

(2003) 02 BOM CK 0012

In the Bombay High Court

Case No : Second Appeal No. 27 of 1990

Atal Bandhu (Firm)

APPELLANT

Vs

Yavatmal Municipal Council

RESPONDENT

Date of Decision : 28-02-2003

Acts Referred:

Maharashtra Municipal Councils Nagar Panchayats and Industrial Township Act, 1965
— Section 105, 172

Maharashtra Municipalities (Octroi) Rules, 1968 — Rule 18

Citation : (2003) 4 ALLMR 665 : (2003) 6 BomCR 447 : (2003) 2 BOMLR 946 :
(2003) 4 MhLj 545

Hon'ble Judges : P.S. Brahme, J

Bench : Single Bench

Advocate : Daga, for the Appellant; A. Shelat, for the Respondent

Final Decision : Dismissed

Judgement

1. This second appeal is filed by original plaintiff- appellant challenging the judgment and decree passed on 23rd June, 1989 by 3rd Additional District Judge. Yavatmal in Regular Civil Appeal No. 76 of 1988.

2. Appellant's suit bearing Regular Civil suit No. 58 of 1985 for monetary claim of Rs. 5045.92 ps. with interest @ 6% p. a. from the date of suit till its realisation came to be decreed by 2nd Joint Civil Judge (Jr. Dn.), Yavatmal by judgment dated 15th March, 1986. That judgment and decree came to be set aside by the Appellate Court by its judgment in Regular Civil Appeal No. 76 of 1988 and the appellant's suit has been dismissed.

3. This second appeal came to be admitted on 28-3-1990 on the following substantial question of law :

"Whether the octroi can be levied on the vehicles which are, admittedly, plying outside the territorial jurisdiction of the Yavatmal Municipal Council?"

4. Heard Mr. Daga, the learned counsel for the appellant and Mr. Shelat, the

learned counsel for the respondent.

5. Appellant's claim in the suit may be stated in brief on the basis of the averments made in the plaint. Plaintiff, which is a registered partnership firm, was doing business of selling motor cycles of Escort Company at Yavatmal. The vehicles are booked by depositing an amount of Rs. 5007- by the customers. The vehicles are then delivered as per the list to the customers. However, a new scheme of Direct Billing was started by Escort Company wherein the Company was accepting the orders from the customers directly. Many persons placed their orders for purchase of Rajdoot Motor Cycle directly to the Company at Faridabad and the Company accepted the orders. The motor cycles were distributed through the plaintiff firm to the concerned customers. Plaintiff deposited octroi tax from time to time at the time of receipt of the vehicles at Yavatmal amounting to Rs. 6,200A That amount was deposited under protest with Yavatmal Municipal Council. It is the case of the plaintiff that the firm did not deal with the vehicles which are purchased by the customers directly under the Direct Billing Scheme. Therefore, no question of payment municipal octroi duty arises in such cases if the customers are residing outside the local limits of Yavatmal Municipal Council. The defendant had refunded such amount and therefore, it is estopped from claiming such octroi.

6. In the instant case, plaintiff firm handed over the vehicles to different purchasers who had placed the order with the Company directly under the Direct Billing Scheme. The plaintiff deposited transit passes in defendant's office for refund of deposit money. The octroi for 12 vehicles is only to be paid at Yavatmal, which amounted to Rs. 1154.09 ps. The plaintiff, after handing over the vehicles applied for refund of deposit on 2-7-1984, 19-7-1984, 25th September, 1984, 20th October, 1984 and 20th December, 1984. Defendant refused to refund the amount contending that it was not refundable because the vehicles were sold in Municipal Council limits. According to the plaintiff, there was no sale of vehicles by plaintiff firm to the customers, much less within the local limits of Yavatmal Municipal Council. Plaintiff was not concerned with the transaction of sale of vehicles by the Company to the customers directly under the scheme. As defendant failed to comply with the demand of plaintiff made under the notice, plaintiff claimed decree for a sum of Rs. 5045.90 ps. of the octroi amount deposited along with interest and notice charges.

7. Respondent-defendant resisted plaintiffs claim by its written statement Exh.14. Defendant was not aware of the system of Direct Billing. According to it, the authorised dealer i.e. plaintiff hands over delivery of the vehicles to the customers and as such, the scheme of Direct Billing and Direct Order placed with the Company is disputed. It is denied that the Dealer has only to help the Company. The sale was by the plaintiff and not directly by the Company to the Purchaser, which transaction is the subject matter of the suit. It is contended that, even though the purchasers are found to be resident of the place falling outside the local limits of the defendant municipal council, they are liable to pay

municipal taxes. It is contended that the vehicles are not delivered in the same form. The vehicles were sold by plaintiffs and therefore, it has deposited octroi under the declaration of the defendant. The vehicles were not retained temporarily. Plaintiff-firm did not deposit transit pass. However, plaintiff is taking advantage of the fact that the vehicles were booked for and from Akola, so as to get refund. It is contended that plaintiff has no right to get refund of octroi tax and therefore, defendant prayed that the suit be dismissed.

8. Before the trial Court, parties went on trial on these pleadings with issues framed at Exh.16. In that, the main issue was, "Whether the plaintiff-firm is entitled to receive back the amount as the motor cycles were sold out of the limits of defendant?" The trial Court, after assessing the evidence led by the plaintiff and defendant, reached to the conclusion that the motor cycles were sold outside the limits of defendant-municipal council and consequent thereof, the trial Court Judge found that plaintiff is entitled to refund of amount of octroi tax deposited by the plaintiff-firm. That is how, the trial Court decreed plaintiff's suit.

9. Respondent-defendant challenged the judgment and decree passed by the trial Court by preferring an appeal before the District Court. The Appellate Court framed the basic point for consideration that "whether plaintiff is entitled to refund of octroi tax paid?" The Appellate Court reversed the findings of the trial Court. The Appellate Court found that the trial Court was not right in holding that plaintiff-firm was not importer of the two wheelers. That findings recorded by the trial Court was against the record and material brought on record. The Appellate Court found that the vehicles sold by the plaintiff-firm was out of the municipal limits of defendant-council and therefore, the defendant-council was justified in accepting the octroi for the vehicles which were sold and delivery of which was given within the municipal limits of defendant-municipal council. That is how, the Appellate Court reversed the judgment and decree passed by the trial Court and ultimately, dismissed plaintiffs suit.

10. The learned counsel for the appellant pointed out that the orders for the vehicles were placed with the Escort Company by the purchasers directly and as such, the plaintiff-firm has nothing to do with the transaction of purchase of the vehicles. That, it was established on evidence that the individual purchaser has placed the order with the Company and only delivery of vehicle was taken through plaintiff-firm. The vehicles were, admittedly, to be sent directly to the places of residence of the purchasers which were, admittedly, outside the jurisdiction of defendant-municipal council. Plaintiff has, while depositing the amount of octroi, given declaration Form No. 1 and it was incumbent on the defendant-council to produce the same. He submitted that the Appellate Court reversed the judgment and decree passed by the trial Court on the ground that the plaintiff did not produce the Form No. 1, though it was admittedly duty of the defendant-municipal council to produce the same as no record was with the plaintiff in that regard. It is submitted that the Appellate Court, though reversed

the findings given by the trial Court, has not assigned any reason as to why interference in the findings recorded by the trial Court was called for. It is submitted that the findings recorded by the Appellate Court is against the weight of evidence which was rightly appreciated by the trial Court. He pointed out that the vehicles which were sold to the customers through plaintiff-partnership firm as a dealer, were at no point of time plied in the territorial jurisdiction of the defendant-council. Plaintiff paid octroi under protest and thirdly, admittedly, plaintiff had deposited Form No. 1 with defendant-municipal council. Therefore, the Appellate Court, has erred in arriving at a finding that plaintiff-firm was not entitled to refund of octroi tax. He pointed out that, merely by fixing accessories to the vehicles, nature of the vehicles is not changed. He, therefore, urged that the appeal be allowed and the judgment and decree passed by the Appellate Court be set aside and the suit of the plaintiff-appellant be decreed.

11. Mr. Shelat, the learned counsel appearing for the respondent, pointed out from rule 18 of the Maharashtra Municipalities (Octroi) Rules, 1968 that a person who imports a vehicle is liable to pay octroi. It is pertinent to note that under Sub-rule (2) of rule 18 of said rules, the person incharge of the dutiable goods imported within the octroi limits which are intended for immediate export shall on their arrival at the Entrance Naka, apply to the Octroi Officer for the written permission-cum-transit pass for conveying the goods without escort, via the route from the Entrance Naka to the Exit Naka and at the same time, he shall pay at the Entrance Naka a deposit calculated by the Octroi Officer in accordance with the scale of deposits and on payment of fees may ask for written permission- cum-transit pass and if considered necessary by the Octroi Officer, on presentation of a declaration-cum-application in Form No. 2, the Octroi Officer shall issue a written per mission-cum-transit pass in Form No. 7. He also pointed out that as per Sub-clause (3), "on arrival of the goods at the Exit Naka, without having broken bulk on the journey and on surrender of the written permission-cum-transit pass, the Octroi Officer shall verify the entries therein with the goods and refund to such person the deposit as entered in the said pass. The learned counsel submitted that the plaintiff did obtain transit pass and on the basis of that, plaintiff claimed that the vehicles had entered the local limits of defendant-municipal council in a transitory manner for their onward journey to the places of customers and it was on that basis that the plaintiff claimed refund of octroi duty contending that the transaction of sale has not taken place within the municipal limits of defendant-municipal council. He submitted that, in the case before hand, after the vehicles have entered the municipal limits of defendant-municipal council, the accessories were fixed by plaintiff and registration of the vehicle was done at Yavatmal and thereafter, the vehicles were plied within the limits of defendant council for test ride and then, the vehicles were delivered to the customers for being taken to the place of their residence. In fact, the transit pass was issued when the goods had entered the municipal limits of defendant-municipal council. Rule 14 of the Octroi rules and Sub-rule 1(B) thereof provides for making a declaration-cum-application in form No. 2, in respect of goods

intended for immediate export, if considered necessary for the purpose of determining the amount of deposit to be taken in accordance with the scale fixed under the clause. Therefore, though the plaintiff has obtained transit pass, it was not a case where vehicles have entered within the municipal limits of the defendant-municipal council for a transitory period for being immediately exported outside the limits. It was not that the entry of the vehicles was on the basis of the transit pass. The Appellate Court has taken into consideration the fact that the vehicles have been actually sold through plaintiff firm and the part of transaction of sale was effecting delivery of vehicles to the customers and for that purpose, the vehicles did enter within the municipal limits of defendant-municipal council and thereafter, at the behest of plaintiff firm, as a part of dealing with the vehicles, accessories were affixed to the vehicles and then registration of the vehicle got done through plaintiff firm and then, vehicles were sent on road for test ride and then, the vehicles were delivered to the customers. When plaintiff paid entire octroi duty, it cannot retain transit pass. Plaintiff admitted that, in respect of the vehicles he filled in the form No. 1 as per Rule 14(a)(1). As such, plaintiff has paid entire amount of octroi tax. Therefore, there was no basis for refund of octroi.

12. The learned counsel for the respondent submitted that, in view of decision of this Court in Gandhi Agencies and etc. Vs. Municipal Council, Barshi and another, , the Civil Court's jurisdiction must be deemed to have been barred if a taxing statute provides a separate machinery or a separate forum to challenge the liability of the tax. He pointed out that u/s 172 of the Maharashtra Municipalities Act, there is bar of such for challenging assessment, valuation or levy of tax or liability to be assessed or taxed. The learned counsel also submitted that claim of plaintiff, so far as it relates to refund in respect of first to deposits dt. 24-6-1984 and 23-7-1984 is barred by limitation having regard to Sub-section (2) of Section 304 of the Maharashtra Municipalities Act. He, therefore, urged that the appeal merits no consideration at all and in second appeal, the finding of fact arrived at by the First Appellate Court on the basis of the evidence on record cannot be interfered with by the High Court unless it is found that the findings recorded by the First Appellate Court is based on no evidence and perverse.

12-A. It goes without saying that this Court has to assess and scrutinize also the finding of fact arrived at by the Appellate Court and it is much more so when the Appellate Court has reversed the finding of fact recorded by the trial Court. In the instant case, though plaintiff based his claim on the strength of the transaction of sale of motor cycles to the customers under Special Billing Scheme, there is no iota of evidence to substantiate that the plaintiff, as a dealer, is no way concerned with the said transaction. As against that, the factual position undisputed is that the vehicles have been received by the plaintiff. It was plaintiff who deposited amount of octroi duty from time to time when the vehicles entered the municipal limits of defendant-municipal council and for that purpose, plaintiff filled in form No. 1 making declaration and also obtained transit

pass. It is admitted that plaintiff received the vehicles and then accessories were affixed to the vehicles at the behest of plaintiff firm as a part of transaction of sale of the vehicles and then, registration of the vehicles was done at Yavatmal and then, the vehicles were plied on road for test ride and then, ultimately, the vehicles were delivered to the customers. The Appellate Court, taking into consideration all these aspects and material facts, rightly came to the conclusion that the vehicles have been received by the plaintiff firm for being delivered to the customers and that was a part of transaction of sale. That is why, the Appellate Court observed that in case of those vehicles, it was not just a case of transitory entry in the octroi limits of defendant-council. But the fact remains that plaintiff obtained transit pass under the guise that the vehicles are to be retransmitted directly without there being doing anything else within the municipal limits of defendant-council

13. The Appellate Court has rightly observed that the plaintiff failed to bring on record form No. 1 that was, admittedly, filled in by the plaintiff. It was further admitted that the plaintiff did not deposit the amount, but what was deposited by the plaintiff was the octroi duty. Therefore, there was no question of refund of the same. That apart, plaintiff did not surrender the transit pass as it was incumbent on the plaintiff to do so. The fact that the accessories were fixed on the vehicles through plaintiff's dealership itself goes to show that the entry of the vehicles out of the municipal limits of defendant-council was not transitory only. The fact that the vehicles were registered with the Regional Transport Office at Yavatmal was again indicative of the fact that the vehicles had entered the municipal limits of defendant-council not for transitory purpose, but for making compliance of these things. In addition to that, the vehicles have been plied within the municipal limits of defendant-council for test ride. This, according to me, supports the contention of defendant that the vehicles have entered within the local limits of the municipal council for specific purpose rather than for mere transitory entry. Therefore, the trial Court was in error in coming to the conclusion that the plaintiff was entitled to get refund of octroi duty paid. As against that, the finding recorded by the Appellate Court that the plaintiff was liable for payment of octroi duty on the vehicles received by him for the customers was based on admitted facts and the evidence on record and therefore, the Appellate Court was justified in reversing the findings recorded by the trial Court. It was not a case of recording finding by the Appellate Court without there being any evidence on record. It cannot be said that the findings recorded by the Appellate Court is perverse or based on no evidence or any illegality has been committed by the Appellate Court in recording the findings. It goes without saying that the Appellate Court being the last Court on facts was perfectly within its limits in reappraising the evidence on record and coming to the conclusion of its own. Therefore, there is no scope for interference with the findings recorded by the Appellate Court.

14. The Appellate Court was right in holding that the plaintiff was liable to payment of octroi duty as the vehicles have been imported by plaintiff for giving

delivery of the same to the customers, who are residing outside the local limits of defendant-council. As such, plaintiff is not entitled to refund of octroi duty that has been paid, though under protest.

15. There is also much substance in the submission of the learned counsel for the respondent that the suit for refund of octroi duty paid by the plaintiff is barred u/s 172 of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965, no objection shall be taken to any valuation, assessment or levy nor shall the liability of any person to be assessed or taxed be questioned, in any other manner or by any other authority than is provided under the Act.

16. So far as the case before hand is concerned, when plaintiff is seeking refund of octroi duty, his claim impliedly is that the plaintiff is not liable to be assessed for octroi duty for the vehicles which were imported by plaintiff within the municipal limits of defendant-council. It is very clear from the provisions of Section 171 of the said Act. Special procedure has been prescribed for challenging decision of levy of tax imposed by the municipal council. It is also clear that Section 172 of the Act has been interpreted as impliedly ousting the jurisdiction of the Civil Court in respect of valuation, assessment or levy of taxes.

17. In the case referred by the learned counsel for the respondent reported in Gandhi Agencies and etc. Vs. Municipal Council, Barshi and another, , it has been observed that in the Municipalities Act having made provision for questioning validity of assessment of tax by way of appeal and refund, jurisdiction of Civil Court to try the suit is barred. The suit is not maintainable. In that case, plaintiff therein had engaged in the sale of consumer goods and alleged that it got discount on purchases made by it from the wholesale dealers. The cash discount was mentioned in the invoices and the plaintiff stated that it was liable to pay octroi on the actual amount paid after deducting the discount as allowed. However, plaintiff filed the suit for injunction against the municipal council restraining it from claiming octroi on the amount allowed as discount amount. The suit was dismissed as not maintainable. The appeal also came to be dismissed by the District Court. When the matter came up before the High Court, it was held that the Civil Court's jurisdiction must be deemed to have been barred if a taxing statute provides a separate machinery or separate forum to challenge the liability of tax. If the action of the Municipality in demanding higher octroi duty was incorrect or erroneous, the same could be challenged by way of appeal u/s 169 of the Act or in revision u/s 171 of the Act. The same analogy is to be applied so far as the case before hand is concerned, because plaintiffs claim for refund of tax amount is on the basis that plaintiff was not liable to pay octroi duty on the vehicles which were imported by him. In other words, the issue under challenge was whether the plaintiff was liable to pay octroi duty on the goods imported within the octroi limits of defendant-municipal council. In my opinion, the plaintiff was not entitled to bring action in the Civil Court for claiming refund.

18. In the result, it is found that the Appellate Court has committed no illegality or error in reversing the findings recorded by the trial Court. The claim of plaintiff for refund of octroi duty paid by plaintiff firm is not maintainable. Therefore, the Appellate Court was right in dismissing the plaintiffs suit. The appeal, therefore, merits no consideration at all. The appeal is dismissed with no orders as to costs.