furnish any information to the respondents or that they withheld any document or accounts. The undertaking prescribed under Form 5 requires the petitioners to produce invoices only for a period of one year from the date of import. The petitioners, therefore, contend that the account of the petitioners should have been settled within one year and that it cannot be reopened after a lapse of 9 years. In the alternative they have submitted that any additional demand for octroi should have been made within a reasonable time of the import of these goods. They submit that a period of 3 years can be considered as a reasonable time within which the accounts can be verified and a demand made and /or a bill issued under Chapter X of the Maharashtra Municipalities Act, 1965.

7. There is considerable force in these contentions it is true that u/s 142 no period of limitation is prescribed for making a demand for any additional octroi dues. Section 142 requires that the account current which is kept in respect of

octroi dues from a person who imports material from time to time has to be settled at intervals not exceeding one month and any amount so due at the expiry of such interval can be recovered under Chapter X.

8. In the case of Shri Mulchand Odhavji Vs. Rajkot Borough Municipality, the Supreme Court was required to consider the provisions of the Bombay Municipal Boroughs Act, 1925 as applying to the State of Saurashtra, then in existence. It seems that u/s 99 of the said Act also there was a similar provision authorising the Municipality to permit an account current of octroi duty payable by an importer instead of recovering it at the time when the goods were brought within the Municipal limits. It also provided that where such accounts were maintained, they should be settled at intervals not exceeding one month and the balance due on such settlement should be recovered. The Supreme Court said that under that section a person was required to give information-and details necessary to settle the accounts at intervals of one month, as is the case in the present section 142 also. The Supreme Court said that where the importer fails to furnish the necessary details, he cannot be allowed to urge that his account was not settled within a month or at intervals of one month and hence any claim for recovery was time barred. All that the Supreme Court decided was that where the evidence was to the effect that the importer-firm failed to supply the details and consequently the respondent-municipality could not settle his account and had to prepare a bill and serve the demand notice in respect of duty due without settling the account, the appellant-firm could not legitimately object to the steps for recovery taken against it by the respondent municipality. The ratio of this case has no application to the facts before us, because this is not a case where there was any failure on the part of the petitioners to supply any information or records to the respondent-Municipality. It is an accepted position on both sides that the verification of records was made for the first time only on 23-7-1982. The respondents have pleaded in their affidavit in reply that they could not settle the account at intervals of one month because of shortage of staff. In our view, this is not at all a satisfactory explanation for failure on the part of the respondents to carry out their statutory obligation u/s 142 of the Maharashtra Municipalities Act, 1965.

9. The respondents also relied upon an unreported judgment of Sawant and Kolso-Patil, JJ., dated 1st March ,1988 in Writ Petition No. 420 of 1987 Garware Nylons Ltd. v. Pimpri Chinchwad Mahanagarpalika and others. In that case the Division Bench considered, inter alia. the provisions of Rule 31 of the Maharashtra Municipalities (Octroi) Rules, 1968 read with Rule 28. These rules deal with the refund of octroi. In construing these rules the Court said that the prohibition against making any requisition for specified statements, registers and documents of the importer beyond the period of 6 months prescribed under Rule 31, sub-rule (2), has nothing to do with the recovery of octroi. Hence it cannot be said that the octroi dues cannot be recovered beyond the period so prescribed. This judgment deals with the interpretation of rules which are not applicable at all to the present case. Hence the ratio of this judgment has no

application to the facts before us.

10. It is true that section 142 does not prescribe any period of limitation within which recovery proceedings under Chapter X have to be taken. Nevertheless looking to the scheme for recovery of octroi when an account-current is kept, it would appear that the amount in respect of octroi payable by an importer has to be settled at intervals of one month. For the purpose of checking invoices rule 5 requires the importer to preserve the relevant invoices for a period of one year. Even under Chapter X, section 150 sub-section (1) sets out that when any amount becomes due to the Council under this Act, the Chief Officer shall, with the least practicable delay, cause to be presented to the person liable for the payment thereof a bill for the sum claimed as due. Clearly, therefore, the respondents are required to finalise their claim for octroi dues and present a bill within a reasonable time. Looking to the provisions of the Limitation Act, in our view, a period of 3 years can be considered as a reasonable time within which a bill has to be presented u/s 150 of the said Act. It is true that Form 5 requires that an invoice is to be preserved only for one year. We have, however, allowed the respondents some further time for the purpose of inspecting the records of the importer and verifying the claim in respect of octroi duty. Even so, in our view maximum indulgence that can be given to the respondents in this connection cannot extend beyond a reasonable time, which, in our view, is a period of three years from the date when the account-current is required to be settled as per section 142.

11. In the present case the claim covers a period of 9 years starting from April 1973. The details of this claim are given in Ex.A to the petition along with annexures which were supplied to the petitioners by the respondents.

12. In the present case the bill for recovery of additional octroi duty was raised on 31st August, 1982. The respondents are, therefore, entitled to raise a claim in the purpose of recovery only in respect of the claim arising on and after 30th August 1979. Learned Advocates for the petitioners and the respondents are agreed that if any claims for octroi prior to 30th August, 1979 are excluded, the claim of the respondents for the period starting from 30th August, 1979 amounts to Rs. 11,544.35 p.

13. It was also contended by Mr. Patil, learned Advocate for the respondents that u/s 169 of the Maharashtra Municipalities Act, 1965 an appeal is provided from any claim for taxes or other dues included in a bill presented to any person u/s 150. Hence the present writ petition should be dismissed. Despite the provisions of section 169, however, the petition was admitted as far back as February 1983 and an interim order was also passed in favour of the petitioners on their depositing in Court a sum of Rs. 10,000. In our view, after a lapse of more than 7 years it would not be fair on our part to now deny to the petitioners any relief only on the ground that they should have availed of the remedy of an appeal u/s 169. In any event, in the present case, the question before us relates to reasonableness or otherwise of the demand which is made after a period of 9

years. We do not see how such a question could have been entertained or decided in an appeal u/s 169.

14. In the premises, the demand made by the respondents in the bill dated 30th August, 1982 in so far as it pertains to a period prior to 30th August, 1979 is set aside and the respondents are restrained from recovering any amount under the bill in so far as it relates to a claim for the period prior to 30th August, 1979.

15. As the claim for the period after 30th August, 1979 under the bill dated 30th August, 1982 amounts to Rs. 11,544.35, the respondents are at liberty to withdraw the sum of Rs. 10,000/- deposited by the petitioners in this petition.

16. Rule is made absolute accordingly.

17. Looking to the circumstances of the present case, there will be no order as to costs.

