

(2002) 08 MP CK 0029

In the Madhya Pradesh High Court

Case No : Writ Petition No. 3277 of 1999

Gajanand Agarwal

APPELLANT

Vs

State of M.P. and another

RESPONDENT

Date of Decision : 26-08-2002

Acts Referred:

Madhya Pradesh Municipalities Act, 1961 — Section 127(1), 129, 130

Citation : (2003) 2 MPLJ 26

Hon'ble Judges : A.K. Mishra, J

Bench : Single Bench

Advocate : R.N. Singh with Arpan Pawar, for the Appellant; V. Awasthy, Government Advocate for State and M.L. Jaiswal with Mohd. Asif, for the Respondent

Judgement

Arun Mishra, J.

Petitioner in this writ petition is assailing the action of the Municipal Council, Umaria for imposition of terminal tax of Mahul leaves at the rate of 2%.

The challenge is in two fold firstly on the ground that imposition is not made following the procedure of law; second ground is that the Municipal Council has exceeded the rate as prescribed in the rules called Terminal Tax (Assessment and Collection) on the Goods exported from M.P. Municipal Limits Rules, 1996 (for short "the Rules").

Petitioner's case is that resolution Annexure P/2 has been passed on 29-4-1999 imposing the terminal tax at the rate of 2% of the value of liquor, Tendu leaves and Mahul leaves. While passing the resolution, Municipal Council, Umaria has taken the shelter of the rules called Terminal Tax on Export of all kinds of Burnable Woods, Building Woods, Mines Coal and Wooden Coal Rules, 1984. Municipal Council has taken the decision u/s 127(1) read with sections 129 and 130 of the M.P. Municipalities Act, 1961 (for short "the Act"). Petitioner submits that as against the resolution, petitioner preferred an objection but the same has

not been considered and demand to pay the terminal tax was raised as per notice P/4 dated 7-6-1999. Petitioner further submits that Municipality is not empowered to impose terminal tax on Mahul leaves which is a forest produce; procedure u/s 129 of the Act has not been followed. Terminal Tax Rules, 1996 makes no mention of Mahul leaves as taxable item. Rules of 1984 also do not mention the Mahul leaves as taxable item.

A return has been filed by respondent No. 2 pointing out that Municipal Council has exercised the powers conferred under sections 127 and 129 of the Act. Public notice R/2-1 was published on 7-5-1999 to impose the export tax; there is no illegality.

Respondent No. 1 State of M.P. contends that tax has been imposed by the Municipal Council by exercising its power u/s 127 of the Act.

Shri R.N. Singh, learned senior counsel for the petitioner submits that rules of 1984 could not be invoked as under the rules of 1984 Mahul leaves could not be subjected to terminal tax rules of 1984 specifically deals with the export of burnable woods, building woods, mines coal and wooden coal. Next submission is that rules of 1996 prescribed the rates on other items at the rate of 0.10% on the value in schedule as per item No. 15 which at the most is imposable; his last submission is that the procedure prescribed u/s 129 of the Act has not been followed.

Shri M.L. Jaiswal, learned senior counsel for respondent Municipal Council has supported the action taking shelter of clause (n) of sub-section (6) of section.127 of the Act and the Rules of 1996. He contends that action is justifiable and no interference is called for.

Shri V. Awasthy, learned Govt. Advocate has supported the stand of Municipal Council.

Perusal of the rules of 1984 makes it clear that these rules are applicable only with respect to burnable woods, building woods, mines coal and wooden coal and for no other item. Thus reference to the rules of 1984 does not confer any power on Municipal Council to impose the terminal tax at the rate of 2% on Muhul leaves. However, rules of 1996 comes to the rescue to the action of the Municipal Council but to a limited extent. Item No. 15 in the schedule to the rules is a residuary entry; with respect to other items/other local products rate of 0.10% is permissible to be imposed.

Thus, imposition of rate of 2% on value is ultra vires of the powers; sub-section (6) of section 127 limits the power of the Municipal Council to impose the tax. It has to be exercised subject to any general or special order of the State Government. The rules of 1996 have to be taken as general directions issued within the purview of sub-section (6) of section 127 of the Act. Thus, imposition of tax at a higher rate than prescribed under the Rules is not permissible.

The last submission of the learned counsel for petitioner that procedure has not

been followed is not acceptable; resolution has been passed and that is what is required to be passed u/s 133 of Corporation Act and 129 of the Municipalities Act. It is not the case set up in the petition that provision has not been made in the Budget, thus, that aspect cannot be looked into for want of plea.

Coming to the relief to be granted, from the petition it is clear that tax at the excessive rate than permissible has been realized; same is directed to be adjusted at the rate prescribed under the rules if necessary may be adjusted against the future dues as Municipal Council may not be in a position to refund it.

Writ petition is allowed in part to the extent indicated above. Obviously it goes without saying that Municipal Council is entitled to recover it at the rate prescribed under the rules. Resolution P/2 and demand P/4 are quashed to the extent indicated above.

Costs on parties.