(1978) 11 KAR CK 0004

In the Karnataka High Court

Case No : WP. 2339/73

Chamundeswari Coffee Works APPELLANT

Vs

Town Municipal Council, Hosanagar. RESPONDENT

Date of Decision : 08-11-1978

Acts Referred:

Citation : (1979) 2 KarLJ 17

Hon'ble Judges : Puttaswamy, J

Judgement

1. In Hosanagar town of Shimoga District, the petitioner which is a registered partnership firm, is principally carrying on the business of dealing in coffee seeds and coffee powder. Coffee seeds are bought by the petitioner from whole-sale dealers in different places and are imported into Hosanagar town. The petitioner has asserted that the coffee industry, in particular the supply of coffee seeds in the Country, is regulated by the Coffee Act of 1942 (Act 7 of 1942) (hereinafter referred to as ''the Central Act'') and the Rules framed thereunder and that what is supplied by the wholesale dealers who in turn purchase in the coffee pool sales conducted by the Coffee Board constituted under the Central Act, is only ''clean coffee'' The case of the petitioner is that the coffee seeds that are purchased from wholesale dealers and imported by it are clean coffee seeds and are therefore leviable to octroi under Entry 13 of Class I-Article of Food and Drink-of the Octroi Schedule appended to the Notification No. MUN. CR. 13/72-73 dated 28th April 1972 published in the Karnataka Gazette dated 15-6-1972 (hereinafter referred to as ''the Octroi Schedule'') and not under Entry No. 23 as claimed by the Respondent. The petitioner has also asserted that some time prior to July 1973 clean coffee imported by it was rightly assessed to octroi under Entry No 13 But the new Chief Officer who has taken charge some time in 1973 has illegally sought to levy octroi on clean coffee under Entry No. 23 of the Octroi Schedule for which reason the petitioner has moved this Court under Article 226 of the Constitution for appropriate reliefs.

2. In its return the respondent has resisted the claim of the petitioner and has

justified the action taken to levy octroi under entry No. 23 of the Octroi Schedule. In the return the respondent does not dispute the assertion of the petitioner that it purchases coffee seeds from wholesale dealers and imports them into the territorial limits of the Hosanagar town Municipality. But it still contends that the levy under Entry No. 23 of the Octroi Schedule is justified.

3. Shri Kadidal Manjappa, learned counsel for the petitioner, strenuously contended that what is sold to the wholesalers by the coffee Board from whom the petitioner purchases and imports into the territorial limits of Hosanagar Town Municipality is clean coffee seeds and therefore they can be subject to octroi only under Entry No, 13 and not under Entry No. 23 of the Octroi Schedule. Shri Mohandas Hegde, learned counsel for the respondent, refuted the contention of Shri Kadidal Manjappa and supported the action of the respondent to levy octroi under Entry No. 23 of the Octroi Schedule.

4. Octroi is also tax and can be levied only on certain specified articles mentioned in Schedule II of the Act and the same cannot be levied on all articles imported into the territorial limits of a Municipal area. The rules of construction applicable to the construction of taxing statutes is applicable to the provisions relating to the levy of octroi under the Act. A taxing statute or taxing provisions has to be construed strictly, As observed by Rowlatt, J, in Cape Brandy Syndicate v. I.R.C, (1921) 1 KB. 64. 71, which has become classical, ''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 tax. Nothing is to be read in, nothing is to be implied. One can only look fairly at the language used.'' In Sales Tax Commissioner v. Modi Sagar Mills, AIR 1961 SC. 1047, Shah J, as he then was, has stated the same principle in these words:

"In interpreting a taxing statute, equitable considerations are entirely out of place. Nor can taxing statutes be interpreted on any presumptions or assumptions. The Court must look squarely at the words of the statute and interpret them. It-must interpret a taxing statute in the light of what is clearly expressed; it cannot imply anything which is not expressed; it cannot import provisions in the statute so as to supply any assumed deficiency."

In interpreting the taxable items in statutes like Sales Tax Act, the Supreme Court in Commissioner of Sales Tax M.P. v. Jaswant Singh, (1967) 19 STC. 469, on a review of the foreign and Indian authorities has ruled that the test that should be applied is what would be the meaning which persons dealing with an article and consumers purchasing it would give to that word and should not be interpreted in a technical or scientific sense. In my opinion, this principle is equally applicable in interpreting the terms occurring in the Schedule II of the Act and the Notification levying the octroi in the territorial limits of Hosanagar Town Municipality.

5. Coffee Industry in the Country is regulated by the Central Act. S. 14of the Act provides for registration of owners of coffee estates. After the plucking of coffee

fruits, they are not sold to the Coffee Board, wholesalers or retailers in the same form. The husk and other things are removed and they are subjected to a process of curing by the owners in their own curing plants or other curing plants which are all licensed by the Coffee Board under the Central Act. The word ''clean'' in the context means the outer shall etc., is removed, cured and is fit for human consumption. All the coffee grown by the owners, except what is allowed for their own consumption, is required to be delivered to the Coffee Board that administers the Act. What is delivered to the Coffee Board is clear or cured coffee seeds which is sold by it in coffee pool sales to the wholesalers. A fortiori what is bought by the petitioner from the wholesalers and imported into the municipal limits of Hosanagar Town Municipality, is only ''clean Coffee'' or coffee powder manufactured from Coffee seeds and not any other coffee seeds. The Chief Coffee Marketing Officer, Coffee Board, in his letter dated 7-1-1978 addressed to the Secretary, General Merchants Association, Sagar, Shimoga District, a copy of which is produced by the petitioner has also stated the same.

6. An owner of a coffee estate cannot and does not sell coffee fruits, coffee seeds, to a wholesaler or a retailer or to any other person and the assumption of the respondent to the contrary proceeds on the misapprehension of the factual and legal position of the Coffee Industry in particular marketing of coffee seeds and coffee powder in the Country.

7. In his report dated 25-10-1978, Shri A.V. Ramunni Menon, Retired Quality Control Officer, Coffee Board, who was appointed as the Commissioner in the case has opined that clean coffee seeds are leviable for octroi under Entry No. 13 of the Octroi Shedule.

8. In the light of my above discussion, I hold that what is imported by the petitioner is only ''clean coffee'' and therefore levy of octroi on that article can only be under Entry No. 13 and cannot be under Entry No. 23 of Class I-Article of Food and Drink-of the Octroi Schedule. I therefore direct the issue of a writ in the nature of mandamus to the respondent to collect octroi on ''clean coffee'' imported by the petitioner according to Entry No. 13 and not according to Entry No 23 of C lass I-Article of Food and Drink-of the Octroi Schedule appended to the Notification No. MUN. CR. 13/72-73. dated 28th April, 1972 published in the Karnataka Gazette dated 15-6-1972 (Exhibit A) and refund the excess octroi so far collected from the petitioner with all expedition.

9. Rule made absolute. Petitioner is entitled to his costs. Advocate''s fee Rs. 100.