(2000) 08 RAJ CK 0043

In the Rajasthan High Court

Case No : Civil Writ Petition No. 3610 of 1997

Brijlal Sringar Singh and Party APPELLANT

Vs

State of Rajasthan and Others RESPONDENT

Date of Decision : 11-08-2000

Acts Referred:
Constitution of India, 1950 — Article 265

Citation : (2000) 4 RLW 319 : (2000) 4 WLC 559 : (2007) 3 WLN 76

Hon'ble Judges : Rajesh Balia, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Rajesh Balia, J.—The facts in the present case which are not in dispute are that the petitioner firm is an authorised licensee in respect of Doda Posth (Doda grain) in the District of Sri Ganganagar and is entitled for distribution of said Doda Posth in the territory of Sri Ganganagar Municipality as well as Suratgarh Municipality. Its godown for keeping the stock is situated outside the Municipal limits of Sri Ganganagar.

2. The truck No. RJ-09/G-0967, in which the poppy grain in question which were under transport rom Choti Sadari, District Chittorgarh to the godowns of the petitioner were seized outside the municipal limits, Sri Ganganagar while the truck was on its way to the godown which was also outside the city of Sri Ganganagar. The seizure was affected on 5th March, 1987 and the goods so seized outside the municipal limits of Sri Ganganagar were taken by the authority seizing the goods within the territory of Ganganagar Municipality for further action and thereafter handed over to the District Excise Officer. For securing the release of the said goods, the petitioner had deposited Rs. 2,00,000 with the District Excise Officer in the form of FDR because of the order made by the respondent No.2. The Municipal Council, Sri Ganganagar on 6.3.1997 informed the petitioner that unless it pays Rs. 1,98,000 as an outstanding octroi in respect of the poppy grain seized on 5.3.1998, the same shall be sold. A

period of five days was given for deposit of the said amount. It has further been alleged by the petitioner that the goods transported were only 90 quintals on which octroi if it were to be imported within the territory of municipality for use or consumption could have been subjected to levy of octroi at the rate of Rs. 200 per quintal amounting to Rs. 18,000 only. Ten times penalty has been imposed u/s 132 of the Rajasthan Municipalities Act, which the Municipal authority has no authority to impose.

3. The petitioner has contended that the octroi which the State legislature is competent to impose is under Entry 52 of the List II of the VII Schedule of the Constitution. The petitioner says that since the goods were never brought within the local limits of the Municipal area, Sri Gangangar, it could not be subjected to levy of octroi by the Municipal authorities while the goods were outside the municipal limits and their destination too was outside the municipal limit. Infact, the goods have not even been allowed to enter the municipal limits under the control of the petitioner so as to enable the petitioner to comply with the provisions of law if he was at all liable to pay octroi which could only be at the time of entry within the local area. Secondly, he also contended that the 10 time penalty u/s 132 is not imposable by the municipality as a breach of any provisions to the levy of octroi but is a matter of punishment provided u/s 132 which can only be imposed on a conviction by a Magistrate as the provision itself makes it abundantly clear. Therefore, at any rate, no penalty could be imposed and recovered from the petitioner by the executive order of the Municipality u/s 132.

4. Learned Counsel for the respondents. While does not dispute the fact that the goods have been seized outside tile territory of the municipality and that the godown where the goods were to be taken is also outside the territorial limits of the Municipality, has contended that since Head Office of the petitioner was situated within the municipal limits of Sri Gangangar and all business was transacted therefrom, the petitioner was liable to pay octroi duty in respect of the goods kept at the godown even outside the municipal limits as the same were meant for being transacted within the municipal limits of Sri Gangangar. He also contended that the petitioner did not have with him the transit pass at the time of seizure if the goods were not destinated within the Municipal limits of Sri Gangangar so as to absolve from the liability of paying octroi. Lastly, it was contended that though u/s 132, a penalty has been provided on conviction by a Magistrate but since the petitioner had admitted to make the payment as determined by the respondents for release of the goods, the recovery of penalty as a result of admission is not liable to be disturbed by this Court.

5. Having carefully considered the rival contentions, I am of the opinion that this petition merits acceptance. In the first instance, it has to be emphasized that in view of Article 265 no imposition of tax can be made unless authorised by laws. The taxable event in the case of levy of octroi is the entry of goods into a local area for consumption, use or sale therein. The law has not authorised imposition

of octroi at a point earlier then the goods enter a local area for consumption, sale or use therein. On the admitted facts, the liability of octroi had not arisen at all at the time of seizure.

6. The contention that if the goods were not destinated for Sri Ganganagar but were destinated outside, the petitioner did not have a transit pass is also without any substance. The question of obtaining transit pass would have arisen only if the goods were to enter the Municipal limits and then were to make exit through it. At the checkpost at the time of entry the tax payer gets an opportunity to show the papers and obtain a transit pass to be delivered at the time of exit from the municipality. Before that stage question of having an exit pass does not arise. At any rate, before entering the municipal limits, there could be no insistence to have transit pass for the purpose of levy of tax. The Municipality had no jurisdiction to intercept the goods beyond that limits and then to contend that the goods were not accompanied with transit pass and levy tax or penalty on that basis. In there circumstances, it cannot be said that the respondents have acted within the limits of law in imposing octroi authorised by law after seizing the goods outside the municipal territory and which has entered the municipal limit only at the instance and control of the authorities of the municipality who had brought in the goods within the municipal limits which was not destinated to come within the municipal limits but was destinated outside. In this connection, it is also to be noticed that in peculiar facts of this case, the petitioner was not given the licence for dealing with the poppy grain only within the municipality of Sri Ganganagar. The poppy grain is an article which is an excisable good within the meaning of Rajasthan Excise Act and can only be traded under the regulatory provisions of the said Act and on a licence being given by the Excise authorities. The petitioner was given a licence to distribute and deal with the commodity both within the municipal limits of Sri Ganganagar as well as Suratgarh. In that event, it could also not be said with any certainty that the goods were destinated to be used or consumed within the municipal limits of Sri Ganganagar only. It is equally possible that the goods seized would have never been brought in Municipal limit for use, sale or consumption therein but were for use in other municipal limits and would have attracted octroi duty of another local area when entering such limits.

7. Be that as it may, the fact remains that the municipal authorities have acted beyond their territorial jurisdiction in seizing the goods and imposing tax which had not even reached the entry point of the municipal limits so as to give rise to taxable event u/s 104 of the Municipalities Act. It was not even a case where the Municipal authorities were chasing the goods which had clandestinely entered the Municipal limits and were taken out of it.

8. So far as the levy of penalty is concerned, the provision on which both the learned Counsel rely is Section 132 of the Rajasthan Municipalities Act, which authorises levy of penalty by way of fine. It reads as under:

132. Penalty for evasion of octroi duties--If goods passing into a municipality are

liable to the payment of octroi, every person who with intention to defraud the board causes or abets the introduction of or himself introduces or attempts to introduce within the octroi limits of the said municipality, any such goods for which the octroi due on such introduction has neither been paid nor tendered shall, on conviction before a Magistrate, be punishable with fine which may extend to ten times the value of such Octroi or to fifty rupees whichever may be greater.

9. The provision in itself is clear. As in the present case, there is no dispute that penalty, if at all leviable was Rs. 18,000. Maximum penalty has been imposed by the respondents which the petitioner has been forced to deposit at the excise department. Statement of law has further been made clear by the decision of the Supreme Court in Municipal Corporation, Ludhiana v. Commissioner, Patiala AIR 1994 SCW 5136. That case had arisen under the corresponding provision of Punjab Municipal Corporation and which provided for penalty for evasion of octroi. The Court held that fine can only be levied by criminal courts and not by officers of the corporation. Section 116 of the Punjab Act also envisaged as u/s 132 of the Rajasthan Act that whosoever contravenes the provisions of the Act shall be punishable with fine which may extend to the amount specified therein or imprisonment for a term which may extend to the period specified in that behalf. Considering the expression about the words ''punishable with fine'', the Court said:

The normal rule of legislative drafting is that wherever it says that a particular Act shall be punishable with fine", it contemplates its imposition by a Criminal Court only. Be that as it may, both Sections 116 and 388 speak of ''punishable with fine". Section 388 provides not only for fine but also for imprisonment. It cannot be suggested that the punishment of imprisonment contemplated by Section 388 can be awarded by the officers of the Corporation. If so, the punishment of fine can also not be imposed by them. We, therefore, agree with the High Court that punishment of fine provided by Section 116 can be imposed only by the Criminal Court and cannot be imposed by the officers of the Corporation.

10. Thus, the penalty imposed by the officers of the Corporation, also cannot be sustained. In this connection, the contention of the learned Counsel for the respondents is that because the petitioner has deposited the penalty, he cannot challenged the same. I am unable to accede to this contention. The matter of imposition of punishment whether by way of agreement is exclusive preserve of the criminal courts and not within the competence of the corporation or its officers to impose. Even if a person agrees that he has committed the specified acts which entail punishment by way of fine, it can only be used is evidence before the competent criminal court for obtaining a conviction and imposition of penalty and its recovery can only be as a consequence of the conviction by the Magistrate. No amount of admission of the accused would give an authority to the Municipality to levy penalty u/s 132.

11. Learned Counsel in this connection has referred to a decision of this Court in Writ Petition No. 68/1988 also in the matter of levy of penalty and imposition of octroi by the Municipal Council, Sri Ganganagar for the purpose of contending that notwithstanding that the godowns of the petitioner are situated outside the municipal limits, it does not give him immunity from levy of octroi to the persons who are trading in such commodities within the municipal limits.

12. Having carefully gone through the judgment. I am of the opinion that the decision in that case has no bearing on the present case. That was a case in which the respondents had contended that the petitioners were found guilty of evading tax at the checkpost. It has been stated by the respondents that one of the trucks owned by the petitioners containing 865 bags of bidis came to the octroi checkpost of Sri Ganganagar but the Manager of the petitioner firm refused to pay octroi and misbehaved. This fact itself was suffice to come to the conclusion that the taxable event had occurred and the petitioner was found avoiding the tax at the entry point where it was to be collected and since the petitioner has concealed that material fact while claiming relief, the Court did not thought it fit to interfere in exercise of its extra ordinary jurisdiction in favour of a person who was guilty of suprressio vari. That case cannot govern the facts of the present case.

13. As a result, this petition succeeds. The impuged orders are quashed and the amount deposited with the Excise Department is directed to be refunded.