(1973) 04 P&H CK 0019

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ No. 2464 of 1971

Amrit Banaspati Co. Ltd., Chandigarh APPELLANT

Vs

The State of Punjab and others RESPONDENT

Date of Decision : 17-04-1973

Acts Referred:
Punjab Municipal Act, 1911 — Section 61(2)

Citation : (1973) 04 P&H CK 0019

Hon'ble Judges : R.N. Mittal, J

Bench : Single Bench

Advocate : J.N. Kaushal, A.G., Haryana, with Mr. L.M. Suri, for the Appellant; I.S. Tewana, D.A.G., Punjab, for Respondents 2 and 3 and Mr. A.N. Mittal with Mr. Viney Mittal, for the Respondent

Final Decision : Dismissed

Judgement

R.N. Mittal, J.—This judgment will dispose of Civil Writs 2464 and 2465 of 1971. In the judgment I shall state the facts from Civil Writ 2464 of 1971.

2. The petitioner is carrying on business in manufacturing and selling hydrogenated vegetable oil products commonly known as "Vanaspati". It has factories at Rajpura in the State of Punjab and also at Ghaziabad in the State of Uttar Pradesh. The Vanaspati is prepared from Vegetable oils, such as, ground nut oil, cotton seed oil and soyabean oil. The oils are imported to the factory from various places in India. The factory premises and the offices of the petitioner are situated outside the municipal limits of Rajpura Municipal Committee (hereinafter referred to as the "Committee"). The petitioner for purchasing the goods sends orders to different parties who send the consignments by rail and hundies are drawn by them through banks in favour of the petitioner. The payment is made by the petitioner to the banks at Rajpura. On presentation of the railway receipts to the Railway Authorities, goods are delivered to it on the railway siding which it after unloading from the wagons, removes them to the factory premises. No part of the goods so received is either

Used, consumed or sold in the limits of the Committee. The goods pass through the limits of the Committee only in a transitory stage. According to Section 61(2) of the Punjab Municipal Act, 1911 (hereinafter referred to as the Act) read with Entry 52 of List II of Schedule VII to the Constitution of India, the petitioner is not liable to pay any octroi duty on the goods as imposed by the Committee. Previous to the imposition of octroi duty, the Executive Officer of the Committee had given permission to the petitioner for use of transit passes as envisaged by Rule V.15 of the Municipal Account Code, (hereinafter referred to as the "Code").On demand of octroi duty, it made a representation to the Executive Officer and President of the Committee, but they expressed their inability to help in the matter due to "some" clarification given by the Examiner, Local Fund Account; Punjab, Chandigarh. The clarification given by him is based on the assumption that the Railway Station at Rajpura and the railway land adjacent to that is part of the Committee and that whatever goods arrive at the Railway Station Goods Shed or Parcel Office have already entered the municipal limits of the Committee. The Committee considers even the endorsement of the Bank through whom the documents are negotiated as a sale though the Bank Acts only as an agent, receives money and delivers the documents relating to the goods. The goods are received by the petitioner by, Railway Receipts directly endorsed in its favour and some goods are received through the seller''s commission agents or the petitioners purchasing agents. The goods are brought to the factory premises from the Railway Station without loading or unloading then in the Municipal limits of the Committee. The goods are brought into the Committee''s limits neither for consumption nor use nor sale. The respondents are not entitled to charge any octroi on them. The petitioner made a representation to the Minister in Charge, Local Self Government, Chandigarh, vide representation dated May 8, 1970 (Annexure "A").On June 21, 1971, the Executive Officer of the Committee informed the petitioner vide letter No. 238 Annexure ''C,'') that the Punjab Government had given its decision for charging Octroi duty on the goods received through railways. It is stated in the writ petition that the order of State of Punjab as incorporated in the letter of the Executive Officer (Annexure "C") is wrong, illegal and without jurisdiction and liable to be quashed. The petition has been contested by the State of Punjab and Respondents 2 and 3.

3. Respondent Nos. 2 and 3 have filed a joint return, in which it is stated that the sale of goods takes place at the Railway Station/siding, which is within the octroi limits of the Committee. The ownership changes hands at Rajpura Railway Station as the petitioner purchases goods from an importer at the Railway Station. Thus, the octroi is chargeable on the sale of goods within the municipal limits of the Committee. The goods pass through the municipal limits of the Committee, after sale on the Railway Station, and the physical possession of the goods also changes hands there. The Committee has no objection to the passage of goods if the original consignee takes delivery of the goods in his name and takes them through the municipal limits by road or truck. In that case the transit

pass can be availed of by the purchaser. The octroi is legally chargeable from the petitioner as the Rajpura Railway Station is a part of limits of the Committee and the sale of goods takes place there.

4. The State in a separate return, has supported Respondent Nos. 2 and 3. It is stated in the return, that the petitioner is liable to pay the octroi duty.

5. The first contention of the learned counsel for the petitioner is that the sale does not take place within the limits of the Committee as the property in the goods passes to it as soon as they are delivered to the Railway. It is admitted by the learned counsel for the petitioner that the hundies are drawn in favour of the petitioner and the payment is made by it to the banks at Rajpura. In the circumstances, it cannot be said that the property in the goods passes to the petitioner before the payment is made by it to the bank and the Railway Receipt is got released. The Railway will be considered to be agent of the person who despatches the goods and draws the hundi. The sale is effected in favour of the petitioner when the payment is made by it to the bank who is agent of the owner of the goods. I am supported in the aforesaid view by a Supreme Court judgment in Commissioner of Income tax, Delhi v. M/s. P.M. Rathod and Co. AIR 1950 SC 1394. In that case an assessee was a firm of manufacturers of perfumery and hair oils at Rat-lam in Madhya Bharat and their goods were sold through out India. At the relevant time Madhya Bharat was a Part B State. The agents of the assessee visited various parts of India to convass orders. The goods ordered by the customers were sent either by V.P.P. or by rail. In case the goods were sent by rail, the Railway Receipt was taken in favour of self and sent through a bank deliverable against the payment of the demand draft drawn on the buyers and sent with the Railway Receipt. The price received by the bank was sent by it by means of Bank Draft to the assessee at Ratlam, who in turn sent it for being encashed and credited to their amount at Bombay. It was held that the sales were completed when the money were paid to the bank and the Railway Receipt delivered to the purchasers. The relevant observations of the Supreme Court are as follows :--

Held that in the case of goods sent by Railway, as in the ease of goods sent by V.P.P., the Railway Receipts in favour of self could not be delivered to the buyer till the money was paid and although the goods hid been handed over to a common carrier the appropriation to the contract as in the ease of goods sent by V.P.P. was Only conditional and the performance was completed only when the moneys were paid and the Railway Receipts delivered. These Contracts also must betaken to have been performed in Part A or C State and the price paid to the Bank as agent of the seller at the place of payment and delivery of Railway Receipts. The income profits and gains were therefore received in these, States and not at Ratlam.

The contention of the learned counsel for the petitioner has no substance and is therefore rejected.

6. The second contention of the learned counsel for the petitioner is that even if sale takes place within the Municipal area, the Committee is not entitled to charge octroi from it as The owner of the goods is liable to pay the same. He had also urged that the petitioner has not imported the goods itself into the Municipal area but as to take it out for use in its factory. This contention has not been raised in the writ petition and the petitioner is therefore not entitled to take up the same at the time of arguments, I have however, considered the submission of the counsel for the petitioner, but do not find any merit in it. Section 82 of the Act relates to recovery of octroi and tolls. Sub section (1) says that in case of non payment of any octroi or terminal tax or of any toll on demand, the officer empowered to collect the same may seize any article on which the octroi or terminal tax is chargeable or any vehicle or animal on which the toll is chargeable or any part of its burden of sufficient Value to satisfy the, demand. Rule V. 33 of the Code, which relates to the power of some officials to inspect goods and demand payment from in charge of the goods is as follows :--

V 33. Power of demand passes and inspect goods :

(1) The octroi Superintendent and any octroi Inspector meeting a person with goods which he deems to have been imported and to have been liable to octroi on import, may demand the receipt or pass covering such goods, and may verify the entries therein by inspection of the goods, and any person called upon for his receipt or pass under this sub rule shall produce it and shall permit the officer demanding it to inspect the goods.

(2) If, no checking the goods With the receipt or pass, the officer finds that all the items in the receipt or pass are correct, he shall sign the coupon attached to the receipt or pass ; he shall tear the coupon off the receipt or pass and keep it for comparison with the counterfoil or the carbon copy, as the case may be, at the barrier, and shall then endorse his name on the back of the receipt or pass and return it to the presenter.

(3) If the person incharge of the goods has no receipt or pass or if the officer finds reason to believe that the full amount of octroi has not been paid tin the goods or that the goods do not tally with the description entered in the receipt or pass, such officer may, and, if he finds that the second foil of a pass granted under rule V. 24 has not been torn off, shall take such person to the head office, where the case shall be inquired into by the octroi Superintendent; such person shall accompany such officer to the head office when called upon to do so under this rule the octroi Superintendent, if he is satisfied that the octroi payable on such goods has not been paid or has not been paid in full, shall assess the amount of tax payable, demand payment of the amount from the person in charge of the goods and, on receipt of the amount, shall fill up a receipt in duplicate, by carbon process in Form O. 4 retain the carbon copy and hand the original with the coupon attached duly filed up, to the person incharge of the goods; the octroi Superintendent shall subsequently report the case to the Secretary with a view to the orders of the committee being taken as to whether a

prosecution should be instituted u/s 78 of the Act.

(4) An officer obtaining coupons under sub-rule (2) of this rule shall take such coupons to the barrier or barriers from which they were Issued, and shall there verify the coupons with the counterfoils or carbon copies, as the case may be, and, if he finds that the entries are correct, shall initial the counterfoils or carbon copies, as the case may be, and drop the coupons into the barrier cash box : if in any case a discrepancy is detected, he shall forward the coupon concerned under separate cover to the head office with a report.

Rule V.13 enjoins upon the person intending to import goods, on which octroi is leviable to take them to one of the barriers for collection of octroi at the time of import. Rule V. 14 says that when goods liable to octroi are declared to be intended for immediate export under the provisions of sub-rule (1) of Rule V.13, they shall be dealt with under the Transit Pass System. Rule V.15 provides for the Transit Pass System, Rule V.23 relates to the maintainance of Railway Receipt and Invoice Register by the Committee.RuleV.24 says that the officer in charge of the railway barrier shall determine the octroi leviable and the amount payable shall be demanded from the person presenting the railway receipt, to whom, on payment of the amount, a receipt to be prepared in duplicate by carbon process shall be granted in Form O. 8; of which the coupon and second foil shall be left blank, and the carbon copy retained; the railway receipt and invoice shall then be stated with a municipal stamp and returned to such person, and the declaration, if any, shall be stamped and filed. The Punjab Government has taken a decision vide Memo No. 12827-C-53/36154,dated July 1, 1954 and No. 6948-CC-54/49872, dated September 1, 1954, that "in cases where railway stations are situated within octroi limits; octroi is leviable on the goods which are sold by the importers within railway premises even if they are subsequently exported by rail or road. If, however, the goods are exported by trucks by original consignee to some place outside the octroi limits to be sold there and no sale takes place within the octroi limits then no octroi is leviable on such goods." The said decision of the Punjab Government is in consonance with the above mentioned rules. If a person imports goods within the municipal area without payment of octroi and sells them, it cannot be said that the Committee cannot recover octroi on the goods. As given in section 82, of the Act, the Committee has ample power to recover the octroi by seizure and sale of the goods Rule V.23 gives powers to the Committee to recover the octroi from the person who presents the railway receipts. The learned counsel for the petitioner contends that it is the importer from whom the Committee can charge the octroi and not from the purchaser of the goods.He has referred to the definition of octroi as given in Rule V.1 of the Code. It is stated there that the octroi means a cess on the entry into a municipality of goods for consumption, use or sale therein. No doubt, the octroi is leviable on the entry of the goods into a municipality, but the same can be recovered in spite of the fact that the goods have entered the premises of the Committee without such payment if the goods are to be consumed used or sold within the municipal area. In the present case, the goods are sold to the petitioner within the limits of the Committee and as such, the goods become liable to octroi. In case the octroi has not been paid by the seller of the goods, the Committee has a right to recover the same from the person in charge of the goods under rule V.33. The learned counsel for the petitioner has referred to Burmah Shell Qil Storage and Distributing Co. of India Ltd. Belgaum v. Belgaum Borough Municipality, Belgaum, AIR 1963 SC SIC and relied on the following observations :--

In our opinion even without the word sale in the Boroughs Act the position was the same provided the goods were sold in the local area to a consumer who bought them for the purpose of use or consumption or even for re-sale to others for the purpose of use or consumption by them in the area. It was only when the goods were re-exported out of the area that the tax could not legitimately be levied and in this case the municipality has agreed to refund the amount of tax on goods reexported without being used or consumed in the municipal area. In this view of the matter it was not necessary for the Municipality to follow the procedure for imposing taxes when the section was amended. The tax still remained the same. Its nature, incidence or rates were not altered. In our opinion, the company was liable to pay octroi tax on goods brought into local area (a) to be consumed by itself or sold by it to consumers direct and (b) for sale to dealers who in their turn sold the goods to consumers within the municipal area irrespective of whether such consumers bought them for use in the area or outside it. The company was however, not liable to octroi in respect of goods which it brought into the local area and which were reexported. But to enable the company to save itself from tax in that case it had to follow the procedure laid down by rules for refund of taxes.

The aforesaid observations were made in a different context. The contention which has been urged by the learned counsel for the petitioner was not urged in that case. In the present case, it has not been challenged by the learned counsel for the petitioner that even the importer was not liable to pay the tax and, therefore, the question of payment of tax by the purchaser does not arise. His contention the purchaser is not liable to pay the tax and that the importer is liable to pay the tax is not supported by the aforesaid observations of the Hon''ble Supreme Court. The ratio in that case is not applicable to the present case. This contention of the learned counsel for the petitioner is also rejected being without any substance.

7. Civil Writ No. 2465 of 1971 has been filed by M/s. Aggarwal and Co. on the same grounds on which Civil writ No. 2464 of 1971 was filed. In that case, the only difference is that the petitioner is not manufacturing the Hydrogenated Vegetable Oil Produces but is carrying on business of purchase and sale of oil which is used in the manufacturing of Hydrogenated vegetable Oil Products commonly known as "Vanaspati". It brings the goods from various places of India, and supplies them to its customers outside the area of the Committee, No additional argument was urged by the learned counsel for the petitioner in that

writ petition.

8. For the reason recorded, both the writ petitions fail and are dismissed with cost Counsel''s fee in each case Rs. 100/-.

