(1995) 03 SC CK 0124

In the Supreme Court Of India

Case No : Civil Appeal No. 1662 of 1988

Garware Nylons Ltd. APPELLANT

Vs

Pimpri Chinchwad Mahanagar Palika and Others RESPONDENT

Date of Decision : 28-03-1995

Acts Referred:

Maharashtra Municipalities (Octroi) Rules, 1968 — Rule 17
Maharashtra Municipalities Act, 1965 — Section 105(1), 321(2)

Citation : (1995) 77 ELT 22 : (1997) 10 JT 539 : (1995) 2 SCALE 606 : (1995) 3 SCC 345 : (1995) 3 SCR 23

Hon'ble Judges : S. B. Majmudar, J;R. M. Sahai, J

Bench : Division Bench

Advocate : M.L. Verma, Pallav Sisodia, Punita Singh, Sonu Bhatnagar and Sanjay Kishan Kaul, for the Appellant; V.E. Joshi, for the Respondent

Final Decision : dismissed

Judgement

1. The question that arises for consideration in this appeal is whether the customs duty paid by the appellant could be included for determining valuation for purposes of charging octroi under Rule 17(a) of the Maharashtra Municipalities (Octroi) Rules, 1968 made under Sub-section (2) of Section 321 read with proviso to Sub-section (1) of Section 105 of the Maharashtra Municipalities Act, 1965.

2. The appellant is a public limited company. It manufactured nylon and polyster yarn. Between September 1983 and August 1984 it imported goods liable to octroi. The corporation authorities claimed that the appellant was liable to include the customs duty paid by it in the valuation of the goods as it was a component of the value of the said goods for the purpose of Rule 17(a). The appeal filed by the appellant before the Civil Judge failed. The order was challenged by way of writ petition under Article 226 of the Constitution. The High Court negatived the claim. Rule 17(a) is extracted below:

R. 17.-Provisions to determine value where octroi is leviable ad-valorem:

(a) If the original invoice is produced by the importer and accepted by the Octroi Officer the value of the goods means the value made up of the cost price of the goods as ascertained from that invoice plus freight charges, carrier charges, shipping dues, insurance, excise duties, sales tax, vend fee and all other incidental charges incurred by the importer till the arrival of the goods within the octroi limits".

Since the words 'custom duty" are not mentioned in the rule, it gave rise to an argument before the High Court and in this Court whether it could be included while determining the value under Rule 17. The High Court relying basically on the decision of this Court in Shroff and Co. Vs. Municipal Corpn. of Greater Bombay and Another, held that even though the custom duty was not mentioned in the rule yet it was liable to be included while determining the value under Rule 17. The learned counsel for the appellant urged that since the words 'custom duty' do not find place in Rule 17, they could not be included for determining valuation under the rules. Reliance was also placed on Goodyear India Ltd., Gedore (India) Pvt. Ltd., Kelvinator of India Ltd. and the Food Corporation of India and Another Vs. State of Haryana and Another, and Mcdowell and Company Ltd. Vs. Commercial Tax Officer VII Circle, Hyderabad, and it was urged that in case the provision in taxing statute was susceptible to two constructions, then the one favouring the assessee should be accepted.

3. In Shroff's case (supra), it was held by this Court that countervailing duty being imposed for the purpose of compensating excise duty, it was includible in the expression 'duty'. The Court further held that expression 'incidental' used in the rule expanded its ambit and extended it to such duty that was an incident of importation. It was explained that the words 'incidental charges' have a very wide meaning, particularly in the context where duties and taxes are referred to and the idea seems to be to include all items that will be taken into account by an importer as part of his cost.

4. Rule 17 provides for determination of value of goods brought inside the Corporation or Municipal Board for consumption, use or sale. The use of various words in the rule widens its scope. It provides for inclusion of cost price, charges such as freight, carrier, custom duties and then all other incidental charges, dues etc. The mention of various charges and duties is more illustrative than exhaustive. It only indicates that it is not only the expenses which are usually incurred in normal course of commercial activity, but any incidental expenditure shall constitute the value of the goods. The rule has to be understood in broad sense. No good can be imported from outside without payment of custom duty unless it is exempt. There appears to be no reason to exclude it while determining the value of the goods. In any case, if duty counter-veiling could be considered to be incidental charges for importation, there is no valid reason to exclude custom duty from it.

5. In the result, the appeal fails and is dismissed. But there shall be no order as to costs.

