

(1990) 09 SC CK 0065

In the Supreme Court Of India

Case No : Civil Appeal No. 333 of 1981

Faridabad Complex Administration

APPELLANT

Vs

Hindustan Milkfood Manufacturers Ltd. and another

RESPONDENT

Date of Decision : 04-09-1990

Acts Referred:

Constitution of India, 1950 — Article 265

Citation : AIR 1991 SC 355 : (1991) 2 SCC 262 Supp

Hon'ble Judges : K. Jagannatha Shetty, J;B. C. Ray, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. Civil Appeal No. 333/81 was filed against the order of the Division Bench passed on 10th April, 1980 dismissing LPA No. 125/1980 affirming the judgment and order passed by the learned single Judge in Civil Writ Petition No. 1873/77 Reported in 1980 Land LR 13 (Punj & Har). The subject matter of dispute is whether bringing horlicks powder in bulk container from outside State i.e. from Nabha in Punjab to Faridabad in Haryana for the purpose of repacking the same in small containers and then exporting the same outside the State for the purpose of sale etc. amounts to consumption, use or sale within the octroi limits of Faridabad. It has been held by this Court in Civil Appeal No. 4160/89 "we see no ground as to why amount should not be refunded. Realisation of tax or money without the authority of law is bad under Article 265 of the Constitution. Octroi cannot be levied or collected in respect of goods which are not used or consumed or sold within, the municipal limits. So these amounts become collection without the authority of law. The respondent is a statutory authority in the present case. It has not right to retain the amount, so far and so much. These are refundable within the period of limitation. There is no question of limitation. There is no dispute as to the amount. There is no scope of any possible dispute on the plea of undue enrichment of the petitioners." "We, therefore, hold that amounts should be refunded subject to the verification directed by the learned single

Judge of the High Court of the amount of refund. The appeal is, thus, allowed. The judgment and the order of the Division Bench of the High Court are, therefore, set aside.

2. The question involved in the above appeal is similar to the one raised before us in this appeal, and in fact as against the same party. The facts are also similar. The question having been already concluded by this Court does not require any further consideration.

3. It is also evident from the order passed on 22-4-76 in Civil Writ Petition No. 1484 of 1976 that the counsel for the State gave an undertaking to refund to the respondent any octroi that may be found not due but may have been paid in the meantime under the existing arrangement.

4. Mr. Mahabir Singh, learned Counsel appearing on behalf of the State has drawn our attention to the notification dated 7th April, 1972 and more particularly to provisions contained in para V-(13) wherein provision has been made requiring a person bringing the goods to declare whether the goods are intended for immediate export or for consumption, use or sale within the octroi limits. Failure to give such declaration would attract the levy of octroi on such goods, and it is said that the respondent has not given such declaration and therefore, liable to pay octroi. But the counsel for the respondent disputes that statement. This contention was neither raised before the High Court nor before this Court in the Memorandum of Appeal. However, it is sought to be argued before us for the first time. In these circumstances we are not inclined to express any opinion and we keep the question open.

5. We further direct that the said question so far as to the amount involved and also for the period involved cannot be raised by the appellant i.e. Faridabad Complex Administration. The appeal is, therefore, dismissed with no order as to costs. The order of Bank guarantee is discharged.