(2011) 08 BOM CK 0095

In the Bombay High Court

Case No : Writ Petition No. 1495 of 1997

Batliboi Limited — APPELLANT

Vs

Municipal Corporation for Greater Bombay, Municipal Octroi Inspector and Assistant Assessor and Collector (Octroi) — RESPONDENT

Date of Decision : 17-08-2011

Acts Referred:

Bombay Municipal Corporation Act, 1888 — Section 478(1A), 478(1B)
Constitution of India, 1950 — Article 226

Citation : (2011) 7 ALLMR 407 : (2012) 1 BomCR 859 : (2011) 6 MhLj 672

Hon'ble Judges : R M Savant, J;P B Majmudar, J

Bench : Division Bench

Advocate : Mayur Khandeparkar and Kanga and Co, for the Appellant; V.S. Gharpure, for the Respondent

Judgement

R M Savant, J.

1 The Petitioner Company is a manufacturer of Industrial Package Air Conditioners. The cause of filing the above Petition was detention of consignment of its air conditioners which arrived at Dahisar Check Naka in three different trucks. The said trucks carrying assessable goods were detained as the goods were undervalued by classifying the goods under Entry No. 52 of the Octroi Rules which attracts rate at 4%, the invoice value of the goods being Rs. 1,64,000/? though the goods had passed the octroi limit and part of the consignment was already delivered to one Precision Components Pvt. Ltd. for whom they were meant. However, a part of the said consignment was detained by the Respondents. A Stop Delivery Memo was issued under Rules 15 and 16 of the Octroi Rules 1965 and the Petitioner was called upon to produce relevant documents octroi receipt/import invoice/goods consignment notes. On receipt of the said stop delivery memo dated 3.9.1997, the Petitioner placed before the concerned officer of the Respondent No. 1? Corporation i.e. Respondent No. 3 herein the relevant documents. The Petitioner also simultaneously offered to pay on the invoice value of the seven package air conditioners, the octroi payable at

the rate of 2%, since the said consignment is covered under Item 50 of Schedule?H of the Bombay Municipal Corporation Act, 1888. Since the Respondents did not accede to the request of the Petitioner to release the part of consignment which was detained, the Petitioner Company was constrained to file the above Petition invoking the writ jurisdiction of this Court.

2 The Petitioner in the above writ petition has inter alia sought the following reliefs:?

(a) That this Hon''ble Court be pleased to exercise jurisdiction vested in it under Article 226 of the Constitution of India, and be pleased to declare that the detention of the Petitioners'' part of the assessable goods described in Exhibit "A" by the Respondents as illegal, null, void, arbitrary and unconstitutional and contrary to law;

(b) That this Hon''ble Court may be pleased to declare that the refusal by the Respondents to accept Petitioners payment of octroi at the rate of 2% on the invoice value inclusive of excise duty on the said consignment of goods described in Exhibit "A" hereto is illegal, null, void, unconstitutional and contrary to law;

(c) That this Hon''ble Court further be pleased to permanently restrain the Respondents, their officers, servants and agents by a permanent order and injunction from in any manner interfering with the Petitioners clearing the said assessable goods described in Exhibit "A" hereto upon payment by the Petitioners of octroi at the rate of 2% on the invoice value inclusive of the excise duty in respect of the said consignment of goods described in "A" hereto;

(c)(i) That this Hon''ble Court be pleased to issue a Writ of Mandamus or a writ in the nature of mandamus or any other appropriate writ, order or direction restraining the Respondents their officers, servants and agents from in any manner levying octroi duty in respect of the Petitioners package type air conditioners in excess of the rate prescribed for Entry 50 of Schedule?H of the Bombay Municipal Corporation Act, 1888, and further directing the Respondents, their officers, servants and agents to forthwith withdraw and/or cancel the said notice dated 17/18th September 1997 (Exhibit "N" hereto).

3 The above Petition had come for admission on 25th September 1997 on which day an interim order came to be passed by a Division Bench of this Court. By the said interim order the Respondents were directed to forthwith release the goods seized by them on the condition that the Petitioner would be pay the octroi duty due and payable on the basis of the original invoices. It was further directed that the Petitioner should fully cooperate during the investigation which is sought to be carried out by the Respondents with regard to the alleged acts committed by the Petitioner Company or by its agent.

4 In the context of the reliefs sought in the above Petition, as also in the context of the allegations made by the Respondents qua the Petitioner? Company it would be apposite to reproduce Paragraph?9 of the affidavit in reply filed by the

Respondents herein. The same is reproduced as under:?

9 From the above, it will be clear that the Petitioners and/or their agents, knowingly fully well and consciously devised the fraudulent documents with malafide intention to evade the payment of octroi in all the abovementioned 3 cases by fraudulently producing faked documents showing value of the goods imported in the City on the lower side and having brought into the City the materials/goods on different names. I say that, this being clear case of deliberate intention to evade the octroi, these Respondents are entitled to investigate the matter thoroughly in order to ascertain the persons involved in this particular racket and the quantum of evasion of octroi. These Respondents are not in issue on the rate at which octroi is to be collected. I say that if these Respondents are not permitted to thoroughly investigate the matter and ascertain the persons responsible in the evasion of payment of octroi, it will set bad precedent. These Respondents are further entitled to prosecute the persons involved in deliberate and intentional evasion of payment of octroi u/s 478-1A and 478-1B of the B.M.C. Act. The Petitioners'' contention that his regular agent was not available, is also after thought and statement made in petition is false statement in as much as the Petitioners'' regular agent i.e. Kamal Agency had in fact cleared consignment of other parties on 2.9.1997 as evident from the records maintained by these Respondents. Act of the Petitioners in approaching some other agent in clearing their consignment, has been done with clear intention to evade the payment of octroi. The Petitioners are not even revealing the names of the agents to whom they have engaged in clearing the consignment imported into this City.

5 Reading of Para?9 of the affidavit in reply of the Respondents therefore discloses that in so far as rate at which the octroi was due in respect of the goods in question, the Respondents had no issue. The issue was only as regards the alleged fraudulent documents produced by the Petitioner on the

basis of which it is the case of the Respondents that the goods were undervalued.

6 During the course of hearing of the above Petition, Shri Khandeparkar, the learned Counsel appearing for the Petitioner, fairly conceded that in view of the interim order dated 25th September 1997, except prayer Clause (c)(i), all the other prayers have worked themselves out, since the goods were directed to be released by this Court.

7 In so far as prayer Clause (c)(i) is concerned, the said prayer is referable to the document dated 17th September 1997 which has been annexed to the Petitioner later on as Exhibit "N" by way of amendment. The author of the said document is the Assessor & Collector Vigilance Cell (Octroi) of the Respondent No. 1? Corporation. In the said letter dated 17th September 1997, it is stated that it is prima facie noticed that octroi has been paid less due to wrong classification of the consignments. Therefore the Petitioner was requested to furnish the certified copies of Excise Gate Passes, Import Invoices, Challans and Lorry Receipts for

confirmation of value declared at the time of import and confirmation of the correctness of payment of octroi. By the said letter the Petitioner was requested to pay the difference of Rs. 81,473/? provisionally as mentioned in the accompanying statement pending verification of the documents called for.

8 In so far as the said letter dated 17th September 1997 is concerned, it is contended by Shri Khandeparkar, the learned Counsel appearing for the Petitioner, that since in the affidavit in reply the Respondents have stated that since there is no issue as regards the rate at which the duty is payable in respect of the goods in question, the said issue of classification therefore does not survive for consideration in respect of the goods in question.

9 The interim order dated 25th September 1997 permitting the Respondents to clear the goods was passed on the basis of the document dated 17th September 1997 and it is the case of the Respondents that there was an undervaluation of goods in question and the gravamen of the allegations of the Respondents was that the Petitioner had produced fraudulent documents.

10 The learned Counsel appearing for the Respondent Corporation Ms. Gharpure stated that no investigation has been carried out pursuant to the said interim order dated 25th September 1997. In view of what is stated by the Respondents in their affidavit in reply we do not deem it necessary to go into the aspect of the classification of the goods in question. However, we permit the Respondents to carry out the investigation in terms of the said interim order dated 25th September 1997 within a period of three months from date. This is in view of the fact that there is an allegation of fraudulent documents being produced by the Petitioner. If the said investigation is not completed within the aforesaid period, the Respondents would thereafter not be entitled to carry out such investigation and the classification as made by the Petitioner at the time of payment of octroi under Entry 50 of the Octroi Rules would be final and conclusive. In so far as the investigation is concerned, the contentions of the Petitioner are explicitly kept open and the Petitioner would also be entitled to rely upon the pronouncements of this Court in that regard.

11 Since it is the case of the Petitioner that all the relevant documents have already been submitted to the Respondents, the averment to that effect is found in Para?10 of the Petition, the Respondents would, therefore, carry out investigation on the basis of the said documents which have been already submitted to the Respondents.

12 Rule is accordingly disposed of in the aforesaid terms with parties to bear their respective costs.