(1996) 09 OHC CK 0013

In the Orissa High Court

Case No : Original Jurisdiction Case No. 1926 of 1996

B.B. Enterprises APPELLANT

Vs

Octroi Collector, Cuttack Municipal Corporation and Others RESPONDENT

Date of Decision : 09-09-1996

Acts Referred:

Citation : (1997) 83 CLT 83 : (1996) 2 OLR 636

Hon'ble Judges : P.C. Naik, J;Dipak Misra, J

Bench : Division Bench

Advocate : Sanjeev Udgata, for the Appellant; S.K. Nayak-1, A.K. Baral, K. Ray, S.K. Nayak and P.K. Patra for O.Ps. 1 to 3 and S.C. Lal, for O.P. 4, for the Respondent

Final Decision : Allowed

Judgement

Dipak Miisra, J.—Occasions arise in course of adjudication of litigation when a feeling dominates that the facts are hidden in the steep dark sea and efforts are to be made to dive into the whirlpool and undrape the perplexity to arrive at the truth through the agencies which are normally not taken resort to. Such investigation may be at times, eventually makes one feel the whole exercise in much ado about nothing, but nonetheless the exercise has to be taken for the simple reason revelation of truth is an essential part of our adjudicational functioning. The protagonists who face the necessary, may be, embarrassing investigations are not to harbour the feeling of laesa majestas--but are required to co-operate for final unfolding--the real catharsis.

2. Here is the backdrop. The present case, filed by tons M/s. B. P. Enterprises has a simple prayer, seeking a declaration that no octroi is payable in respect of goods not intended for consumption, use or sale within the Cuttack Municipality and and transit through the Cuttack Municipality and for quashing the demand and -collection of octroi on aluminium ingots transported by Maruti Freight Movers (P) Ltd on transit through the Cuttack Municipality to the industry of the petitioner. But in course of hearing an unpleasant fact required investigation to

which we shall advert a little later.

3. The petitioner carries on a business of manufacture and sale of aluminium and utensils as a Small Scale Industry at Balikuda at Gopalpur near the National Highway Cuttack-Bhubaneswar Road. The said place of business is situated outside the octroi limit of Cuttack Municipality. The said industry has been duly registered at the District Industries Centre and is also registered under the Orissa Sales Tax Act. The petitioner uses aluminium ingot as one of the raw materials for manufacture of its products. In course of its business the petitioner negotiated for purchase of aluminium ingot from National Aluminium Company Ltd. (NALCO) and accordingly arranged for the transport of the said ingots from the NALCO, Smeter Plant, Angul to its factory at Balikuda through Muruti Freight Movers (P) Ltd. The relevant documents, namely, way-bill, delivery invoice and packing list-cum-material gate pass-cum-despatch advice issued by the NALCO alongwith other documents accompanied while goods were on transit in vehicle bearing No. OR-O6/9355 carrying the aforesaid aluminium ingots. The said vehicle was detained at the Jagatpur Out-post on 17-2-1996 by the Octroi authorities and payment of octori tax was insisted upon by them. The petitioner approached the Executive Officer, Cuttack Municipality and addressed a letter dated 19-2-1996 stating therein that the consignment was meant for its industry located at Balikuda, Gopalpur as mentioned in the documents and further explained the reasons for having a separate postal address. The Executive Officer, Cuttack Municipality directed the petitioner to approach the Octroi Collector but ultimately no fruitful result ensued and the vehicle in question was detained by the Octroi authorities at the Jagatpur Check Gate. The petitioner under these compelling circumstances made payment under protest and on such payment the vehicle was released. After payment was made the vehicle moved out of the exit Out-post at Gopalpur within 48 hours to the industry of the petitioner and the said fact was duly endorsed by the office of the Addl. Commercial Tax Officer on the Packing List-cum-Material Gate Pass-cum-Despatch advice (Annexure-4) at the Gopalpur Check Gate, Though the vehicle left Gopalpur Out-post the Octroi Collector at Gopalpur Out-post refused to endorse on Annexure-4. The grievance of the petitioner as stated in the petition is that the vehicle was in transit and when the Rules prescribe for supply of transit pass, it was not open to the Octroi authorities to detain the vehicle and collect octroi tax.

4. A counter-affidavit has been fifed by the Assistant Octroi Superintendent, Cuttack Municipality. A specific stand has been takers in paragraph 4 which reads as follows :

"That the writ application is misconceived. It is not based On the correct facts. The documents annexed to the writ petition clearly show that the goods carried by the truck bearing No. GR-08/9355 detained at the octroi check gate at Jagatpur, were meant for use in the petitioner''s factory situated at C-3, Old Industrial Estate, Jagatpur which is within the Cuttack Municipal area. The petitioner''s contention that the goods were on transit is not correct. The petitioner has also filed certain misleading documents to evade payment of octroi. Therefore, the writ application has no merit and is liable to be dismissed by the Hon''ble Court."

In paragraph 13 of the said counter, it has been stated as under:

"That the averments made in paragraphs 8. 9 and 10 of the writ application ere not correct. On verification of the records, the Octroi Collector and other Octroi authorities found that the consignments were really meant for Jagatpur unit of the petitioner. The despatch advice as per Annexure-4 issued by the authority by the National Aluminium Company Ltd. does not show that the goods in the consignment were really passed through Gopalpur Check-gate, The petitioner has deliberately made a false statement that the octroi Collector at Gopalpur Out-post refused to endorse on Annexure-4. It is ascertained that the petitioner''s vehicle did not reach and pass through the Gopalpur Check gate. The deponent himself thoroughly checked and outgoing register of opp. party No. 4 at Gopalpur Check-gate relating to entries of 19th, 20th and 21st February, 1996. The entries did not show the Truch No. OR-06/9355 Morever the stamps shown on Annexures-2 to 6 are doubtful. Therefore, question of refusal to endorse in Annexure-4 does not arise. The statement is false and has deliberately been made to evade tax for illegal gain."

Apart from the aforesaid, various other aspects are also highlighted in the counter affidavit.

5. A return has been filed by the opp. party No. 4, namely. Additional Commercial Tax Officer, Gopalpur Check-gate. In paragraph 4 it has been stated as follows :

" In so far passing of the vehicle bearing No. OR-06-9355 by carrying aluminium ingots on scrutiny of the records, it is found that no such vehicle has been scrutinised. Further the way-bill has not been stamped properly and, it is not known that who has stamped the way-bill,"

A rejoinder, has been filed by the petitioner indicating that there is no factory of the petitioner at Jagatpur and the location of the factory is only at Gopalpur, Cuttack and the documents which accompanied clearly state that the destination of delivery is Gopalpur which is outside the octroi limit of Cuttack Municipality.

6. As peculiar circumstances emerged because of the documents produced before us with regard to the- stamping of passing of truck at the Octroi Check-gate by the Sales Tax Officer, and denial thereof by the Octroi authority we after cocentrated deliberation, thouhght it appropiate to cause an enquiry by the Central Bureau of invatigation, By order dated 13-5-1996 we directed as follows :

"When the matter came up for heading on 1-5-1996 the original Packing List-cum-Vlaterial Gate-Pass-cum-Despatch Advice was produced in Court for our perusal which on its-reverse, bears a seal of the Additional Commercial Tax

Officer. Gopalpur, Balikuda Check-Post. On the basis of the said document, it was stated that the vehicle in question had passed through the aforesaid check-gate. As this was disputed by the Municipal authorities, we had called upon opp. party No. 4 Additional Commercial Tax Officer; Gopalpur Check Post to file an affidavit indicating clearly on the basis of the entries whether or rol the truck bearing registration No. OR-06/9355 had in fact passed through the Check Post. In terms of our order, the said officer (opp. party No. 4) has filed an affidavit stating that the vehicle OR-06/9355 had not been checked at the said Check-post. In paragraph 5 of the affidavit, it is asserted that the vehicle had not passed through Gopalpur Check-gate, as there is no evidence available in the office of the Check-gate.

The document in question bears the seal of the Additional Commercial Tax Officer of the Check Post, but as the said officer denies that the vehicle in question had in fact passed through the Check-post, it becomes necessary to enquire into the actual state of affairs. In the circumstances, we feel is proper to direct the Superintendent of Police, C.B.I., Bhubaneswar, to look into the matter and submit a report by 30th of June, 1996 regarding the actual state of affair and the truthfulness of otherwise of the averments made by the petitioner and we do so. The matter be listed in the first week of July, 1996."

Accordingly, pursuant to our order, a report has been submitted by the Superintendent of Police, C.B.I., SPE Division, Bhubaneswar. After analysing various facts the conclusive portion of the report is as follows :

"......From the aforesaid evidence, it is confirmed that the truck OR-06/9355 carrying aluminium ingots from NALCO passed through the Gopalpur Check Gate on 20-2-1996 and delivered the goods at the factory premises of B. P. Enterprises at Balikuda, Cuttack The transport documents were duly stamped with the seal of Addl. CTO. Gopalpur Check Gate on 20-9-1996. It could not be possible to pin-pointedly said the person who has stampped these documents of OR-06-9355 with the seal of Addl. CTO. Gopalpur Check Gate on 20-2- 1996. But it is a fact that the documents, were stamped by the seal of Addl. CTO, Gopalpur Check Gate by some of the staff of the Check Gate. Sri Niranjan Mishra, Inspector of Commercial Taxes, in-charge of the Incoming Gate Counter during that relevant time was the custodian of the said seal."

From the aforesaid report, it it beamingly clear that the concerned vehicle carrying aluminium ingots passed through the Gopalpur Check Gate.

7. The entire exercise has its own significance. Perplexity has been removed, labyrinth has become visible and suspicion has been ostracised. We accept the report of the C.B.I. and conclude that the vehicle had passed through Gopalpur Check Gate. The allegations of Octroi authorities and the Additional Commercial Tax Officer (opp. party No. 4) are not properly substantiated. We have no reason to reject the submission of the learned counsel for the petitioner that he has been taking goods to his Gopalpur Factory In view of this, what falls for

consideration is whether the Octroi authorities are required to give transit pass or not. In this regard, we may refer to Clause 20 of the Cuttack Municipal/Council/ Corporation Octroi (Amendment) Bye-laws, 1984 which reads as follows:

"Clause-20--Goods intended for transport within a period of 48 hours and in transit through the Cuttack Municipality shall not be subject to any tax on the arrival of such goods at the check post and after the declaration under Bye-laws 11 has been made, the official in charge shall grant in Form ''C'' called "Transit Pass". As soon as the good pass out of the limits the pass will be surrendered to the moharrir in charge of the exit post. After verifying the entries in the pass, he shall verify thereon that the goods have passed out of the limits of the Municipality and send the pass to the Superintendent. If the pass is not surrendered at the exit Check-post, within 48 hours, the owner or person, in charge shall be presumed to have sold or used the goods inside the limits and shall be liable to pay the full Octori due on goods entered thereon unless in the meantime on the application of the party concerned the time for the surrender of the transit pass has been extended, for any special reason by the Superintendent:

Provided that the Superintendent shall, in no case, extend, the time for surrender or grant pass or more than fifteen days."

8. in view of the aforesaid provision, levy of octroi is not permissible if goods are not intended for consumption use or sale within the Cuttack Municipality. If the goods are intended to pass through Cuttack Municipality, a transit pass is bound to be issued but the said transit pass has to be surrendered at the exit Check-post within 48 hours. If the transit pass is not surrendered it is open to the Octroi authorities to take appropriate action as per law. We do not appreciate the detention of the vehicle and non-granting of transit pass to the petitioner. Under the circumstances, we would direct the Octroi authorities to grant transit pass as per Clause-20 of the Bye-laws, if all other requirements are satisfied. The Octroi tax which has been paid by the petitioner in respect of vehicle No. OR-06/9355 should be refunded to the petitioner within six weeks from today.

9. The writ application is accordingly allowed. No costs.

P.C. Naik, J.

10. The report of the Superintendent of Police (CID) that the truck in question passed through the Check gate and that the documents were duly stamped with the the seal of the Addl. Commercial Tax Officer. Gopalpur Check gate on 20-2-96 gives rise to a doubt that things are not as they should be at the Check gate. As the report clearly negatives the contention of the Check gate authority that the truck in question did not pass through the Check gate, one wonders whether it is a practice that some loaded trucks are permitted to pass through the Check gate by affixing the Check gate seal on the transport documents but without making a corresponding entry in the Check gate register for how is it that the documents bear the seal of the Check gate, but a corresponding entry is

not found in the register. The other inference can be that the registers and seals are left unattended at the Check gate or that some people have free access to the seals to be utilised by them as they like for the reasons best known to the authorities. The higher-ups in the Department should take some steps to see that such things do not, if they are continuing, continue any further.

I concur with the order proposed by the learned brother D. Misra, J.

