(1995) 04 RAJ CK 0047

In the Rajasthan High Court

Case No : CWrit Petition No. 68 of 1988

Desai Brothers Ltd. APPELLANT

Vs

Municipal Council, Sri Ganganagar RESPONDENT

Date of Decision : 17-04-1995

Acts Referred:

Rajasthan Municipalities (Octroi) Rules, 1962 — Rule 39
Rajasthan Municipalities Act, 1959 — Section 104(1)(2)

Citation : AIR 1995 Raj 286 : (1995) 1 RLW 563 : (1995) 2 WLC 680 : (1995) 1 WLN 492

Hon'ble Judges : N.K. Jain, J

Bench : Single Bench

Advocate : S.L. Jain, for the Appellant; N.P. Gupta, for the Respondent

Final Decision : Dismissed

Judgement

N.K. Jain, J.—this writ petition, the petitioner seeks to restrain the non-petitioners from realising the octroi duty upon the goods which have not been brought within the Municipal limit of Sri Ganganagar for use or consumption and prays that the respondent be restrained from levying any octroi duty on the goods brought by the petitioner at their godown/depot at village Nathan Wali. The petitioner prays that the non-petitioners may kindly be directed to refund the octroi duty charged on 31-12-1987 vide Anx. 7 amounting to Rs. 7992/60 with interest @ 18% and the non-petitioners be further directed to provide the facility of transit pass to the petitioner.

2. The petitioner''s case is that it is a registered limited Company and having its one of the godowns at village Nathanwali, which is about 5-6 Kms. away from Sri Ganganagar. It is alleged that the petitioner is regularly paying octroi on the goods which have been brought for consumption, use or sale within the municipal limits. It is also alleged that they supply goods from Nathanwali depot to other States and the non-petitioner issue transit pass facility for transportation but they have withdrawn this facility for the last six months. The petitioner has

alleged that a Truck No. ABT 1277 which was loaded with Desai Biddis came from Nazamabad (A.P.) and when it reached at village Nathanwali (Chak 2 M.L.) and goods were unloaded, the officers and employees of the Municipal Council, Sri Ganganagar forcibly taken the truck along with biddis in their possession. The petitioner has alleged that they gave a threatening that the truck will not be released without charging the octroi duty. The petitioner made a representation on 31-12-1987 for release of the truck and the goods but of no avail. Ultimately the petitioner deposited the octroi along with the penalties of ten times of the octroi to the non-petitioner under protest on 31-12-1987. Being aggrieved with the denial of providing facility of transit pass by the non-petitioners, the present writ petition has been filed, on 6-1-1988.

3. Notice to show cause was issued on 15-1-1988. vide order dt. 23-2-1988 this Court directed that the petitioner shall be given facility of obtaining transit pass under Rule 11 of the Rajasthan Municipality Octroi Rules in respect of the goods which according to the petitioner merely pass through the Municipal limits of Ganganagar, which are not meant for use, consumption or sale within those limits. However, the amount so deposited under Rule 11 shall not be refunded to the petitioner on the export of those goods till the disposal of this writ petition. If the writ petition ultimately succeeds, the amount so deposited by the petitioner under Rule 11 shall be refunded to him along with interest at Bank rate from the date of deposit.

4. The non-petitioner has filed reply stating that the petitioner has suppressed material facts and not come with clean hands. It has been stated that the petitioner has alleged that the goods are not brought within the Municipal limits whereas the petitioner has its office at 73 Dhan Mandi, Ganganagar from where all his business of this area is carried out. It has also been stated that an F.I.R. was lodged as the Manager of the petitioner firm misbehaved with the officials of the Municipal Council and a notice u/s 137(1) of the Municipalities Act was also issued against the petitioner as on 30-12-1987 as one Truck No. ABT 1277 containing 865 bags of biddis came to the Octroi check post Sri Ganganagar but the Manager of the petitioner refused to pay the octroi and misbehaved as stated above. The non-petitioner has emphatically denied the facts narrated in para 9 of the writ petition and submits that no relief can be granted to such persons who are tax evaders. The respondent has further stated that mere fact that the goods sold to the purchaser outside is of no relevance when in the present case the goods are sold by the petitioners within the Municipal limits and to evade octroi liability the godown has been constructed at a place where there is no village or any market or other banking facility.

5. Mr. Jain, learned counsel for the petitioner has submitted that the petitioner is not entitled to pay octroi on the goods which are brought to his godown, which is not situated within the Municipal limits. He has relied on Municipal Council Jodhpur, v. Parakh Automobiles (O.B.C. Spl. Appeal No. 3/ 77) decided on 1-2-1980 (reported in 1980 W.L.N. 107 : AIR 1981 NOC 25 and M/s. Pradeep T.V.

Centre v. Municipal Council, Ganganagar (SBCW No. 2144/89) on 21-7-1992.

6. On the other hand Mr. Gupta has submitted that in the garb of godown the petitioner wants to evade the tax though all the transactions are made within the Municipal limits of Ganganagar where the petitioner''s office is situated. He has relied on a decision of this Court rendered in CW 102/1995 Gaurav Saurabh Enterprises v. State decided on 23-2-1995.

7. I have heard learned counsel for the parties and perused the material on record as well as the relevant provisions of law.

8. It is no doubt true that while the goods are in transit tax is not leviable, if the same is only passes through the State and in such a event neither Sales Tax nor octroi is leviable. However, the authorities are competent to investigate and examine the documents while the goods are in transit at any time or particularly at check post to see the genuineness of the documents so as to ensure that there is no evasion of tax and if they are satisfied that the documents are genuine disclosing sufficient information regarding consignee and consignor and the goods are not to be sold within a Municipal area of the State, one should not be harassed by the authorities unless there is definite information with reason to believe that the goods are likely to be sold within a Municipal area of the State, so as to avoid the tax liability then the authorities can certainly probe into the matter.

9. Earlier octroi is leviable only if the goods are brought within the Municipal limits according to Section 104 of the Municipal Act whether for consumption, use or sale, subject to ultimate sale apart from the sale for the pupose of consumption within the Municipal limits. Thereafter vide Circular dt. 20-3-1975, the State Government clarified that if the goods are sold within the Municipal limits of a particular Municipality the goods would be liable to the incident of octroi. Amendment in Clause (2) of sub-section (1) of Section 104 came into force on 28-7-1990 with explanations whereby also it has been provided that an octroi on goods and animals brought within the limts of the Municipality for consumption or use or sale therein and it has been made clear that ''consumption'' shall with reference to goods and animals 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. Likewise words ''use'' and ''sale'' have been explained. In view of this it is clear that as soon as the goods are sold by any one within the Municipal limits, the octroi would be leviable. Therefore, the petitioner cannot take any advantage of the fact that his godown is situated outside the Municipal limits particularly when the respondents have specifically came out with a case that the petitioner is having its office at 73 Dhan Mandi, Ganganagar within the Municipal limits, which is not disputed and the petitioner sold its goods from this office. The petitioner has not been able to satisfy me that every sale transaction has taken place from the godown itself. Therefore, the petitioner is not entitled for any relief in the extraordinary jurisdiction and the decision rendered in Parakh Auto-

motible''s case AIR 1981 NOC 25 (Raj) is not of any help to him.

10. So far as the argument that penalty could not be imposed under Rule 39 unless the evader is convicted by a Magistrate and further the penalty can only be imposed by the Magistrate alone, is concerned, undoubtedly under Rule 39 penalty for evasion or attempt to evade, for any goods brought within the Municipality, can be inflicted only by a Magistrate after conviction. But in the instant case a F.I.R. was lodged and notice u/s 137(1) of the Municipalities Act was also issued to the petitioner but the petitioner deposited the amount of octroi along with ten times the amount as composition fee, the offence was compounded. Therefore, the petitioner cannot take advantage of the fact that penalty has been imposed without there being any conviction and the arugment of Mr. Jain is not tenable. That apart the petitioner has not taken this point in the writ petition. In view of this, the decision of this Court rendered in M/s. Pradeep T. V. Centre (supra) is not of any help to the petitioner. The ad-interim order stands discharged and order dt. 23-2-1988, is vacated.

11. Accordingly, the writ petition has no force and the same is hereby dismissed.

