(1994) 03 RAJ CK 0039

In the Rajasthan High Court

Case No : Civil Writ Petition No. 2212 of 1993

Dabur India Ltd. and Another — APPELLANT

Vs

Municipal Corporation, Jaipur — RESPONDENT

Date of Decision : 17-03-1994

Acts Referred:

Rajasthan Municipalities Act, 1959 — Section 104

Citation : AIR 1995 Raj 78 : (1994) 2 WLC 244

Hon'ble Judges : V.K. Singhal, J

Bench : Single Bench

Advocate : Paras Kuhad, for the Appellant; K.K. Mehrish, for the Respondent

Final Decision : Allowed

Judgement

V.K. Singhal, J.—The petitioner is a manufacturer of Ayurvedic Medicines, Syrups. Hair-oils, and Tooth-paste etc. and is having its factory at Sahibabad (UP) and Alwar (Rajas-than). A warehouse is situated at Plot No. 7 Bais Godam within the limits of Municipalities Corporation, Jaipur. The. goods manufactured at the aforesaid two factories are transported to the warehouses at Jaipur from where part of the said goods are sold for local consumption and part of the same are re-exported outside the Municipal limits for sale, use or consumption in different villages, cities and towns in Rajasthan. The dispute has arisen because the Municipal Corporation, Jaipur is collecting the octroi duty on all the goods which are bought within the municipal limits of Jaipur at the said warehouses,

2. It is submitted that a sum of Rupees 68,995/- has already been collected which is not due in accordance with law and that the petitioner was not allowed the current account facility. By the order dated January 11, 1994 the respondents were directed to inform as to what was the requirement to be complied with by the petitioner which has not been done which disentitles the petitioner for the current account facility. On February 9, 1994, at the time of hearing arguments in this writ petition no such deficiencies were pointed out and after hearing both the learned counsel I am of the view that the respondents

would grant the current account facility to the petitioner like other units which are having the same facility.

3. So far as the claim of the petitioner with regard to the refund of the amount already collected in excess and not due in accordance with law is concerned, no investigation into the detailed facts could be made at mis stage and beside this, the petitioner has remedy under the Act itself. In these circumstances no relief can be given so far as the claim of refund is concerned.

4. The only point which remains to be considered is with regard to the liability of the octroi duty in respect of the goods which are received at the warehouse and then subsequently transferred from Jaipur to the places outside Jaipur. If the transfer is made to a depot then it will not be within the purview of charging Section 104 of the Municipalities Act. According to the said Section the octroi duty is leviable on sale, consumption or use of the goods. If it is merely transferred from one depot to another, then it is neither sale, nor consumption nor use and therefore, there will be no liability provided satisfactory proof as required under the rules is produced. The other dispute is with regard to such sales which the petitioner has effected from its warehouse at Jaipur to other dealers for sale, consumption or use of the goods outside the municipal limits of Jaipur. Reliance has been placed on the decision in the case of Karewell Distributors (P.) Ltd. v. Municipal Council, Jaipur, S.B. Civil Writ Petition No. 3491/1992 decided by this Court on October 15, 1992 wherein the amendment made in Section 104 of the Municipalities Act was also taken into consideration and it was observed that if the goods are brought within the municipal limits then they are delivered to another person for using them up whether or not that other person uses them is not relevant and the goods on entry will attract octroi. In other words, the delivery for consumption or use is relevant and the fact that the goods are actually used or not by the person to whom the delivery was made is not relevant.

5. The Rajasthan Municipalities Act was amended by the Rajasthan Municipalities (Second Amendment) Act, 1990 (Act No. 13 of 1990) wherein the following amendments were made in Section 104 and 133-

"4. Amendment of Section 104, Rajasthan Act No. 38 of 1959-- For Clause (2) of Subsection (1) of Section 104 of the Principal Act, the following shall be substituted and shall be deemed to have always been subs(sic)d, namely--

(2) An octroi on goods and ani(sic) brought within the limits of the municipa for consumption or use or sale therein.

Explanation I.-- For the purpose of this sub-section meaning of the word ''consumption'' shall with reference to goods and animals brought within the limits of the municipality, include the goods brought inside the area by any person to be delivered to another for using them up whether or not that other person is the ultimate consumer of the goods or animals so delivered in that area.

Explanation II.-- For the purpose of this sub-section meaning of the word ''use'' shall with reference to goods and animals brought within the limits of the municipality include the goods brought inside the area for use of any other person whether or not that other person ultimately consumes or uses up the goods or animals.

Explanation III.-- For the purpose of this sub-section ''sale'' of goods or animals shall be deemed to have taken place within the municipal limits if these were brought by the seller within the municipal limits and a contract of sale as contemplated by Section 5 of the Sale of Goods Act, 1930 has taken place between the buyer and seller within the municipal limits whether or not the delivery or payment was deferred at the time of entering into the contract. Defendant of such delivery or payment or both as contemplated by the said Section 5 of the said Act of 1930; and"

5. Amendment of Section 133, Rajasthan Act No. 38 of 1959.-- After Sub-section (2) of Section 133 of the principal Act, the following proviso shall be inserted and shall be deemed to have always been inserted, namely-

"Provided that no mercantile firm or public body shall be eligible for such facility of keeping account current and of deferred payment in respect of any goods or articles brought within the limits of the municipality if it has failed to make any declaration or submit any return, account or statement in any form prescribed or required otherwise at the entry point by the incharge of the octroi post and all acts, actions or orders of the board purporting to grant any such facility to any mercantile firm or public body or purporting to grant otherwise any benefit in (SIC) of this section shall be deemed to be non (SIC)and shall always be deemed to have not (SIC) made."

In the statement of Objects'' and Reasons it was neitioned that in the case of Jodhpur Municipal Council v. Parakh Automobiles, Ltd., (SIC) 1 SCC 367, the Supreme Court while interpreting Section 104 of the Municipalities Act held that for imposition of octroi on the goods brought within the municipal area, all the three incidents of ''consumption,'' ''use'' and ''sale'' with regard to the goods must take place within the limits of the municipal area, and therefore the above amendment has been made retrospectively validating the recovery of tax already made. Mr. Kuhad, learned counsel for the petitioner has placed reliance on the case of Siddagiri v. Entry Tax Officer, II Circle Commercial Tax Department, Belgaum (1993) 89 STC 221 wherein the Karnataka High Court has held that the entry tax cannot be levied-under Section 3 of the Karnataka Tax on Entry of Goods into Local Area for Consumption, Use or Sate therein Act, 1979 in respect of the goods brought within a local area and sold therein to dealers outside the local area pursuant to which the goods so sold are exported or re-exported to places outside the local area. In that case also various contingencies under which the goods could be sold, used or consumed, were considered and it was held that in respect of the goods which are consumed or used outside the municipal limits by re-exporting, no entry tax could be leviable. In respect of the goods brought and sold by the petitioner by way ''of re-export was held not liable to entry tax. In the case of Indian Oil Corporation Vs. Municipal Corporation, Jullundhar and others, the point was with regard to transfer of gqods made by the Indian Oil Corporation to its depot situated within the municipal limits for export thereof to dealers outside the municipal limits for consumption, by persons other than Indian Oil Corporation outside the municipal limits. It was held that the IOC was not liable to octroi duty since the product (sic). In the case of Municipal Council, Jodhpur Vs. Parekh Automobiles Ltd. and Others, the dispute was with regard to goods imported within the municipal limits, exported thereafter for ultimate consumption outside by availing current account facility and it was held that even if sale taken to have been effected within Jodhpur, no octroi was leviable. The provisions of Section 104 after its amendment are reproduced here which read as under-

"104.(1) Every board shall levy, at such rate and from such date as the State Government may in each case direct by notification in the official Gazette and in such manner as laid down in this Act and as may be provided in the rules made by the State Government in this behalf the following taxes, namely-

1. a tax on the annual letting value of building or lands or both, situated within the municipality;

2. An octroi on goods and animals brought within the limits of the municipality for consumption or use or sale therein.

Explanation I: For the purpose of this subsection meaning of the word''s Consumption'' shall within reference to goods and animals brought within the limits of the municipality'' include the goods brought inside the area by any person to be delivered to another for using them up whether or not that other person is the ultimate consumer of the goods or animals so delivered in that area.

Explanation-II. For the purpose of this sub-section meaning of the word ''Use'' shall, with reference to goods and animals brought within the limits of the municipality include the goods-brought inside the area for use of any other person whether or not that other person ultimately consumes or use up the goods or animals.

Explanation III. -- For the purpose of this sub-section ''Sale of goods or animals'' shall be deemed to have taken place within the municipal limits if these were brought by the seller within the municipal limits and a contract of sale as contemplated by Section 5 of the Sale of Goods Act, 1930 has taken place between the buyer and seller within the municipal limits whether or not the delivery or payment was deferred at the time of entering into the contract. Deferment of such delivery or payment or both shall be deemed to be an act of postponement of the delivery or payment or both as contemplated by the said Section 5 of the said Act of 1930; and,

3. A tax on professions and vocations: Provided that-

(a) the tax under Clause (1) shall not be levied-

(i) on kham houses, or

(ii) on buildings or lands or both, of which annual letting value is less than one hundred and eighty rupees,

(b) the tax under Clause (2) shall not be on a motor vehicles defined in the Motor Vehicles Act, 1939 (Central Act IV of 1939) or any other mechanically propelled vehicle, and

(c) the tax under Clause (3) shall not be levied on artisans;

Provided further that, upon a representation made to it by and at the request of a board, the State Government, if it is satisfied that circumstances exist which sufficiently provid the justification for a period not to levy, or to stop the levy of any of the taxes mentioned in this Section may, by special order published in the official Gazette, along with the reasons for making such order, permit the board not to levy or stop the levy of any such tax.

(2) A direction under sub-section (1) may provide for the levy of taxes at different rates in different municipalities having regard to their varying local conditions and needs, and on the same consideration and by a like direction, the State Government may from time to time-

(i) vary uniformly or differently in relation to different municipalities, the rates of taxes levied, or

(ii) withdraw any tax levied by any municipality."

Explanation I has explained the meaning of the word ''consumption'' and it is contemplated that if the goods are brought within the limit of municipality, then the goods which are brought inside the area by any person to be delivered to another for using them up whether or not that other person is the ultimate consumer of the goods so delivered in that area will fall within the charging Section. Similar is the position with regard to ''use'' under Explanation II. Explanation III refers to sale. If the sale has taken place within the municipal limits in accordance with the contract of sale as contemplated by Section 5 of the Sale of Goods Act, 1930 then it will also be subject to charging section irrespective of the fact that whether or not the delivery or payment was deferred at the time of entering into the contract. The three words ''consumption'', ''use'' or ''sale'' which create charge u/s 104 are to be taken separately. If a sale has taken place then one need not go to see, other words, ''use'' or ''consumption''. Similar is the position with regard to ''use'' or ''consumption'' that if there is consumption or use, then the element of sale need not be seen. Whether there is a sale or not has to be examined in accordance with the provisions of Sale of Goods Act, 1930 and it depends on the nature of contract between the buyer and seller. If the sale has taken place then use or consumption are not to be considered as in accordance with the provisions of Explanation III added by the

Amendment Act No. 13 of 1990 the charge would be created if either of three elements is existing. In the case of M/s. Karewell Distributors (P) Ltd. (supra) the dispute was with regard to despatch of goods outside the municipal limits for forsale or consumption. There is difference between ''sale'' and ''fore-saie. If the goods are sent for sale then there is no sale and the provisions of Section 104 are not attracted, but if the despatch is in pursuance or in consequence of sale, then there will be a liability of octroi duty. Assistance has been tried to be sought by the learned counsel for the petitioner for the observations of this Court in the case of M/s. Karewell Distributors (P) Ltd. (supra) to the effect that ratio in the case of Municipal Council, Jodhpur Vs. Parekh Automobiles Ltd. and Others, still holds the field despite the amendment and it has not changed the position of law. These observations have to be considered in the light of the dispute existing and the interpretation given therein. After the aforesaid observations, this Court''in the case of M/s. Karewell Distributors (P) Ltd. (supra) also observed that-

"What the Explanations say is that if the goods were brought within the municipal limits then they are delivered to another person for using them up whether or not that other person uses them is not relevant and the goods on entry will attract the octroi."

It was not a case where the question was that inspite of there being a sale within the municipal area because the ultimate consumption or use is outside the limits of municipal area it will not attract the octroi duty. Even in the case of Parikh Automobile (supra) the facts as stated before this court were that till the goods were supplied to M/s. Parekh Automobiles outlet station the goods were at the risk of IOC. In these circumstances it was contended that till the goods were delivered at the outlet station at Dangiabas there was no contract of sale. The contract of sale was contended to have taken place at Dangiabas where the goods were delivered by Parekh Automobiles and receipt was obtained from the outlet accompanying the delivery of goods at that place. In these circumstances the High Court restricted by way of mandamus not to ievy octroi on goods for use of ultimate user outside the municipal limits of municipal council. On the harmonious construction of the provisions of Section 104 along with amendment by way of Explanation and the two decisions referred to above, I am of the opinion that if a concluded safe has already taken place then whether there is consumption or use is not relevant and similarly if the goods are used or consumed within the municipal limit by the petitioner or any other person then the question of sale is not to be considered as the three words consumption, use or sale are separate and are not dependent on each other. The observations of the Apex Court in the case of Municipal Council, Jodhpur Vs. Parekh Automobiles Ltd. and Others, therefore have to be considered in the light of the facts on which the aforesaid observations were given namely that the property in goods vested with the company at the time when the goods were despatched within the municipal limit and there was no contract for sale existing at that relevant time. Even otherwise it is a question of fact and has to be decided in respect of despatches by the authorities under the Act. The petitioner would not be liable for payment of octroi duty in respect of goods which are transferred from its warehouse at Jaipur to any other warehouse or any other place as there is no element of sale in existence and if the sale has already taken place at the warehouse at Jaipur then the petitioner is liable for octroi duty as discussed above.

6. Consequently, the writ petition is partly allowed as stated above.

