(1993) 08 OHC CK 0006

In the Orissa High Court

Case No : O.J.C. No. 6892 of 1992

Batliboi and Company Ltd. APPELLANT

Vs

Cuttack Municipal Council RESPONDENT

Date of Decision : 31-08-1993

Acts Referred:
Orissa Municipal Act, 1950 — Section 131

Citation : (1993) 2 OLR 548

Hon'ble Judges : D.P. Mohapatra, J;A.K. Padhi, J

Bench : Division Bench

Advocate : A. Patnaik, for the Appellant; S.K. Nayak-I, for the Respondent

Final Decision : Allowed

Judgement

D.P. Mohapatra, J.—Batliboi & Company Ltd., a company registered under the Companies Act, 1956 filed this application under Arts, 226 and 227 of the Constitution of India against the Cuttack Municipal Council, represented by its Octroi Superintendent seeking a direction to it to release the consignment of diesel engine meant for sate by the petitioner to Hart Machines, Rajgangapur, which passed through the Cuttack Municipality in course of transit.

2. The case of the petitioner, shortly stated, is that in Course of its trading activities it had negotiated for sale of diesel engine, manufactured by Kirleskar Cummins Ltd. at Pune to Hari Machines Ltd., at Rajgangpur in Orissa and had arranged for transport of the said diesal engine from the factory at Pune to Rajgangpur through Kaharasht a Road Carrier Pvt. Ltd. Copies of the envoice and the delivery note issued by Kirloskar Cummins Ltd. and copy of the consignment note issued by the Carrier are filed as Annexures 1,2 and 3 respectively to the writ application. For handling its business in Orissa, the petitioner has a depot at Cuttack registered under the Central Sales Tax Act. 1956 and the Orissa Sales Tax Act. 1947. The said depot also reised an invoice on Hari Machines Ltd., Rajgangpur in respect of the diesel engine in question. A copy of the said invoice/ bill dated 7-9-1992 raised by the petitioner on Hari Machines Ltd., Rajgangpur is

annexed to the writ application as Annexure-5. When the diesel engine in question was being transported by the truck bearing No. OSC 15 it was stopped at Gopalpur Check-post by functionaries of the Cuttack Municipality who insisted on payment of octroi on the consignment. The official in charge of the petitioner''s depot at Cuttack addressed the letter dated 21-9-1992 (Annexure-6) to the Officer-in-charge of Gopalpur Check-post stating that the consignment is to be sold to Hari Machines Ltd., Rajgangpur under "Inter-State Subsequent Sate Rules o1 C. S T. Act" and that it is in transit to Rajgangpur and therefore no octroi is payable on the consignment. The plea was not accepted and the consignment was detained. Under such compelling circumstances the petitioner filed the writ application seeking the reliefs noted earlier. By the order dated 29-9-1992 in Misc. Case No. 6640 of 1992 this Court directed release of the consignment referred to in Annexures-2 and 3 on deposit of the tax demanded making it clear that the Interim arrangement is without prejudice to the rights and claims made in the writ petition and shall be subject to the result of the case. It is the contention of the petitioner that since the diesel engine in question was not intended for use or consumption or sale inside the limits of Cuttack Municipality, no octroi could be levied on it by the said Municipality under law and, therefore, the demand was illegal and unsustainable.

3. From the counter affidavit filed by the Octroi Superintendent on behalf of the Cuttack Municipality the stand taken appears to be two-fold : (i) the diesel engine which, as stated by the petitioner, was meant for delivery to Hari Machines Ltd., at Rajgangpur is not the same which was brought inside Cuttack Municipality, and 0*0 the plea that the engine on which demand of octroi has been made entered the Cuttack Municipal limits in course of transit from pune to Rajgangpur is not established. According to the opp. party the sale of the engine to Hari Machines Ltd. took place at Cuttack; therefore it is clear that the engine was brought to Cuttack for sale which attracted the liability for octroi duty u/s 131(kk) of the Orissa Municipal Act (for short, "the Act") read with the Cuttack Municipal Council Octroi Bye-laws.

4. Shri A. Patnaik, learned counsel for the petitioner, reiterated the stand taken in the writ application discussed earlier and submitted that from the materials available on record, particularly the documents filed as Annexures-2 to 5 to the writ application and those annexed to the rejoinder, there can be little scope for doubt that the diesel engine in question was despatched from Pune for delivery at Rajgangpur which amply proves the tact that the consignment was brought to Cuttack in course of transit. It is the contention of Shri Patnaik that in such circumstances no octroi can '' be levied by the Cuttack Municipality. Though in the writ application it was alleged that the Cuttack depot of the petitioner is not situated within the Municipal limit of Cuttack. Shri Patnatk did not press the point at the hearing of the case.

Shri S. K. Nayak, learned counsel for the opposite party submitted, on the other hand, that from the documents filed by the petitioner it is clear that the petitioner''s company was the consignor and also the consignee of the goods and the sale letter was issued from Cuttack depot of the Company. According to Shri Nayak, the sale by the petitioner''s company to Hari Machines Ltd., Rajgangpur took place at the Cuttack depot of the company which is within the limits of Cuttack Municipality. It is also clear that the consignment was brought from Pune to Cuttack for sale within the limits of the Municipality. In such circumstances the demand and collection of octroi by the authorities of Cuttack Municipality is legal and valid.

5. From the case of the parties and the contention raised on their behalf as discussed in the foregoing paragraphs, the question, which in our view, arises for determination is whether in the facts and circumstances of the case the ingredients/conditions prescribed in Section 131 (kk) of the Act can be said to have been satisfied. On a bare reading of Section 131 (kk) it is manifest that the Municipal Council is entitled to impose octroi on goods brought within the limits of a Municipality for consumption, use or sale therein. In the present case, there is no dispute that the direct engine in question was not meant for consumption of use within the Cuttack Municipality. It is to be considered whether it was intended for sale therein. It is the contention of the petitioner that the consignment in question was not intended for sale within the limits of Cuttack Municipality since right from the beginning when it was booked for transportation from Pune it was made clear that the consignment was meant for delivery to Hari Machines Ltd. at Rajgangpur. The contention of the opposite party on the other hand is that though it might have been intended that the diesel engine will be delivered to Hari Machines Ltd. at Rajgangpur, the sale by the petitioner to Hari Machines Ltd. took place inside Cuttack unicipality.

6. The phrase ''''sale therein" has been interpreted by the Apex Court in the decisions rendered from time to time. In the case of Burmah Shell Oil Storage and Distributing Co. India Ltd. Vs. The Belgaum Borough Municipality, the Apex Court tracing the legislative history of the tax observed that the goods must be regarded as having been brought in for purposes of consumption when a person brings them either for his own use or consumption, or to put them in the way of others in the area, who are to use and consume. In this process the act of dale is merely the means for getting the goods in the way of use or consumption. The Court ruled that it is sufficient if the goods are brought inside the area to be delivered to the ultimate consumer in the area because the taxable event is the entry of goods which are meant to reach the ultimate user or consumer in the area. On the facts of the case the Court held that the Company was liable to pay octroi tax on goods brought into focal area (a) to be consumed by itself or sold by it to consumers direct, and (b) for sale to dealers who in their turn sold the goods to consumers within the municipal area irrespective of whether such consumers bought them for use in the area or outside it. The company was, however, not liable to octroi in respect of goods which it brought into the local area and. which were re-exported.

In the case of Tata Engineering and Locomotive Company Limited and another Vs. The Municipal Corporation of the City of Thane and others, the Court ruled that having regard to the nature and incidence of octroi unless the octroi able goods are consumed or used or are meant to reach art ultimate user or consumer in the octroi area no octroi is leviable. The words ''sale therein'' in the words ''consumption use or sale therein'' in the definition of octroi means sale of octroiable goods to a person for the purpose of consumption or use by such person in the octroi area. If sale was intended for consumption or use in the octroi area whether the purchaser actually consumed inside or outside octroi area is irrelevant. Since the goods were sold by the company to outside purchaser and the goods under the transactions of sate were intended to be exported and were in fact exported for consumption or use outside the municipal limits, no octroi duty was leviable and the octroi duty paid on entry into the municipal limits was, therefore, liable to be refunded. Accordingly the rejection of the refund claims on the ground that Rule 25 (3) (d) had not been strictly complied with is illegal and could not be sustained.

7. Testing the present case in the light of the principles laid down in the afore-mentioned decisions, it is to be seen whether the petitioner''s company is liable to pay octroi on the consignment in question. From the facts of the case as emerging from the pleading and the documents on record, the gist of which has been discussed earlier, it is clear that the consignment in question was despatched from Pune for delivery at Rajgangpur and in course of transit it came inside the Municipal limits of Cuttack and remained in the Company''s depot for a certain period. Even accepting the plea of the opposite party that the sale in favour of Hari Machines Ltd., Rajgangpur took place at Cuttack, the sale was not to a person for the purpose of consumption or use by such person in the octroi area since it was meant for consumption or use at Rajgangpur and indeed, the consignment was later despatched re-exported to Rajgangpur. Therefore, going by the restrictive meaning given to the phrase "sale therein" by the Apex Court, the consignment in question was not octroiable at the hands of the Cuttack Municipality. It follows that levy of octroi duty on the consignment in question was not in accordance with the statutory provisions and the law.

8. Therefore, the writ application is allowed, the levy and demand of octroi duty on the consignment in question by the opposite party is quashed and the opposite party is directed to refund the amount paid by the petitioner as octroi duty for the consignment in question within three months hence. There will be no order for costs of this proceeding.

A.K. Padhi, J.

9. I agree.

