
(1984) 06 OHC CK 0026
In the Orissa High Court
Case No : First Appeal No. 36 of 1971

Binayak Sabatho and Sons	Vs	APPELLANT
Municipal Council, Berhampur and Others		RESPONDENT

Date of Decision : 20-06-1984

Acts Referred:

Orissa Municipal Act, 1950 — Section 131(1)

Citation : AIR 1985 Ori 263

Hon'ble Judges : P.C. Misra, J;G.B. Patnaik, J

Bench : Division Bench

Advocate : R.C. Misra, for the Appellant; Y.N. Murty and A.G., for the Respondent

Final Decision : Allowed

Judgement

G.B. Patnaik, J.—Plaintiff is the appellant against the judgment and decree of the Additional Subordinate Judge, Berhampur, in a suit for realisation of a sum of Rs. 48,926.59 illegally collected from it by the defendant No.1-Municipality as octroi tax and for permanent injunction against the defendants not to collect octroi tax in future.

2. According to the plaintiff, turmeric and cereals were not notified as articles approved by the State Government on which there could be imposition of octroi. But notwithstanding the same, the Municipality levied octroi on these articles and forcibly collected octroi tax on different dates to the extent of Rs. 37,022.09, as shown in the schedule appended to the plaint, from the plaintiff. Since the Municipality had no jurisdiction to levy octroi on turmeric and cereals, the amount illegally realised by it along with interest must be refunded to the plaintiff. It is the further case of the plaintiff that the Bye-laws notified in April, 1964 and Dec. 1964, purporting authorisation of levy of octroi were draft bye-laws and did not clothe the Municipality with any authority to impose the octroi on the basis of the same and on that score also the levy of octroi had been made without jurisdiction. The cause of action for the suit is said to have arisen on 14-2-1966 and 27-7-1968 when the claims in appeal were rejected. The different

periods in respect of which the alleged illegal levy had been collected from the plaintiff have been indicated in Annexure B to the plaint ranging from 18-7-1963 to June, 1968.

3. Two sets of written statements were filed - one by defendants 1 and 2 and the other by defendant No. 3. Defendants 1 and 2 denied the allegations made in the plaint and took the definite stand that the levy of octroi had been made pursuant to resolution of the Municipality dt. 19-4-1963 and sanctioned by the State Government in their order dt. 13-6-1963. It was further stated that the Schedule given under the Government order included the articles and the rates. It was admitted in the written statement that the Bye-laws were draft-Bye-laws and were not final, but it was asserted that the octroi was levied not under any Bye-laws, but in accordance with the resolution of the Municipal Council dt. 19-4-1963 which was approved and sanctioned by the State Government in their letter dt. 18-6-1963. The defendants further took the stand that the suit was barred by time and that cereals and turmeric were included under serial I of the Classes of Articles mentioned in the Schedule and notified to the public and, therefore, there had been no illegality in levying tax on turmeric and cereals.

The State (defendant No. 3) in its counter only reiterated the stand of the other two defendants, namely, the Berhampur Municipal Council passed resolution on 19-4-1963 and the same was approved by the State Government in their letter dt. 18-6-1963. Thereafter the District Magistrate in charge of Berhampur Municipal Council passed another resolution to collect tax with effect from 15-7-1963.

4. On these pleadings, the learned Subordinate Judge framed as many as eight issues and on issue No. 2. he found that the action of the District Magistrate in imposing the levy on behalf of the Municipal Council while the Council was under supersession must be held to be valid. It was also found that the levy in question was enforced after due notification and publication as contemplated under Rules 601 and 602 of the Orissa Municipal Rules.

On issue No. 3, the learned Subordinate Judge came to hold that turmeric was included within the entry "Drugs, Gums, Spices and Perfumes" appearing in the Schedule to the Government letter dt. 18th of June, 1963. It was specifically stated in paragraph 7 of the judgment that the plaintiff advanced no dispute in respect of other articles for which tax had been paid. Thus, it appears that though in the plaint the plaintiff challenges the validity of levy of octroi with respect to turmeric and cereals, at the hearing the claim was pressed with respect to turmeric alone.

On issue No. 1, the learned Subordinate Judge found that the octroi tax in dispute had been legally and validly collected and, therefore, ultimately, he held that the plaintiff was not entitled to refund of the amount claimed or any part thereof. So far as the question of limitation is concerned, the learned Subordinate Judge did not discuss the issue elaborately since he had come to the

finding that there was no illegality in the levy in question. The learned Subordinate Judge also found that the State was not a necessary party to the suit and on these conclusions directed dismissal of the suit. Hence the appeal.

5. Mr. R.C. Misra, the learned counsel for the appellant, raised two contentions, namely : --

(i) "Turmeric" was not one of the articles on which the State Government had accorded sanction for imposition of octroi as would appear from Ext. C. the order of the State Government dt. 18th of June, 1963 and, therefore, levy of octroi on turmeric was without jurisdiction; and

(ii) There had been no resolution of the Municipal Council in accordance with section 131(1) of the Orissa Municipal Act imposing octroi on goods brought within the limits of the Municipality and, therefore, the entire imposition was null and void.

Mr. Y.S.N. Murty, the learned counsel appearing for the Municipality, on the other hand, contended that turmeric was one of the notified articles on which octroi was leviable under Ext. C. He particularly referred to Class V, serial No. 2 of the Schedule under Ext. C and submitted that turmeric should be included within the entry "all other spices". So far as the second contention of Mr. Misra is concerned, Mr. Murty, the learned counsel for the respondents, submitted that there had been an order of the District Magistrate who was in charge of the Berhampur Municipal Council authorising imposition and collection of octroi under order dt. 11-7-1963 (Ext. J) and the said order was in conformity with Section 131(1) of the Act, prior sanction of the State Government having been obtained under Ext. C the Government order dt. 18th of June, 1963. These rival contentions require careful examination.

6. Section 131 occurring in Chapter XIII of the Act confers power on the Municipal Council to impose different taxes and fees enumerated in Clauses (a) to (1) at a meeting convened expressly for the purpose, of which due notice must have been given. Section 131(l)(kk) which came into the Statute book by way of amendment in 1954 deals with octroi on goods brought within the limits of a municipality for consumption, use or sale therein. The proviso to Section 131(1) was added by Orissa Act 20 of 1968 and under the proviso imposition of octroi referred to in Clause (kk) can be made with the sanction of the State Government. Thus, the statute requires that the Municipal Council at a meeting convened expressly for the purpose after giving due notice shall decide to impose all or any of the taxes referred to in Clauses (a) to (1) and in case of octroi within Clause (kk), prior sanction of the State Government is necessary. There cannot be any dispute that if any goods are not covered within the list of goods sanctioned by the State Government on which there can be imposition of octroi, such goods are not liable to be levied u/s 131(l)(kk) of the Act. The Government order dt. 18-6-1963 (Ext. C) enumerates the articles on which Government has sanctioned imposition of octroi if brought within the limits of Berhampur

Municipality for consumption, use or sale therein at the rates as specified in the said order. The first question to be considered, therefore, is whether "turmeric" comes within Class V, item No. 2 of the Schedule, as contended by Mr. Murty, the learned counsel for the respondents. Class V deals with "drugs, gums, spices and perfumes". Item No. 2 thereof describes as "betel-nuts, all other spices". "Turmeric" cannot be included within the article "betel-nut" and, therefore, the only thing which requires consideration is whether it will come within the entry "all other spices".

7. We are concerned here in this case with the interpretation of a taxing statute where the general rule is that the statute should be construed strictly, that is, a person should not be taxed unless the words of the statute unambiguously impose the tax on him. There are large number of English cases which have, decided that taxing Acts are to be construed with strictness, and that no payment is to be exacted from the subject which is not clearly and unequivocally required by Act of Parliament to be made. Lord Cairns said many years ago in *Charles James Partington v. Attorney-General*. (1869) 4 HL 100 :-

"As I understand the principle of all fiscal legislation it is this : If the person sought to be taxed comes within the letter of the law he must be taxed, however great the hardship may appear to the judicial mind to be. On the other hand if the Crown, seeking to recover the tax, cannot bring the subject within the letter of the law, the subject is free, however apparently within the spirit of the law the case might otherwise appear to be."

This passage was quoted with approval by the Privy Council in AIR 1940 183 (Privy Council) . An observation of Lord Russell of Killowen in *Inland Revenue Commr. v. Duke of Westminster* (1936) AC 1 may be profitably extracted in this connection :--

"I confess that I view with disfavour the doctrine that in taxation cases the subject is to be taxed if in accordance with a Court's view of what it considers the substance of the transaction, the Court thinks that the case falls within the contemplation or spirit of the statute. The subject is not taxable by inference or by analogy, but only by the plain words of a statute applicable to the facts and circumstances of his case."

In the case of *Abdul Karim Mehtab AH v. City Municipality, Gulbarga* AIR 1967 Mys 127 a particular entry under the Hyderabad District Municipality Act for levy of octroi was considered and it was held that the entry "Fruits (canned, tinned, bottled, boxed or cartoned)" means only those fruits which were either canned, or tinned, or bottled, or boxed, or cartoned, were liable to octroi and not all fruits including the fruits which were not canned, tinned, bottled, boxed or cartoned. While interpreting the entry, their lordships referred to a passage from Maxwell on "Interpretation of Statutes", which is as follows : --

"In a Taxing Act one has to look merely at what is clearly said. There is no room for any intendment. There is no equity about a tax. There is no presumption as

to a lax. Nothing is to be read in, nothing is to be implied. One can only look fairly at the language used."

In the case of Lalchand Agarwalla v. State of West Bengal 76 CWN 120 : 1972 TaxLR 1767 the item described as "nuts, (excluding betel nuts)" in the notification issued u/s 6(1) of the Taxes on Entry of Goods into Calcutta Metropolitan Area Act was considered, as to whether groundnuts used for manufacturing groundnut oil could be included within the said entry or not. His lordship held that the word "nuts" must be read along with the head entry "Edibles" and the heading "Articles of food and drink" and after referring to the incidence of taxation, held : --

".....So on a fair reading of the entry as whole it appears clear to me that what was sought to be taxed was only nuts as one species of edibles. There can be no dispute that there are various kinds of nuts used as edibles and groundnuts to the extent they are used as edibles may come within the specification. But the question is does this entry also cover groundnuts if and when they are imported not as edibles but as oil seeds. I must confess the difficulty or the doubt that has been raised is due to the fact that the term "groundnut" may answer both the descriptions of being nuts used as edibles as also oil seeds for edible oils. The term "nut" so far as it covers groundnut thus becomes susceptible of meaning different things and the true meaning has to be found out upon proper construction of the Statute."

In para 15 of the said judgment, His Lordship held,

"Interpreting the statute now under consideration in the above light, I find that on a fair reading of Section 6 read with the Schedule on the relevant entries the legislature intended and imposed the levy on nuts imported as edibles and not to cover such nuts as are imported as oil seeds....."

8. In the case at hand, Class-V of the notification, deals with "Drugs, Gums, Spices and Perfumes" and the articles which are included are "Pan, Betel-nuts, perfumed spices, Tarpin, Varnish and dyes". In the context in which these articles have been classified and keeping in view the principles of interpretation, the entry "betel-nuts, all other spices" will not include "turmeric" within the ambit of the phrase ""all other spices" and, therefore, we are of the opinion that "turmeric" is not an item on which octroi could be leviable within the entry Class-V, item No. 2 of the Schedule. That apart, though Mr. Murty, the learned counsel for the respondents, referred to the , aforesaid entry to bring "turmeric" into the fold of imposition of octroi, in the written statement filed by the defendant-Municipality in paragraph 6 thereof, it had taken the stand that cereals and turmeric were included under Class-I of the articles mentioned in the Schedule. Class-I describes as "Articles of Food and drink for men or animals" and in column 2, the articles which are notified for imposition of octroi are : --

" 1. Grain and pulses of every description;

2. Paddy;
3. Grass, Straw & bhusa;
4. Dry fruits;
5. Fresh fruits;
6. Coconuts;
7. Manufactured or refined sugar and honey, Gur, Sugarcane;
8. Vegetables of all kinds;
9. Ghee, butter etc.;
10. Potatoes;
11. Khoa etc.;
12. Tea, Coffee, oilmans stores and tinned provisions;
13. Oil cake;
14. Dead fish.

There can be no doubt that "turmeric" will not come within any of these articles specified in the notification on which State Government accorded sanction for imposition of octroi. In this view of the matter, our conclusion is irresistible that "turmeric" is not one of the items of goods approved by the State Government for levy of octroi by the Municipality on it. Therefore, the first contention of Mr. Misra for the appellant must be upheld.

9. So far as the second contention of Mr. Misra is concerned, we find from evidence that at the relevant time, the Municipality was under supersession and the District Magistrate was discharging the duties of the Municipal Council as well as of the Chairman of the Municipality under the Act. From Ext. B dt. 19-4-1963, it appears that there had been a resolution that Government sanction be obtained to levy octroi duty on goods brought within the limits of the Berhampur Municipality as per Section 131(l)(kk) of the Orissa Municipal Act, 1950 and a copy of the resolution along with the Schedule of Rates imposed on different articles was sent to the Government for sanction. After considering the said resolution, the State Government by its letter dt. 18th of June, 1963 (Ext. C) accorded sanction in terms of the proviso to Section 131(l)(kk) of the Act. Under Ext. E, the Berhampur Municipality notified the general public that octroi would be levied on goods brought within the limits of Berhampur Municipality for consumption, use or sale therein at the rate specified in the Schedule sanctioned by the State Government and the said levy was to come into force with effect from 15-7-1963. Prior to the said notice issued by the Municipality, the District Magistrate in charge of the Municipal Council had passed orders approving the suggestion that the octroi tax might be collected with effect from 15-7-1963,

pending coming into force the Bye-laws framed in that regard, as would appear from Ext.J.

Mr. Misra's main contention is that after the sanction order of the State Government, there has been no further resolution making the imposition and the prior resolution of the Municipal Council under Ext.B was merely a decision to make the imposition. Since under the scheme of the statute, it is the duty of the Municipal Council to make the imposition by a resolution subsequent to the sanction of the State Government, in the eye of law it must be held that there has been no resolution to impose octroi and, therefore, the imposition must be held to be without jurisdiction. The only provision under the Orissa Municipal Act in this regard is Section 131 which says :--

"The municipal council may, from time to time, at a meeting convened expressly for the purposes, of which due notice shall have been given subject to the provisions of this Act impose within the limits of the municipality the following taxes and fees or any of them;

xx xx xx xx (kk) an octroi on goods brought within the limits of a municipality for consumption, use or sale therein;

XX XX (XX XX XX Provided that no such impositions as are referred to in Clauses (kk) and (1) shall be made without the sanction of the State Government."

According to Mr. Misra, the resolution (Ext.B) is merely a proposal to impose and not the imposition itself and the order of the District Magistrate under Ext.J cannot be construed to be a resolution making the imposition. Reading Exts.B. C and J, we fail to appreciate the contention of the learned counsel for the appellants. We find that there has been a resolution of the Municipal Council proposing to impose the octroi, the said proposal was duly sanctioned by the State Government and then the District Magistrate who was in charge of the Municipal Council has passed orders effecting imposition from a particular date. In our opinion, the provisions of the statute regarding imposition of octroi have been duly complied with. We would accordingly hold that the second submission of the learned counsel for the appellant is devoid of force.

10. In the ultimate result, therefore, agreeing with the learned counsel for the appellant, we hold that "turmeric" is not included as an item of goods on which octroi could be levied under the notification in question, though we reject the second submission of the learned counsel for the appellant and hold that there has been a valid notification in terms of Section 131(I)(kk) of the Act for imposition of octroi on the goods specified in the notification in question. The first appeal must, therefore, succeed and the appellant would be entitled to the refund of the octroi that has been levied on "turmeric". We are, however, not in a position to find out what is the exact amount of octroi that has been levied on turmeric and, therefore, there is no other alternative than to remand this matter to the court below for the limited purpose of finding out what is the exact amount of octroi duty on turmeric. Parties are at liberty to lead evidence in this

regard whereafter the court below will determine the amount to be refunded to the plaintiff. The judgment and decree of the trial court are, therefore, set aside and the matter is remanded to the Court below for the aforesaid purpose. Parties are directed to appear on July 20, 1984 to receive appropriate direction of the Court below as to further proceeding in the suit.

The first appeal is allowed with costs.

P.C. Misra, J.

11. I agree.