(1995) 02 GUJ CK 0018

In the Gujarat High Court

Case No : Special Civil Application No. 3573 of 1983

Broach Textile Mills Ltd. APPELLANT

Vs

Broach Municipality RESPONDENT

Date of Decision : 21-02-1995

Acts Referred:

Gujarat Municipalities Act, 1963 — Section 277
Octroi Rules, 1965 — Rule 2

Citation : AIR 1995 Guj 181 : (1995) 2 GLR 1436

Hon'ble Judges : R.K. Abichandani, J

Bench : Single Bench

Advocate : None, for the Appellant; V.P. Shah, for B.R. Shah, for the Respondent

Final Decision : Dismissed

Judgement

R.K. Abichandani, J.—The petitioners seek a direction on the respondent Municipality for not recovering the Octroi duty on the goods imported, processed and exported by the petitioners on the ground that they were exempted under Rule 2(hh) of the Octroi Rules framed by the respondent Broach Municipality.

2. The petitioner No. 1 is engaged in the business of manufacture of textile articles like yarns and fabrics of different varieties. These articles are sold by the petitioner company in and outside the Municipal limits. The petitioner company is also engaged in the activity of processing grey fabrics imported from outside the Municipal limits.

3. Rule 2 (hh) of the Octroi Rules under which exemption is claimed by the petitioner Company reads as under :--

"2. The following goods shall be exempted from the levy of Octroi;

.... (hh) All articles imported for repairs, process, ceremonial functions or other temporary use and brought back within one month, provided full particulars necessary for identification are registered at the Octroi Naka at the time of import. Provided further the Chief Officer may on the application of importer for sufficient reasons extend this limit up to 2 months in all."

4. The petitioners had earlier filed Special Civil Application No. 1244/81 in this Court praying for a declaration that the processing of grey cloth was not liable to octroi duty. Even in that petition the question as regards exemption under Rule 2(hh) was directly and substantially involved in context of the petitioner''s importing within Municipal limits, the grey cloth for processing. That petition came to be dismissed on 21st October, 1981 and it is stated that the Letters Patent Appeal filed against that petition was also dismissed. It was held by this Court that the petitioner Company could import either goods belonging to somebody or goods purchased by them for the purpose of processing and the exemption would be available, if after process, such goods were taken out of the Municipal limits within a period of one month or the prescribed extended time. It was held that if the goods were after processing sold by the petitioner company and thereafter exported outside the Municipal limits, the exemption would not apply. However, if the goods were imported and processed and thereafter exported and after exporting them they were sold, exemption would be available. On the basis of these observations, it was sought to be contended on behalf of the petitioners that if the petitioners imported raw-material for processing from one party and sent processed clothes to their dealer outside the limits of the Municipality, the exemption would still be attracted. This submission is based on a misreading of the provision of Rule 2(hh) of the Rules and decision of this Court. Under Rule 2(hh) of the Octroi Rules, the benefit of exemption would be available only if the articles which are imported for such process are "brought back within one month". The words "brought back" in the said Rule clearly suggest that there should be no change of ownership of the articles which are imported within Mumicipal limits for process and that after the process is completed, they should be brought back out of the Municipal limits for the person to whom they belong. In other words, there is no change in ownership of the article imported for process till such article is taken out of the Municipal limits after the process. It is in this context that the observation of this Court in the earlier petition to the effect that if the goods were imported and processed and thereafter exported and after exporting them if they were sold, exemption would be available should be read.

5. In the earlier decision on the petition filed by the present petitioners in respect of the same subject matter, the Court found that it was not possible in a writ petition to sort out the details which were to be looked into for ascertaining whether particular articles were falling within the exempted category or not. As can be noted from the Rule itself, full particulars necessary for identification of the articles are required to be registered at the time of import and, therefore, when exemption is claimed, the Municipality is required to be satisfied that these articles after being processed were being brought back out of the limits of the Municipality. Thus, the petitioner has only made another attempt by filing this petition having failed to secure any relief on the same subject matter in the

earlier petition (Special Civil Application No. 1244 of 1981), which was rejected on 21st October 1981. A blanket direction as prayed for by the petitioners cannot be issued and it would depend on the facts to be examined in each case to decide whether the articles imported were processed within the Municipality and brought back out of its limits within the stipulated time, so as to be exempt from the levy of octroi under Rule 2(hh) of the Rules. The petition therefore fails and is rejected. Rule is discharged with no order as to costs.

