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(1998) 12 BOM CK 0011

In the Bombay High Court

Case No : Criminal Writ Petitions No''s. 554 to 562 of 1996

Desh Chemicals Pvt. Ltd. APPELLANT

Vs

Kulgaon Badlapur Municipal Council and Others RESPONDENT

Date of Decision : 10-12-1998

Acts Referred:

Citation : (1999) 101 BOMLR 67

Hon'ble Judges : D.G. Deshpande, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

D.G. Deshpande, J.—Heard Advocates Mr. S.K. Shinde for the petitioner. Mr. Abhay Oak for respondent No. 1 and learned A.P.P. for the State/respondents. In the group of all these petitions the petitioner is same, respondents are same and the question involved is also same. From the facts narrated, it appears that the petitioner is a small scale industry having its manufacturing unit at M.I.D.C. Badlapur. The petitioner manufactures and processes chemicals of many types and main amongst its products are Sodium Lauryl Sulphate, Sodium Lauryl [Ether Sulphate, Reaction Initiators, etc. for the aforesaid products the petitioner has to purchase number of chemicals as raw materials. By processing and reacting these raw materials, the aforesaid chemicals are the produce. The petitioner''s unit is situated within the territorial limits of Kulgaon-Badlapur Municipal Council, the respondent No. 1, and therefore, bringing the raw materials to the unit turns out to be an import of them within the limits of respon dent No. 1.

2. It is the case of the petitioner in all these petitions that on different dates different chemicals were brought in by the petitioner within the limits of respondent No. 1, as per the particulars given in paragraph No. 1[e] of Exhibit A of the petitions. For example, in Writ Petition No. 554 of 1996 the petitioner brought 7480 kgs. GINOL 1214 [Lauryl Alcohol] in 44 drums on 10.11.1993 valued at Rs. 5,31,747/ to their factory at MIDC Badlapur. The petitioner tried to

submit relevant documents and duly filled in octroi forms for charging of octroi duty at concessional rate. The concerned official of respondent No. 1 refused to accept the forms and insisted upon payment of octroi duty at full rate of 2% ad-valorem amounting to Rs. 10,700/-. Further, according to the petitioner, the octroi official also refused to present a bill and they simply passed a receipt of Rs. 10,700 /- and then only allowed the goods to be imported within the limits of respondent No. 1. According to the petitioner, this has happened in all the petitions wherein they had to pay full octroi duty and where the official of respondent No. 1 refused to accept the forms or serve a bill upon petitioner. Thereafter, the petitioner preferred appeal before the Judicial Magistrate First Class, Ulhasnagar as provided under The Maharashtra Municipalities Act, 1965 raising different contentions and grounds. In that appeal it was mainly contended that not issuing bill for demand of octroi by the octroi official is an illegality and they should be directed to issue such a bill, that non acceptance of form Nos. 1 and 14 of the Rules was illegal and that the respondent should be directed to accept the forms and lastly, that recovery at 2% ad-valorem was illegal and excess amount recovered should be refunded with interest thereon. The Judicial Magistrate First Class, Ulhasnagar [S.P. Pande] rejected the appeal on 29.4.1994, so also the revision was dismissed by Additional District Judge, Thane [S.D. Mohod], and therefore, these petitions have been filed.

3. The counsel for the petitioner repeatedly urged that the petitioner was importing raw materials for the purpose of processing, and therefore, the petitioner was not liable to pay octroi at the rate of 2% ad-valorem but was liable to pay octroi at concessional rate of 1.25% maximum or at a still lesser rate but not less than 0.25%. He also contended that since the petitioner has submitted form Nos. 1 and 14 in respect of each consignment of goods brought within the municipal limits, he was entitled to get benefit of octroi at concessional rate. Apart from this, same question of non-issuance of or refusal to issue bill for demand of octroi was raised before the Appellate Court and Sessions Court. In fact, from the submissions made by the counsel for the petitioner and by Mr. Oak, counsel for respondent No. 1, and from the record of the appeal filed before the Magistrate by the petitioner, written statement filed thereto by the Municipal Council, and Sessions Court''s order, the issue whether the goods were imported for processing does not arise at all, and if it arises it cannot be considered for the following reasons.

4. In his appeal memo filed before the J.M.F.C. the petitioner has admitted that the petitioner is a small scale industry and its manufacturing unit is situated at M.I.D.C. Badlapur, Dist. Thane and the petitioner manufactures and processes chemicals of many types i.e. Sodium Lauryl Sulphate, Sodium Lauryl Ether Sulphate, Trienthanolamine Lauryl Sulphate, Reaction Initiators, etc. There is also no dispute that for the manufacturing unit of the petitioner, the petitioner imports raw materials from out side. If the petitioner is claiming entitlement of concessional rate of octroi at 1.25% on the ground that the petitioner is importing goods for the purpose of processing only, then they have not put forth

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such goods before the Magistrate or before the Sessions Court. They have not given particulars in any of the petitions as to which raw material imported by them for the purpose of processing, what process was done by them on that raw material and what happened to the processed raw material thereafter i. e. whether it was sent out side the limits of respondent No. 1, the Municipal Council, if it was so, to whom it was sent and what was the quantity sent, what was the value sent. All these important particulars are wanting or lacking in these petitions.

5. Further as per the admissions given by the petitioner, the petitioner is also engaged in manufacturing activity, having its manufacturing unit at MIDC Badlapur. In paragraph No. 1 (c) of his memo of appeal Exhibit A the petitioner has stated, As the industrial unit of the Appellant is situated at the address mentioned in cause title, the raw materials have to be taken there for processing/ chemically reacting to make/manufacture the Appellant''s aforesaid products. And in paragraph No. 1 (a) the petitioner has given names of some of his products. They are as, Sodium Lauryl Sulphate, Sodium Lauryl Ether Sulphate, Trienthanolamine Lauryl Sulphate, Reaction initiators, etc. From these admissions it is clear that the petitioner is engaged in manufacturing activity and the raw materials are imported by him for the purpose of manufacturing the above products.

6. This is, therefore, a case where the petitioner is admittedly involved in manufacturing process for which the petitioner imports raw material from out side municipal limits of respondent No. 1, and hence admittedly for the raw materials imported for the purpose of using the same in manufacturing of aforesaid products, the petitioner has to pay and is under an obligation to pay octroi at the rate of 2%.

7. If from the imported raw materials the petitioner is using certain amount of raw materials for manufacturing the aforesaid products and certain amount of raw materials for so called processing, then it was necessary for the petitioner to give all minute details in this regard, firstly to the Municipal Council and secondly to the Magistrate before whom the appeal was filed. For example, in Petition No. 554 of 1996 the petitioner has contended that he bought and brought GINOL 1211 [Lauryl alcohol] 7480 kgs. in 44 drums. These facts are given in the appeal memo before the Magistrate. In the same memo of appeal the petitioner has averred that it manufactures aforesaid products viz. Sodium Laury Sulphate, Sodium Lauryl Ether Sulphate, Triethanolamine Lauryl Sulphate, Reaction initiators, etc. and also carries on processing of chemicals of many types. In view of these facts, it was necessary for the petitioner to state, how much amount of this raw material GINOL 1214 used for the purpose of manufacturing and how much was used for processing. However, the petitioner has not given any of such particulars in its memo of appeal before the Magistrate or in its revision before the Sessions Court.

8. Octroi duty becomes payable as soon as the goods are imported within

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municipal limits or within the limits of Municipal Corporation. General duty is prescribed at 2%. And if the petitioner wants to claim liability of payment of octroi duty at concessional rate on the ground that raw material is imported for the purpose of processing, the entire burden lies on the petitioner to prove that what was the material brought in for the purpose of processing, how much of it was used for processing, what was the processing in respect of that material, and since it is the contention of the petitioner that it was also involved in manufacturing of the products, it was for the petitioner to show that those raw materials were not used for manufacturing. None of such particulars were furnished anywhere in the memo of appeal before the Magistrate or before the Sessions Court or before this Court in the present petitions.

9. Had it been the case of the petitioner that the petitioner was at all not involved in manufacturing process and had no products of its own but it was only processing the raw materials to enable other industries to convert them into final product, then the case of the petitioner to have become acceptable. But this is not so in the present case, and therefore, on this ground alone the petitions are liable to be rejected.

10. Since the petitioner has raised other grounds, it would be appropriate to consider the submissions made by the counsel for the petitioner in that regard. It was contended by the petitioner''s Advocate that the petitioner was submitting form Nos. 1 and 14 to the respondent''s official and therefore, the petitioner was entitled to claim concession because goods automatically come under Schedule II. Part I of the Maharashtra Municipalities (Octroi] Rules, 1968.

11. Form 1 of the Maharashtra Municipalities [Octroi] Rules [herein after referred to as the M.M.O. Rules] is a declaration in respect of dutiable goods imported into municipal octroi limits for consumption, use or sale therein. This form is prescribed under Rule 14 which is in respect of Declarations to be made by importer etc. Form 14 is a declaration to be made by importer importing dutiable goods as raw material for his industrial undertaking. This Form No. 14 is prescribed under Part 1-A and II of Schedule II. Part I-A is in respect of list of goods on which octroi shall be payable at a lower rate by certain industrial undertakings, and Part II is in respect of list of goods on which octroi shall not be payable or be payable partially if a Council has passed a resolution to that effect.

12. It was rightly contended by Municipal Counsel before the Magistrate through their written statement as well as before this Court that since the appellant is not entitled to claim payment of octroi duty at concessional rate, no question arose of furnishing Form Nos. 1 and 14 to the appellant and also of accepting such forms from the appellant. Part I-A as stated above of the Maharashtra Municipalities [Octroi] Rules is in respect of list of goods on which octroi shall be payable at a lower rate and Part II is in respect of list of goods on which octroi shall not be payable or be payable partially if a Council has passed a resolution to that effect. To that effect the contention of the petitioner that octroi officer of the Municipal Council did not make any demand of octroi and did not accept the form

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Nos. 1 and 14 cannot be accepted because the appellant petitioner had no right to claim payment of duty at concessional rate. The J.M.F.C. Ulhasnagar has in his order given sound reasoning for rejecting the contention of the appellant and has considered the relevant provisions of Maharashtra Municipalities [Octroi] Rules, and therefore for all these reasons no interference is called for in these petitions.

ORDER

All the petitions dismissed.

Rule discharged in all the petitions.

Stay, if any, vacated.

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