
(1997) 07 BOM CK 0024

In the Bombay High Court

Case No : Writ Petition No. 3066 of 1988

Bajaj Tempo Limited and another

APPELLANT

Vs

The Pimpri Chinchwad Municipal

RESPONDENT

Date of Decision : 31-07-1997

Acts Referred:

Bombay Provincial Municipal Corporations Act, 1949 — Section 105, 127, 149, 3(2), 493

Maharashtra Municipalities (Octroi) Rules, 1968 — Rule 3

Maharashtra Municipalities Act, 1965 — Section 2(50)

Citation : (1998) 1 ALLMR 503 : (1998) 1 BomCR 745

Hon'ble Judges : B.B. Vagyani, J;A.P. Shah, J

Bench : Division Bench

Advocate : J.D. Dwarkadas, N.H. Seervai and Vaibhav V. Joglekar, instructed by M/s. Kanga and Co, for the Appellant; Narendra Walwalkar and Ms. A.R. Baxi, for the Respondent

Judgement

A.P. Shah, J.—The first petitioner Bajaj Tempo Limited (hereinafter called the "Company") is a company registered under the Companies Act and the second petitioner is its Managing Director. The Company is carrying on business of manufacture and sale of light commercial vehicles in different models such as mini-bus, station wagon, utility van, ambulance, pick-up truck, dual cabin pick-up truck, delivery van, autorickshaw etc. Their manufacturing unit is located at Akurdi within the municipal limits of the first respondent Pimpri Chinchwad Municipal Corporation. The first respondent Corporation was constituted on 5th October, 1982 under a notification issued by the State Government u/s 3(2) of the Bombay Provincial Municipal Corporation Act, 1949. Prior to the constitution of the Corporation it was a municipality and were governed by the Pimpri Chinchwad Municipal Council, constituted under the Maharashtra Municipalities Act, 1965. The Company imports within the municipal limits various types of raw materials, components and spares. Prior to 5th October, 1982, the Pimpri Chinchwad Municipal Council had granted to the Company current account

facilities in respect of payment of octroi under the Maharashtra Municipalities Act, 1965 and the Maharashtra Municipalities (Octroi) Rules, 1968. There is no dispute that the current account facility was continued after the constitution of the Corporation.

2. Under Rule 3 of the Maharashtra Municipalities (Octroi) Rules, a municipal council is entitled to levy octroi on various goods mentioned in Schedule I of the said Rules and is entitled to fix the rates of octroi not exceeding maximum rate and not less than the minimum rate prescribed in the said schedule for each type of goods. In pursuance of the powers conferred by the rules, the Pimpri Chinchwad Municipal Council levied octroi on various items and published a table of rates thereof. Entry No. 75 of Table of Rates of Octroi in force prior to 16th March, 1981 read as under :---

Sr. No.	Description of goods	Percent
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75.	Vehicles (A) Motorcars, motorcycles Chassis and lorries and spares thereof	
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2.00		
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(B) Bicycles, Perambulators, carriages, all kinds of vehicles and their components and spares.		
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2.00		
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3. By passing a resolution dated, 30th January, 1981 bearing No. 621, the General Body of Pimpri Chinchwad Municipal Council decided to revise the rates of octroi of various items. By virtue of the said resolution, the then prevailing rates of octroi for Serial Nos. 75-A and 75-B were reduced to 0.5 per cent ad valorem to be effective from 16th March, 1981. In pursuance of the said resolution, a revised Table of Rates came to be published. Serial No. 75 of the said Table of Rates reads as follows :

Sr. No.	Description of goods	Percent
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75.	Vehicles	
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A.	Motorcars, motorcycles,	0.50
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Chassis and lorries and spares thereof	2.00	
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B.	Bicycles and their spares parts	0.50
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C.		
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Perambulators, carriages, all kinds of vehicles and their components and spares		
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0.50		
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It is clearly seen that the above Table of Rates is at variance with the Resolution No. 621 dated 30th January, 1981. Under the resolution, the vehicles as well as "spares thereof" falling under Serial No. 75-A were liable to be taxed at 0.5 per

cent whereas the revised table which came to be published prescribed different rate for the spares of the vehicles falling under Serial No. 75-A. Further it is seen that the original Entry 75-B was split into two parts i.e. 75-B and 75-C.

4. As already indicated, Pimpri Chinchwad Municipal Corporation was constituted with effect from 5th October, 1982. u/s 105 of the Corporations Act, levy of octroi is optional. Then section 149 provides that in the event of the Corporation deciding to levy octroi, it has to frame rules for the matters enumerated in the said section. Section 493 of the Corporations Act contains transitory provisions empowering the State Government to issue notifications for directing continuation of rules, bye-laws etc. in so far as they are not inconsistent with the provisions of the Act and then such rules, bye-laws would continue to remain in force unless they are modified or suspended. In pursuance of the powers conferred by section 493 read with paragraph 5(a) of Appendix IV, the State Government continued the old rules, bye-laws etc. under notification dated 5th October, 1982 until they are suspended or modified under the provisions of the Corporations Act. It appears that the Administrator who was in-charge of the Municipal Corporation at the relevant time published draft Octroi Rules on 8th August, 1985. The draft rules were submitted to the State Government for its sanction. However the Government raised certain queries by its letter dated 2nd April, 1986. The Government also suggested by the said letter that the elected representatives may be asked to consider the draft Octroi Rules for approval. Accordingly, the draft Octroi Rules were placed before the General Body on 16th May, 1986 and were approved. Once again, the Octroi Rules were submitted to the Government on 24th September, 1986. However, the Government has not sanctioned the rules so far despite several reminders sent by the Municipal Corporation. Consequently, the rules framed under the Municipalities Act which were applicable before the constitution of the Corporation continued to be applied for levy and collection of octroi.

5. Since the revised Table of Rates of octroi came into force on 16th March, 1981, the Company has had differences with the Municipal Council which later on became a Corporation. The main dispute between the parties relates to the classification of the goods imported by the Company. The Company maintains that their goods fall under Entry 75-C and, therefore, octroi is payable at 0.5 per cent. On the other hand, the stand taken by the Municipal authorities is that the components and spares are classifiable under Entry 75-A and are, therefore, liable for levy of octroi duty at the rate of 2 per cent. Lengthy correspondence has been ensued between the parties in respect of the issue of classification. It seems that since October, 1981 the Company is paying octroi under protest calculated at the rate of 1.25 per cent. When the petition was pending for admission, the respondents issued two notices both dated 16th June, 1988. By the first notice, the respondents claimed that an amount of Rs. 1,02,14,975.25 ps. was due and payable by the Company for the period January 1981 to December 1984. On the same day another notice was issued claiming the difference of Rs. 1,06,65,233.90 for the period from January 1985 to December,

1987. It is an admitted position that this demand was made on the basis that the goods imported by the Company fall under Entry 75-A.

6. Mr. Dwarkadas, learned Counsel appearing for the petitioners, strenuously contended that the components and spares imported by the Company for manufacture of their vehicles fall under Entry 75-C and not under Entry 75-A. The Counsel urged that the vehicles manufactured by the Company do not fall under Entry 75-A but they are covered by Entry 75-C which applies to all kinds of vehicles and their components and spares. In the alternative, Mr. Dwarkadas urged that even assuming that the vehicles of the petitioners fall under Entry 75-A, Entry 75-A does not speak of components and, therefore, the components would fall under Entry 75-C. In any event, according to Mr. Dwarkadas the components would fall under the residue Entry 86 and liable to be charged at the rate of 1.25 per cent. Mr. Dwarkadas next urged that the Table of Rates published by the municipal council on 6th February, 1981, is contrary to the resolution passed on 30th January, 1981. Mr. Dwarkadas submitted that the revised rate of 2 per cent for spares is an interpolation made by the officer of the Council contrary to the resolution passed on 30th January, 1981. Mr. Dwarkadas submitted that splitting of original Entry 75-B was also contrary to the resolution. The Municipal Council had no power to amend the Entry in the schedule. The interpolations made in the Entry are, therefore, illegal, without jurisdiction and liable to be ignored. Mr. Dwarkadas submitted that the authorities have failed to make distinction between the spares and components and erroneously charged at a flat rate of 2 per cent for both components and spares. Mr. Dwarkadas also submitted that the first respondent has neither passed any resolution for levying octroi nor made any rules in respect of the same as required u/s 149 of the Corporation Act. Thus a mandatory pre-condition to the levy of octroi has not been complied with and, therefore, the collection of octroi by the first respondent is without any authority of law.

7. In reply, Mr. Walawalkar contended that Entry 75 jointly deals with vehicles. It divides vehicles into two parts i.e. vehicles having engines and vehicles without engines. According to Mr. Walawalkar Entry 75-A deals specifically with vehicles having engines and Entry 75-C deals with vehicles which are not fitted with engines. Mr. Walawalkar also contended that for the purpose of levy of octroi there is hardly any difference between spares and components. It will be impossible to distinguish between spares and components at the time when they are imported and therefore, the corporation was right in levying duty at the rate of 2 per cent on the imports made by the petitioners. Mr. Walawalkar contended that the revised rates published by the Municipal Council cannot be said to be contrary to the resolution passed on 30th January, 1981 since in a subsequent resolution passed on 21st November, 1988 it has been clarified that it was always intended that the octroi would be levied on spares at 2 per cent. Mr. Walawalkar then contended that even assuming that the revised rates were contrary to the resolution, any such contradiction has lost its meaning after the Municipal Corporation was established. Mr. Walawalkar contended that the Municipal

Corporation had merely adopted the table of rates as published by the erstwhile Municipal Council for their convenience till the rules were framed u/s 149 of the Corporations Act. Therefore, the schedule of rates and items must be taken to be an independent table of rates and items and integral part of the budget for the purpose of collection of octroi unconnected with the said table of rates and items prepared under the Municipalities Act by the erstwhile Pimpri Chinchwad Municipal Council. Mr. Walawalkar strongly refuted the argument of Mr. Dwarkadas that levy is without authority of law. Mr. Walawalkar submitted that the draft rules are already submitted to the Government for its sanction as far back as 1986. However, the Government has not taken any decision so far. Mr. Walawalkar urged that till the rules are sanctioned by the Government, the old rules shall continue to apply and, therefore, the levy of octroi cannot be said to be illegal or ultra-vires.

8. The principal issue which falls for our consideration is the issue of classification. According to the petitioners, the vehicles manufactured by them do not fall under 75-A but fall under 75-C and, therefore, the components and spares imported by them are covered by Entry 75-C. The expression "vehicle" has been defined in section 2(50) the Municipalities Act and the definition runs thus :-

"Vehicle" includes a carriage, cart, van, dray, truck, hand-cart, bicycle, tricycle, motor-car and every wheeled conveyance which is used or is capable of being used on a street."

The definition is very wide and covers within its sweep all types of vehicles. Entry 75-A deals with only certain types of vehicles like motorcars, motorcycles, chassis and lorries and spares thereof. Entry 76-C relates to perambulators, carriages, all kinds of vehicles and their components and spares. The vehicles manufactured by the petitioners are not covered by Entry 75-A and, therefore, they would necessarily be covered by expression "all kinds of vehicles" in Entry 75-C. Mr. Walawalkar, however, argues that Entry 75-C relates to vehicles which are not fitted with engine like perambulators, carriages and, therefore, the expression "all kinds of vehicles" should also be construed as all kinds of vehicles which are not fitted with engines. Mr. Walawalkar says that in construing the expression, we must adopt the rule of construction *noscitur a sociis*. This rule according to Maxwell, means that when two or more words which are susceptible of analogous meaning are coupled together they are understood to be used to their cognate sense. They take as it were their colour from each other, that is, the more general is restricted to a sense analogous to a less general. The argument is that the expression "all kinds of vehicles" should be construed to mean vehicles which are analogous to perambulators and carriages and not vehicles fitted with engine. We are not impressed by this argument. It is well settled that *noscitur a sociis* is merely a rule of construction and it cannot prevail in cases where it is clear that the wider words have been deliberately used in order to make the scope of the defined word correspondingly wider. It is only

where the intention of the Legislature in associating wider with words of narrow significance is doubtful, or otherwise not clear that the present rule of construction can be usefully applied. It can also be applied where the meaning of the words of wider import is doubtful, but where the object of the Legislature in using wider words is clear and free of ambiguity the rule of construction in question cannot be pressed into service. See: *The State of Bombay and Others Vs. The Hospital Mazdoor Sabha and Others*, .

9. In our opinion, the words "all kinds of vehicles" are extremely wide in their application and cover all the vehicles other than the vehicles falling under Entry 75-A. They will have to be read in the light of definition of vehicle u/s 2(50) and so read they would cover, within their ambit, all kinds of vehicles other than those covered by Entry 75-A. It is, therefore, not possible to accept the argument of Mr. Walawalkar that the intention of the rule makers was to give restrictive meaning to the expression "all kinds of vehicles". Thus the vehicles manufactured by the Company and their components and spares would fall under Entry 75-C and will be liable to be charged at the rate of 0.5 per cent. Entry 75-A speaks only of vehicles and spare parts and not of components. Therefore even assuming that the vehicles manufactured by the company fall under Entry 75-A, the components would be governed by Entry 75-C and liable to be charged at the rate of 0.5 per cent. Some controversy has been raised as to whether the goods imported by the Company are components or spares. It is submitted by Mr. Walawalkar that no distinction can be drawn between spares and components for the purpose of octroi. The argument is without any merit. The words "spare part" means an extra part of a vehicle or machine kept for use in emergency or replacement. The expression "spare parts" cannot be equated with "parts" without regard to the colour that is lent by the word "spare". As a matter of plain language, the expression "spare parts" connotes a part which requires replacement in the ordinary course on account of wear and tear, and as an extra item for use in an emergency See *Sujan Singh v. Appellate Assistant Commissioner, Sales Tax, Delhi Sales Tax Cases Vol. XXIV 504*. Thus Mr. Walawalkar is not right in saying that the components brought by the Company would fall under Entry 75-A.

10. We also find considerable merit in the argument of Mr. Dwarkadas that unauthorised interpolations were made in the revised rates published by the Municipal Council which were to be effective from 16th March, 1981. By the resolution dated 30th January, 1981 the rates of octroi for Entry Nos. 75-A and 75-B were reduced to 0.5 per cent. However it seems that in the final rates which were published by the Municipal Council, a different rate was prescribed for the spares of the vehicles falling under Entry 75-A. The original Entry 75-B was split into two parts i.e. 75-B and 75-C contrary to the provisions of the Municipalities Act. Mr. Walawalkar has not disputed that the final Table of Rates published by the Municipal Council was contrary to the resolution dated 30th January, 1981 passed by the Municipal Council. Mr. Walawalkar, however, tried to justify the changes made by the Municipal officers by relying upon a resolution

dated 21st November, 1988. Mr. Walawalkar argued that by the said resolution it has been clarified that it was intended that the octroi would be levied on spares at 2 per cent. The argument is required to be stated only to be rejected. It is not open for the Municipal Corporation to validate unauthorised interpolations in the Table of Rates by passing a resolution after lapse of seven years in this fashion. We have, therefore, no hesitation to hold that unauthorised interpolations made by the municipal officers were clearly illegal and without jurisdiction. Mr. Walawalkar argued that the Corporation has adopted Table of Rates as their own Table of Rates for making budgetary provisions. The discrepancy, if any, between the resolution passed by the erstwhile Municipal Council and the Table of Rates published on the basis of such resolution is of no consequence. It is not necessary for us to express any opinion on this aspect of the matter since we have already indicated that the goods of the petitioners fall under Entry 75-C and not 75-A.

11. The next contention of Mr. Dwarkadas is that the levy imposed by the Corporation is ultra vires and without jurisdiction. In that connection, Mr. Dwarkadas relied upon various provisions of the Corporations Act. He pointed out to us that sections 95 to 97 lay down procedure of preparing estimates of income and expenditure by the Commissioner. He also pointed out that u/s 149 in the event of the Corporation deciding to levy any of the taxes specified in sub-section (2) of section 127, it shall make detailed provisions, in the form of rules, modifying, amplifying or adding to the rules at the time in force for the matters like the nature of law, the rates thereof, the class or classes of persons, articles of properties liable thereto and the exemptions therefore, if any, to be granted, the system of assessment and method of recovery etc. The argument of Mr. Dwarkadas is that in the absence of such rules, the levy is rendered completely illegal and invalid. We do not find any merit in the argument of Mr. Dwarkadas. Section 493 contains transitory provisions. u/s 493 read with paragraph 5(a) of Appendix IV power is conferred on the State Government to issue notification for directing continuation of rules, bye-laws etc. in so far as they are not inconsistent to the provisions of the Act and such rules, bye-laws would continue to remain in force unless they are modified or suspended. We have already noted that the Administrator who was in-charge of the Municipal Corporation at the relevant time had duly published draft rules. The draft rules were approved by the General Body in 1986 and thereafter they are submitted to the State Government for its sanction. It seems that the Government has not sanctioned the rules so far despite several reminders sent by the Corporation. As a result, the old rules continue to apply by virtue of the notification issued by the State Government u/s 493 read with paragraph 5(a) of Appendix IV. We were told that some of the Municipal Corporations have adopted the old rules as their own rules. It is true that no such resolution has been passed by the first respondent Municipal Corporation. But that would not make any difference because the old rules shall continue to govern the levy and collection of octroi. The additional affidavit of the Corporation shows that the provisions of sections 95 to 97 have

been duly complied with and budgetary estimates have been prepared and passed every year. It seems that the Corporation has increased the levy in respect of Entry 75-C from 0.5 per cent to 2 per cent with effect from June, 1989. Thus from 1989, the company will be liable to pay levy at the rate of 2 per cent on the components and spares imported by the company in the Corporation area.

12. In view of the foregoing discussion, the impugned notices dated 16th June, 1988 are quashed and set aside. The Corporation is directed to re-fix the amount of octroi payable by the petitioner No. 1 company in the light of observations made in this judgment. In case any amount is found to be refundable to the petitioner No. 1 company, the Corporation shall refund the same within 12 weeks from today or give credit for the said amount in the account current maintained by the company. Rule is made absolute accordingly. No order as to costs.

On the oral request of the learned advocates for the parties, operation of this order is stayed for a period of ten weeks. Interim order to continue in the meanwhile.