

(1981) 06 KAR CK 0004
In the Karnataka High Court
Case No : Writ Petition No. 1811 of 1979

Balappa Mallappa Dambal

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 09-06-1981

Acts Referred:

Citation : AIR 1981 Kar 251 : (1981) 2 KarLJ 174

Hon'ble Judges : M.P. Chandrakantaraj Urs, J

Bench : Single Bench

Advocate : G.D. Shirgurkar, for the Appellant; M.R. Vanaja, for the Respondent

Judgement

1. In this writ petition the short question that falls for determination is whether Ammonium SuIphate, Ammonium Nitrate, Urea, Ammonium Chloride, Sodium Nitrate, Calcium Ammonium Nitrate, Super Phosphate etc., imported and sold by the petitioner within the municipal limits of the Town Municipal Council, Chloride are liable to levy of octroi either under Item 12 of Class III or under Item 3 of Class IX of the Second Schedule - to the Karnataka Municipalities Act, 1964 (hereinafter referred to as the Act) (Since filing of the petition, Octroi has come to be abolished).

2. The facts leading to the filing of the petition stated briefly are as follows : The petitioner is " a dealer in Chemical fertilizers. He is doing so for the last 50 years in the Town of Chikodi in Belgaum District. The customers are all agriculturists. By an order dated 7-7-1976 the State of Karnataka, 1st respondent herein accorded sanction to the 2nd respondent-Chinked Town Municipal Council to levy octroi on goods specified in Second Schedule to the Act. The petitioner deals in different chemical fertilizers enumerated above and has been subjected to levy of octroi duty on Sodium Nitrate at 2 per cent ad valorem, the rate being common to both the relevant entries in the Second Schedule to the Act. -In regard to Item 12 of Class III and Item 3 of Class IX of the Second Schedule to the Act, it is the contention of the petitioner that Sodium Nitrate is a chemical fertilizer and it cannot be subjected to levy of octroi at all as it is not covered by either of those

entries. He derives support for his contention by reference to the Circular issued by the 1st respondent- Deputy Commissioner, Raichur, bearing the date 25-7-1968. That circular has reference to a copy of the Government Order L. No. TMA 43 MNR 66 dated 23-1-1968. It is seen from the circular that the said order of the Government clearly provides that octroi could be levied on fertilizers only if they are subject to such levy of octroi in terms of Item 43 of Class IX of the Second Schedule to the Act.

3. Though the State has entered appearance, it is not the contesting respondent. Therefore, the learned Government Pleader appearing for the State has made no serious attempt to support the levy of octroi by the 2nd respondent-Town Municipal Council.

4. The 2nd respondent-Town Municipal Council is represented by a counsel. But, no statement of objections has been filed nor is the counsel present today at the time of arguments in spite of being sent for.

5. In the result, the Court has to decide whether the chemical fertilizer enumerated above in the course of this order, especially Sodium Nitrate, is liable for levy of octroi by the 2nd respondent-Town Municipal Council.

6. Item 12 of Class III of the Second Schedule to the Act is fire-works and its components. I am unable to see how Sodium Nitrate or any "of the chemical fertilizers enumerated comes within the scope and meaning of that item. By the use of the word components the Legislature has brought within that entry all chemical explosives and combustibles which are used in preparing fire-works and allied products. When the petitioner is not a licensee to store fire-works and its components or explosives, his dealings in Sodium Nitrate or any other chemical fertilizers cannot come within the term fire-works and explosives which are subjected to levy of octroi under the said Item 12 in Class III. Therefore, the stand taken by the Town Municipal Council in the letter addressed by its President dated 4-1-1979 does not appear to be correct.

7. Now we have to examine whether Sodium Nitrate falls for purpose of levy of octroi within the meaning and scope of Item 3 of Class IX of the Second Schedule to the Act. That entry reads as follows :

"3. Chemicals (except those chargeable under any other class) distilled water and Sulphur in casks or barrels or bags".

8. The language of that entry itself aids its construction. The term chemicals" is used apparently to mean and have the ordinary dictionary meaning; otherwise there was no purpose in including Sulphur in casks or barrels or bags as undoubtedly Sulphur is also a chemical in the sense it can be derived by chemistry. The, dictionary meaning of the word "Chemical" is the one I have stated "derived from chemistry or relating to chemistry". In the sense of the dictionary meaning almost all things used by man becomes a chemical, such could not have been the intention of the Legislature though providing for

exclusion of certain chemicals chargeable under separate heads in the language of the item is indicative that the Legislature wanted to give a wide meaning to the word "chemical" but, not so wide as to make it meaningless. Therefore, we must understand "chemicals" to mean and include only those items which are normally understood as chemicals by chemists, students of chemistry and others who have occasion to mix chemicals to prepare something out of it or use it for purpose of laboratory experiments by schools and colleges. This may include medicinal and toilet preparations dispensed by Chemists and Druggists. It is incorrect to include Sodium Nitrate in those items of chemicals knowing it to be sold as fertilizer. It is significant to notice that though the petitioner deals in other fertilizers than Sodium Nitrate, Sodium Nitrate alone is subjected to levy of octroi. Therefore, if the Municipal Council is of the view that the other chemical fertilizers are not liable to be subjected to levy of octroi duty, burden is on it to explain why Sodium Nitrate is singled out. No explanation is forthcoming from the Municipal Council.

9. Therefore, it must be understood that the Municipal Council has taken that chemical fertilizers in themselves are not liable to octroi duty as it appears to be the intention of the Government also.

10. In these circumstances, the petitioner must succeed in his prayer to have the demand notice Exhibit-B quashed as being without the authority of law. It appears that half the amount demanded in Ext.-B has been paid" under the directions of the Court, while the whole of the amounts demanded by demand notices under Exts. F to K have been paid by the , petitioner Similarly, by an order of this Court sum of Rs. 686-40, 686-40 and 667-07 have been paid to the Municipal Council as octroi on Sodium Nitrate. This levy and collection, for the reasons stated above, is without the authority of law and the petitioner is liable to get refund of the amounts. Accordingly, Ext. B the demand notice as well as Exhibits F to K " for the earlier periods are quashed. A writ of mandamus will issue to the 2nd respondent 7- Municipal Council to refund the amounts above indicated as aid by the petitioner as octroi on Sodium Nitrate.

11. The petitioner is also entitled to his costs. The Bank guarantee furnished for the remaining half of the demand in Exhibit-B stands hereby cancelled Advocate's fee Rs.100/-.

12. Petition allowed