(1989) 06 GUJ CK 0006

In the Gujarat High Court

Anjar Bullion Merchants Association and Another — APPELLANT

Vs

Anjar Municipality — RESPONDENT

Date of Decision : 21-06-1989

Acts Referred:

Constitution of India, 1950 — Article 14
Gujarat Municipalities Act, 1963 — Section 101, 101, 101(a)(i)

Citation : (1989) 2 GLR 1319

Hon'ble Judges : P.R. Gokulakrishnan, C.J;R.A. Mehta, J

Bench : Division Bench

Judgement

P.R. Gokulakrishnan, C.J.—This Letters Patent Appeal is against the order of the learned single Judge, dismissing the Special Civil Application No. 220S of 1989. In that Special Civil Application, the petitioner No. 1, which is an Association of Anjar Bullion Merchants and petitioner No. 2 who is a member of the said Association and who is a bullion merchant dealing in gold and silver, questioned the orders passed by the Chief Officer, Anjar Municipality, demanding octroi on gold and silver bars and its ornaments. Various contentions were raised before learned single Judge as to the legality of the levy of octroi on gold and stiver, bringing those items under the residuary clause. The learned single Judge, after meeting all the points has dismissed the Special Civil Application, holding That the levy of octroi is valid and legal.

2. Mr. H.B. Shah, the learned Counsel appearing for the appellants, petitioners, contended before us That other Municipalities are not levying octroi on gold and silver and as such, levy of octroi by the Anjar Municipality is discriminatory and offends Article 14 of the Constitution of India.

3. The next contention urged by Mr. H.B. Shah is that gold and silver have not been taxed so far for octroi duty and as such, it will affect the fundamental right of the appellant if they are taxed all of a sudden.

4. It is next contended by the learned Counsel that articles like gold and silver cannot be put in the residuary clause as Item No. 124 in the Octroi Schedule Part

1-A of the Anjar Municipality Octroi Rules.

5. The next contention of Mr. H.B. Shah is that the levy rate is so obnoxious that it cannot be termed - as reasonable or as having any nexus to the object sought to be achieved, and hence, such a levy has to be struck down.

6. Finally, Mr. H.B. Shah states that the procedure enunciated in Section 101 of the Gujarat Municipalities Act for levy of tax has not been followed.

7. Octroi Schedule Part 1-A of the Anjar Municipality clearly enumerates as many as 124 Items. With regard to 123 Items, the description of the particular goods has been mentioned with corresponding rate of octroi to be levied on the same. Item 124 of the Schedule reads:

124. All the other articles which are not included in Parts 1 and II.

The rate of octroi per rupee is mentioned as 0-01 1/2. Thus, it is clear from the Rules, which have been validly made by the Anjar Municipality under the powers conferred upon the Municipality, that the Municipality has included all other articles to bring it under the purview of octroi. This Item No. 124 is termed as a residuary clause by the appellants herein. The meanings of "residue" given by the Concise Oxford Dictionary, Sixth Edition, are:

Remainder, rest, what is left or remains over; what remains of estate after payment of charges, debts and bequests.

The argument that the other Municipalities have not levied such octroi duty on gold and silver cannot have any substance since each and every Municipality has its own power to spell out regarding the levy of octroi. The fact that other Municipalities have not so far levied and up till date, no octroi has been collected on gold and silver cannot be pressed into service for the purpose of stating that there is discrimination between Municipalities and Municipalities regarding the levy of such octroi. The provision of law clearly empowers the Municipality to spell out the octroi duty which they intend to levy, including the articles on which they are levying such octroi duty. The mere fact that the other Municipality have not yei levied such octroi on gold and silver cannot disentitle Anjar Municipality from invoking the residuary clause and levying such octroi on gold and silver. The argument as if there is a discrimination and different treatmeni beiween citizens of different Municipalities cannot have any basis inview of the specific provisions of the Gujarat Municipalities Act, 1963 and also the power of the Municipality to levy such octroi. The fact that such a tax has not been levied up till today cannot also be a ground to bar the Municipality from invoking its power for the purpose of levying such duty. Hence, we do not think that there is any substance in the argument to the effect That the tax, which has not been thought of up till today, cannot be levied as on date.

8. The argument as if gold and silver cannot be put under the residuary clause, in our view, has no substance. Item 124, which is considered to be the residuary clause, through which the present octroi duty is levied, clearly empowers the

Municipality to collect octroi duty on articles that have been left or remained over. The Dictionary meaning we have given in paragraph supra clearly establishes that that residuary clause includes all other items which have been left out from the items enumerated in the Octroi Schedule Part 1-A of the Anjar Municipality. Hence, there is no difficulty in bringing gold and silver under the residuary clause for the purpose of levying the octroi.

9. As regards the argument of Mr. Shah regarding the procedure for levy of such octroi, we do not think that there is any violation of the procedure contemplated u/s 101 of the Gujarat Municipalities Act, 1963. According to Section 101(a)(i), it is clear that the Municipality before imposing a tax shall observe the following preliminary procedure;

101. xxx xxx xxx

(a) xxx xxx xxx

(1) the classes of persons or of property or of both, which the Municipality proposes to make liable, and any exemptions which it proposes to make.

10. In the present case, the Municipality has given the classes of persons and of property, on which it intends to levy the octroi duty. It has made it very clear by Item No. 124, which is a residuary clause, to include all other articles which have been left out in enumerating from Item No. 1 to Item No. 123: The method and manner far which the Anjar Municipality has adopted the Rules and acted upon the same clearly shows that the procedure preliminary for imposing the tax has been strictly followed in this case. We have already stated the rate of octroi to be levied on such articles.

11. Thus, we are of the view that the arguments, which were advanced and which were enumerated in paragraphs supra by Mr. H.B. Shah, the learned Counsel appearing for the appellants, have no merits and for these reasons and for the reasons stated by the learned single Judge while dismissing the Special Civil Application. This Letters Patent Appeal is dismissed.

12. Mr. H.B. Shah, the learned Counsel appearing for the appellants, prays for grant of certificate for appeal to the Supreme Court. We have considered each and every point That has been advanced before us by the learned Counsel appearing for the appellants. We do not find that there is any substantial question of law of general importance in this case, which needs to be decided by the Supreme Court for us to grant the leave. Hence, the prayer for certificate for appeal to the Supreme Court is rejected.

