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(1989) 09 P&H CK 0068

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 1982 of 1989

Avery India Limited APPELLANT

Vs

State of Haryana and Faridabad Complex Admn. RESPONDENT

Date of Decision : 04-09-1989

Acts Referred:

Citation : (1990) 2 LJR 266 : (1990) PLJ 100 : (1989) 2 RRR 546

Hon'ble Judges : Harbans Singh Rai, J

Advocate : him)., Mr. Kapil Sibal, Sr. Advocate, (Mr. K.K. Lahiri, Mr. R.C. Setia, Advocates, Advocates for appearing Parties

Judgement

Harbans Singh Rai, J.

1. Avery India Limited is a Public Limited Company with its registered office at 28/2, Waterloo Street, Calcutta and one of its works is at plot No. 5059, Sector 25B, Ballabgarh, Haryana. The Annexure P. 31 passed by respondent No. 2 being illegal and also that the respondent No. 2 cannot charge octroi from the petitioner on the material imported by it by classifying the same to be instruments under Article 76 of the Faridabad Complex Administration, Faridabad Octroi Schedule. It is stated that the petitioner Company is engaged in the business of manufacturing and marketing weighing scales, weighing machines and weigh bridges of different kinds, capacities and sizes. In connection with this business the petitioner company purchases and brings rawmaterials, components, machinery parts and other cast iron products into the municipal/ territorial limits of the Faridabad Complex. After completion of the process of manufacture, the said machines are sent out from its works and sold throughout India from its various branches/sales offices/depots. The petitioner has appended some photographs of some of the components of machinery parts and cast iron products brought into the municipal limits of Faridabad, along with the petition.

2. It is further averred that the petitioner Company in connection with its business activities of manufacturing weighing scales, weighing machines and weigh bridges at its works at Faridabad had been bringing into the limits of the

Faridabad Complex various raw materials, components of machinery parts and other cast iron products and had been paying octroi thereon under Article 100 of the aforesaid Schedule as `machinery and parts of machinery'' in connection with the weights thereof. Somewhere in 1986, according to the petitioner, the officers of respondents Nos. 2 and 3 started stopping the goods of the petitioner Company and insisted on charging octroi under Article 76 of Class VII of the said Schedule in accordance with the value of the item and not in accordance with the weight. According to the said officers parts of weighing machines would be treated as scientific instruments or apparatus. On October 27, 1986, Superintendent of the Faridabad Complex Administration imposed and charged octroi on the material being brought in by the petitioner Company under Article 76 of the Schedule instead of Article 100 and the petitioner Company preferred an appeal before respondent No. 2. Respondent No. 2 allowed the appeal of the petitioner vide his order dated March 13, 1987 and held that the goods being brought in by the petitioner Company within the territorial limits of Faridabad Complex were classifiable and subject to octroi under Article 145 according to weight and not according to the value of the goods inasmuch as the same was neither covered by Article 76 nor Article 100 of the Schedule.

3. The Administrater, Ballabgarh Zone on behalf of the Octroi Department requested the Chief Administraterrespondent No. 2 to review his order of 13.3.1987 and on the basis of the request of the Administrater of Ballabgarh Zone, respondent No. 2 issued a suo moto notice to the petitioner Company expressing his intention to review the said order. The petitioner Company submitted before respondent No. 2 that he had no powers of review conferred on him and he was not competent to review the order and there is no infirmity in the order dated March 13, 1987. The respondent No. 2, Chief Administrater did not agree with the submission of the petitioner Company and reviewed his order of March 13, 1987 on June 8, 1987 by setting aside the same and holding that parts and components of weighing machines and weigh bridges being brought in by the petitioner Company within the territorial limits of the Faridabad Complex were to be subject to octroi under Article 76. In arriving at this conclusion respondent No. 2 relied on a latter of November 4, 1980 issued by the State Government in this behalf.

4. The petitioner Company continued to represent against the orders passed by the Chief Administrater but as no relief was given it has filed this writ petition.

5. Respondents Nos. 2 and 3 in their written statement controverted the allegations of the petitioner and stated that weigh bridges and scales and their parts imported by the petitioner Company into the municipal limits of the Faridabad Complex Administration, Faridabad are mathematical instruments and squarely fall within Article 76 of the Schedule of Octroi Tax prepared by the Faridabad Complex Administration and sanctioned by the Haryana Government vide Notification No. 289ICI72/10750 dated April 7, 1972. They are not machines within the meaning of Article 100 of the Schedule and they are not used for the

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manufacture of any other goods. The respondents have further pleaded that a similar dispute had arisen in Gurgaon Municipal Committee. The matter was referred to the State Government for its decision. The State Government considered the issue and decided vide their office Memo No. 10/21/7980 2KI dated 4.11.1980 that the goods be assessed under item No. 64 of the Octori Schedule applicable to Municipal Committee Gurgaon. Item No. 64 of the Octroi Schedule applicable to Municipal Committee, Gurgaon is in the same terms as Article 76 of the Faridabad Complex Octroi Schedule. It was admitted that petitioner Company is engaged in business of manufacturing weighing scales and weigh bridges of different kinds, capacities and sizes and for their assembly, it imports components and parts of the same. It was further pleaded that Faridabad Complex Administration had never charged octroi under item serial No. 100 of the Octroi Schedule on components and parts of the weighing scales and weigh bridges imported by the petitioner Company. It is also pleaded that the Chief Administrater had passed an erroneous order on March 13, 1987 and when decision of the Haryana Government in a similar matter relating to the Gurgaon Municipal Committee was brought to the notice of the Chief Administrater, he reviewed his decision dated March 13, 1987 vide his order dated June 8, 1987. The respondents further stated in their written statement that weighing scales and weigh bridges are squarely mathematical instruments and come under octroi schedule item No. 76. They are not machines within the meaning of Schedule item No. 100 as they are not used for producing or manufacturing other goods but are used as measuring instruments like inchtape or scale or any other weighing scale or measuring instrument.

6. I have heard the learned counsel for the parties and have gone through the record.

7. The first submission of Mr. Kapil Sibal, Senior Advocate, learned counsel for the petitioner is that the order passed by respondent No. 2, Chief Administrater, Faridabad, Haryana dated June 8, 1987 is without jurisdiction as he had no power of review and could not review his own order passed by him on March 13, 1987 to the detriment of the petitioner. Respondent No. 2 vide his order dated March 13, 1987 held that "case falls under item serial No. 145 and it should be charged as such because it is machinery item and cannot strictly be brought into the purview of the mathematical instrument, unless the firm has gone into the advance technology of the electronics and brought new products." Vide order dated June 8, 1987, respondent No. 2 reviewed his earlier order and held as under :

"Since this issue already stands decided at the State Government level vide Memo No. 19/21/7980/2 KI dated 4.11.1983 referred to above my earlier orders dated 13.3.87 have got no legal application because the decision of the State Govt. as a superior authority cannot be overruled. In view of the above, it is legal and necessary to review the earlier orders dated 13.3.87 and the Octroi on the components of the weigh bridges being imported by the appellant firm be

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assessed and charged under serial No. 76 of the Octroi Schedule, applicable in the case of Faridabad Complex Administration, Faridabad."

So, Mr. Kapil Sibal submits that the Faridabad Complex Administration cannot act upon the order passed by respondent No. 2 on June 8, 1987, the order being without jurisdiction.

8. Mr. Anand Swaroop, S. Advocate, learned counsel for the respondent has very fairly conceded that the respondent No. 2 had no power of review and the order passed by him on June 8, 1972 is without jurisdiction.

9. In view of the agreed position I have no hesitation in holding that the Chief Administrater, Faridabad, respondent No. 2, had no jurisdiction to review his own order dated March 13, 1987 and the order of review passed by him on June 8, 1987 being without jurisdiction is liable to be set aside and is set aside.

10. The second and the main contention of Mr. Sibal is that the petitioner Company is not liable to pay octroi under Article 76 for the material imported by it as the imported material is not covered by the scope of Article 76. Article 76 figures in Class VII and reads as under :

"Class VII Scientific apparatus, instruments of music and amusement.

Article 76 : All kinds of scientific, mathematical, optical, surgical and dentistry instruments and equipments including telephonic, telegraphic and televisional apparatus and goods."

Machinery is in Class XIII and is defined as under :

"All kinds of machinery including agriculture, industrial spare parts".

The contention of Mr. Sibal is that a bare perusal of the Article 76 would show that machinery, parts and components and other raw material in the nature of cast iron products brought in by the petitioner Company within the municipal limits of Faridabad Complex cannot be classified and subjected to octroi under Article 76 of the Schedule on scientific, mathematical, optical, surgical and dentistry instruments or equipments such as telephonic, telegraphic and televisional apparatus and goods. He has further submitted that the respondent No. 2 in his order dated March 13, 1987 had taken a correct view and the finding given by him in his order dated March 13, 1987 was in consonance with the correct interpretation of the Schedule. He has referred to dictionary meaning of the `machinery'' and scientific `instruments''.

11. Mr. Anand Swaroop, Senior Advocate, learned counsel for the respondents, on the other hand, has vehemently argued that the items imported by the petitioner company are mathematical instruments and are covered by Article 76 of the Schedule.

12. In the New Lexicon Webster''s Dictionary 1987 Edition `machine'' is defined as under :

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"Machine : 1. n. an apparatus, made of organized, interacting parts, which takes in some form of energy, modifies it, and delivers it in a more suitable form for a desired function // a thing or system resembling such an apparatus in acting with regularity as a result of the interaction of its component parts/a person who acts like such an apparatus, apparently without exercising his will, though for or imagination//an organization whose members collaborate for some purpose, a political machine 2. v.t. pres. part. machining past and past part machined to make or operate on by machinery."

and `instrument'' is defined as under :

"instrument : 1. n. any object used for making, doing, achieving or promoting something, an implement, surgical instruments//a means, language is an instrument for communication//a person made use of by another//a device for producing music//(law) a deed, bond or other document embodying a right or obligation 2. v.t. to equip with instruments//to orchestrate (a score) (F.)"

In the Random House Dictionary of the English Language, `machine'' is defined as under :

"Machine : n. 1. an apparatus consisting of interrelated parts with separate functions, used in the performance of some kind of work; a sewing machine. 2. a mechanical apparatus or contrivance; a mechanism, 3. sometime operated by a mechanical apparatus, as an automobile or airplane. 4. Mech. a device which transmits and modifies force or motion b. Also called simple machine, any of six or more elementary mechanisms, as the lever, wheel and axie, pulley, screw, and inclined plane. c. Also called complex machine a combination of simple machines. 5. any of various contrivances. esp. those formerly used in the theatre, for producing stage effects. 6. some agency, personage, incident or other feature introduced for effect into a literary composition. 7. any complex agency or operating system; the machine of government. 8. an organized group of persons that conducts or controls the activities of a political party or other organization; He heads the Democratic machine in our city. 9. one who or that which acts in a mechanical or automatic manner; Routine work had turned her into a machine. v.t. 10. to make, prepare, or finish with a machine."

and `instrument'' is defined as under :

"Instrument : n. 1 a mechanical device or contrivance; tool; implement; a surgeon''s instruments. 2. a contrivance for producing musical sounds : a stringed instrument. 3. that with or by which something is effected ; means ; agency an instrument of Govt: 4. a formal legal document, as a contract, promissory note, deed, grant, etc. 5. a person used by another merely as a means to some private end. 6. a device for measuring the present value of the quantity under observation. 7. a mechanical or electronic measuring device esp. one used in navigation ; landing a plane by instruments. adj. 8. Aeron, relying on only instruments for navigation; instrument flying; instrument landing. Cf. contact (def. 10). v.t. 9. to equip with instruments, as a machine, manufacturing

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process, etc.; to instrument a space capsule. 10. to arrange a composition for musical instruments; orchestrate."

13. Chambers Twentieth Century Dictionary, New Edition, defines a "weigh bridge" as "machine for weighing vehicles with their loads" and weighing machine has been defined as "a machine or apparatus for weighing". Weighing machine or weighbridge considering its nature, appearance and use and dictionary meaning given to machine and instrument, will be covered by the term `machine'' and not an `instrument''. It is not disputed that the petitioner Company is not importing a finished product or a complete item. It is importing different components, parts, which are assembled and given shape of weighbridge or weighing machine. An instrument presupposes that it will be complete in itself. Article 76 deals with all kinds of scientific, mathematical, optical, surgical and dentistry instruments and equipments including telephonic, telegraphic and televisional apparatus and goods, whereas Article 100 deals with machinery including agriculture, industrial spare parts. A reading of Article 76 will show that it does not deal with any parts of instruments such as mathematical, optical, surgical or dentistry instruments. It appears the Legislature in its wisdom provided octroi to be levied under Article 76 on instruments, equipments, apparatus and goods which are fine, small and delicate and are subject to octroi on the basis of value, as such delicate instruments cannot be levied octroi on their weight whereby leading to the loss of revenue. On the other hand, machinery and parts thereof are obviously used in the context of heavy items and are consequently, subjected to octroi on the basis of weight since their value may not be high as compared to weight.

14. If a rational interpretation is given to the words used in Article 76, it becomes clear that it will not apply to the parts imported for assembling or manufacturing machines. It will apply only in situation where an instrument complete in itself is imported. It is not disputed that the petitioner Company is not importing any finished instruments which is complete by itself, but is importing different parts and components, which are assembled and a weighing machine or weighbridge etc is manufactured. The interpretation given by the Chief Administraterrespondent No. 2 to Article 76 in his order dated March 13, 1987 was legally and factually correct. There is no justification is styling raw material, components machinery parts and other cast iron products imported by the petitioner Company as mathematical instruments. They are not covered by the scope of Article 76 and the respondents No. 2 and 3 are not justified in charging octroi on such imports by the petitionerCompany according to Article 76.

15. Consequently, the order passed by the Chief Administrater, respondent No. 2, dated June 8, 1987 reviewing its order dated March 13, 1987 and holding that the imported articles mentioned therein by the petitioner Company are covered by Article 76 is set aside being without jurisdiction, as respondent No. 2 had no power of review and his order dated March 13, 1987 is restored and it is further held that the machinery, parts and components and other raw material in the

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nature of the cast iron products imported by the petitionerCompany are not covered by Article 76 of the Faridabad Complex Administration Octroi Schedule and the respondents are not entitled to charge octroi classifying them as articles covered under Article 76 of the Schedule. This writ petition is allowed. There will be, however, no orders as to costs.

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