(1995) 02 RAJ CK 0045

In the Rajasthan High Court

Case No : Civil Writ Petition No. 1483 of 1984

Gulabdas Jagannath APPELLANT

Vs

The State of Rajasthan and Another RESPONDENT

Date of Decision : 15-02-1995

Acts Referred:

Constitution of India, 1950 — Article 19(1), 301, 302, 304
Rajasthan Municipalities Act, 1959 — Section 104

Citation : AIR 1995 Raj 225 : (1995) 1 RLW 695 : (1995) 2 WLC 521

Hon'ble Judges : R.S. Kejriwal, J;Arun Madan, J

Bench : Division Bench

Advocate : V.C. Mehta, for the Appellant; C.R. Thakkar,A.G.A., L.M. Lodha and M.S. Singhvi, for the Respondent

Final Decision : Dismissed

Judgement

Madan, J.—All these connected writ petitions filed under Article 226 of the Constitution of India involve identical question of law as to whether the octroi duty is leviable in respect of the goods imported from outside the State of Rajasthan and which are not manufactured or produced in the State of Rajasthan and whether any tax or octroi can be imposed on such imported goods by the respondents? They are disposed of by this single order.

2. The facts giving rise to the filing of these writ petitions briefly stated, are that the petitioners have been importing Soda Ash, Nitric Acid and various other goods as per Schedule A to the writ petition from outside Rajasthan, i.e., from other States, namely, Gujarat, Punjab etc. As per the statements furnished by the petitioners in Schedule A, the said goods are neither produced nor manufactured anywhere in the State of Rajasthan. The petitioners have to import these goods to Jodhpur from other States. The petitioners stated that Soda Ash, Nitric Acid and other goods are purchased and transported from Gujarat and Punjab etc. It has been contended en behalf of the petitioners that during all material times, they have been paying all taxes direct and indirect, levies of

excise and other fees and duties levied by the Central Government, State Government and other concerned Authorities. As stated above the present writ petitions concern the levy and collection of octroi duty on the movement of the goods by the respondents like Soda Ash, Nitric Acid and other goods as referred to above which are neither manufactured nor produced anywhere in the State of Rajasthan and hence the contention of the petitioners is that no actroi duty is leviable by the respondents on the movement of goods in the State of Rajasthan under the relevant provisions of Constitution of India.

3. It has been further contended on behalf of the petitioners that in the year 1959 the Government of Rajasthan enacted a legislation, namely, Rajasthan Municipalities Act, 1959 (Act No. 38 of 1959) (hereinafter referred to as "The Act") which received the assent of the President of India on 7-9-1959, and was enacted with a view to consolidate and amend the law relating to Municipalities in the State of Rajasthan and came into force w.e.f. 17-10-1959 vide Government Notication No. D-6617/F.4(34)SG/A/59 dated 15-10-1959. The said Notification was published in Extraordinary issue of Rajasthan Gazette Part IV (c) dated 15-9-1959. Municipal Counsel, Jodhpur (respondent No. 2) has been established and incorporated u/s 7 of the Act which provides for the establishment and incorporation of Municipal Boards in every Municipality. Respondent No. 2 is a body incorporate having perpetual succession and common seal.

4. It has been contended that respondent No. 1 i.e. the State of Rajasthan is responsible for the implementation of the laws including the Act and subject to the provisions of the Constitution, the legislature of State may make laws for the whole or any part of State, as per the provisions laid down under Article 245 of the Constitution of India. It has been further contended by the petitioners that the State Government has been empowered to make rules or orders generally for the purpose of carrying into effect the provisions of the Act, and prescribe forms for any proceedings, for which it considers that a form should be provided etc. u/s 297 of the Act, hence for exercising the powers u/s 297 read with Section 104 of the Act, the State Government has framed Rules inter alia for the Assessment and Collection of octroi in respect of the goods liable to octroi imported into Municipal limits of the State, namely, the Rajasthan Municipalities (Octroi) Rules, 1960 published in the Rajasthan Gazette Extraordinary, Part IV(c) dated 20-11-1962. (for short "the Rules"). Under Rule 6 of the Rules there is complete ban that no goods liable to payment of octroi duty shall be purchased within the Municipal limits of the State of Rajasthan until the octroi duty leviable in respect of such goods has been paid thereunder. It has been contended by the learned counsel for the petitioners that the State Legislature has no power to legislate for levy of tax on the movement of such goods which are neither manufactured nor produced in the State of Rajasthan and since Soda Ash, Nitric Acid, etc. as detailed in Schedules A to C are neither manufactured nor produced in the State of Rajasthan, they are not leviable to octroi duty. It has been further contended that the Act and Notification, dated 13-5-1968 in question being purely of fiscal

nature, cannot be said to constitute reasonable restriction on the freedom of trade, commerce and intercourse within the territory of India and hence the same are not saved by Article 304(b) of the Constitution of India as held by the Apex Court in Kalyani Stores Vs. The State of Orissa and Others, and A.B. Abdul Kadir and Others Vs. State of Kerala, It has been further contended by the learned counsel for the petitioners that not being aware of the correct position, the petitioners under mistake or misconception of law paid octroi duty on the above goods which are neither manufactured nor produced in the State of Rajasthan and that a sum of Rs. 1,74,365.37 has been recovered by respondent No. 2 towards the octroi duty. It has been further contended that on 16-4-1984 the petitioners vide notice of demand for justice requested respondent No. 2 to refund the above amount illegally collected from them which has been not been refunded by the respondents. It has been further contended that respondent No. 2 is bent upon realising the octroi duty on the above goods and the said respondent has neither refunded the amount of octroi tax illegally and unauthorisely collected from the petitioners nor are permitting the above goods in question to be brought into the Municipal limits to the city of Jodhpur without payment ''of octroi duty which is in violation of petitioners'' fundamental right to trade and business under Articles 14, 19(1)(G), 265, 300A, 301 read with Article 304 of the Constitution of India.

5. In the prayer clause the petitioners crave leave of this court under Article 226 of the Constitution of India for the purpose of declaring or holding that the Act and the Notification, dated 13-5-1968 issued thereunder, imposing octroi duty are not applicable to the goods imported either from foreign countries or from outside the State of Rajasthan which are not manufactured or produced in the State of Rajasthan and no octroi duty can be imposed on such goods by the respondents on the petitioners as the same is unconstitutional, illegal and void being beyond legislative competence of the State Government flagrantly violating the constitutional guarantees provided under the Constitution of India. In the grounds it has been contended by the petitioners that very foundation and power of the State to legislate for levying tax under Article 304(A) of the Constitution of India was not available to the State Legislature in respect of such goods. It has been further contended that the goods mentioned in Schedules A to C are neither manufactured nor produced in the State of Rajasthan and are being imported either from foreign countries or from other States. In the prayer clause the petitioners have sought a declaration from this court to declare the Act and the Notification, dated 13-5-1968 issued thereunder imposing octroi duty be not made applicable to the goods imported from outside the State of Rajasthan or from foreign countries or from other States and that no octroi duty can be imposed on such imported goods. Alternatively the petitioners have prayed that the Act, Rules and the Notifications issued thereunder imposing octroi duty on the goods referred to above, be declared illegal, invalid and unconstitutional. They have further prayed for a writ of mandamus or any other appropriate writ or direction commanding respondents to refund the amount of Rs. 1,74,365.57

as mentioned in Schedules A to C to the writ petitions.

6. Notices were issued to the non-petitioners and despite service no reply has been filed by the respondents till date.

7. We have heard learned counsel for the parties and examined their rival claims and contentions and also perused the relevant documents on the record.

8. In S. B. Civil Writ Petition No. 590/1983, M/s. Delhi Cloth & General Mills Ltd., Delhi v. State of Rajasthan decided on 22nd November, 1983 this court (D. L. Mehta, J.) has occasion to deal with a similar question of law which was raised in a writ petition filed under Article 226 of the Constitution of India wherein the prayer was made to the court that Rajasthan Municipalities Act, 1959 and the Notification dated 13-5-1968 published in Rajasthan Gazette dated 13-5-1968 imposing octroi duty on the goods in question, do not apply to the goods imported from outside the State of Rajasthan which are neither manufactured nor produced in the State of Rajasthan and hence no octroi duty can be imposed on such imported goods. The petitioner-company had challenged the validity of the Notification referred to above and had prayed for a declaration that the impugned notification may be declared ultra vires in so far as it applies to the goods imported from outside the State of Rajasthan which are neither manufactured nor produced in the State of Rajasthan and consequently no octroi duty can be imposed on such imported goods. In that case the petitioner was an industrial unit located at Kota where "rayon, tyre-chord fabrics, rayon tyre yarn, rayon tyre cord and their ancillary products like sulphuric acid, carbon sulphide, sodium sulphite and sodium sulphate are produced. For the purpose of manufacturing "tyre-yard, tyre-chord fabric and/ or tyre-chord, the basic raw materials and chemicals used are "tyre chord grade wood pulp, sulphur, stead coas" and chemicals are per annexure A, B and C.

The petitioner had further submitted that "tyre-chord grade wood pulp or any other like goods which could be used for the manufacture of tyre-chord fabric or tyre-yard as a substitute for tyre-chord grade wood pulp are not produced and/ or manufactured in India and the petitioner has to entirely depend upon the import of the said items from outside India. It was contended by the learned counsel for the petitioner that the Municipality cannot impose octroi duty and the notification issued by the State Government imposing the octroi is void as it was hit by Article 301 of the Constitution of India which reads as under:

"Subject to the other provisions of this Part, trade, commerce and intercourse throughout the territory of India shall be free."

Reliance was also placed on Article 304 of the Constitution of India which reads as under:

"Notwithstanding anything in Article 301 or Article 303 the Legislature of a State may by law, --

(a) impose on goods imported from other States or the Union territories any tax to which similar goods manufactured or produced in that State are subject, so, however, as not to discriminate between goods so imported and goods so manufactured or produced; and

(b)... ... ...

(c) Provided that no Bill or amendment for the purposes of Clause (b) shall be introduced or moved in the Legislature of a State without the previous sanction of the President".

It was held by this court that since the goods of the similar nature are neither manufactured nor produced in the State of Rajasthan and within the Municipality limits of Municipality Kota thus, it is a tax simpli-citer and it cannot be said to be a restriction on the freedom of trade; and that the legislature has a power to impose reasonable restrictions on trade or intercourse if they are indeed in the public interest and are in conformity with entry 52 of List II of VIIth Schedule.

It will be pertinent to refer to the relevant provisions of the Rajasthan Municipalities Act, 1959 (Act No. 38 of 1959), which received the assent of the President of India on 7th day of September, 1959, Section 104 of the Act deals with imposition of obligatory taxes such as octroi on goods which reads as under:--

"(1) Every board shall levy, at such rate and from such date as the State Govt. may in each case direct by notification in the official Gazette and in such manner as is laid down in this Act and as may be provided in the Rules made by the State Government in this behalf, the following taxes, namely, --

(i) ...

(ii) an octroi on goods and animals brought within the limits of the municipality for consumption, use or sale therein; and....."

It will also be pertinent to refer to Rule 9 of the Rules which reads as under:--

"Declaration of goods brought into the Municipal limits -- (1) Every person bringing within the Municipal limits goods liable to payment of octroi shall produce such goods at the octroi outpost and shall declare whether goods are intended:--

(i) for consumption, use or sale within the municipality, or

(ii) for immediate transportation outside the Municipality, or

(iii) for temporary detention within Municipal limits an eventual transportation outside the Municipal limit.

(2) Declaration under Clause (i) of Sub-rule (1) may be oral declaration under Clauses (ii) and (iii) shall be in writing in form No. 1 and shall be tendered to the incharge of the octroi outpost at the time of bringing the goods within the Municipality. If no such declaration is made the goods shall be treated as having

been brought within the Municipal limits for consumption, use or sale therein."

9. It is clear from the perusal of the above statutory provisions that if the goods are imported or brought within the Municipal limits for immediate transportation outside the Municipality or temporary retention within the municipal limits and eventual transportation outside the municipal limits, then the goods are not liable to payment of octroi. However, a declaration has to be given at the time of the import within the municipal limits as provided under Clause 2 of Rule 9. In our opinion the imposition of octroi duty squarely falls within the ambit of Entry 52 of VII Schedule of List II of the Constitution of India according to which there is no restriction on the levy of octroi duty on the goods imported or brought from other States or cities in the State of Rajasthan which are meant for consumption, sale or use within the State of Rajasthan. Entry 52 takes into its sweep not only the goods which are produced in the State of Rajasthan but also the goods which are not produced within the State or any part thereof and are exclusively imported either from any part of the country or from any foreign country. Under Article 302 of the Constitution of India the Parliament has unfettered powers to impose reasonable restriction on the freedom of trade, commerce or intercourse between one State and another or within any part of the territory of India, as may be required for public interest. We are further of the opinion that the goods which are neither produced nor manufactured and are imported either from any other State or from foreign country, then Article 304(b) of the Constitution of India is applicable. The provision of Article 304(b) of the Constitution is wide enough to include the goods which are not manufactured or produced in the State at all and covers such goods. Hence the contention of the petitioners that the Municipality has no power to impose levy of octroi duty on the goods brought from outside the State or imported from other foreign country, is not well sounded.

10. It has been held by the Apex Court in the matters of The Western India Theatres Ltd. Vs. Municipal Corporation of The City of Poona, The Automobile Transport (Rajasthan) Ltd. Vs. The State of Rajasthan and Others, and City Municipality representated by the Shaik Sheriff Vs. Mahado Seetha Ram and Others, that taxation per se under authorised heads of the State list would not amount to violation of Article 301 of the Constitution of India if it does not directly affect free-flow or movement of goods, and is meant for the bona fide purpose of collecting revenue although such taxation may indirectly or incidentally place burden on trade, commerce or intercourse. It was held by the Apex Court that since the tax is meant for the bona fide purpose of collecting revenue and that it does not put heavy burden on the trade so as to call it an infringement of the freedom of trade and that it does not offend Article 301 of the Constitution.

11. The above view was also confirmed by the Apex Court in the matter of G.K. Krishnan and Others Vs. State of Tamil Nadu and Others, it is within the full competence of the State to impose octroi duty/tax for the welfare of the State

and for collecting revenue.

12. We are further of the opinion that provisions of Article 301 read with Article 304(b) of the Constitution of India are wide enough to allow the State to impose octroi duty on the goods which are brought to Rajasthan from other State or from any foreign country for consumption, use or sale within the State and the State is fully competent to impose reasonable restrictions on the exercise of freedom of trade or commerce as enshrined under Article 19(1)(g) of the Constitution. We are further of the opinion that Article 304(9) is an enabling Article and the levy of octroi duty on goods brought from other States or from foreign country will not amount to any discrimination qua the goods manufactured or produced in the State of Rajasthan.

13. The legislature has power to impose reasonable restriction on trade if it is intended in public interest and in conformity with Entry 52 of List II of VIIth Schedule of the Constitution of India. We are further of the opinion that these writ petitions are squarely covered by the ratio of the decisions of the Apex Court and the decision of this court in S.B. Civil Writ Petition No. 590/83 referred to above and for the reasons mentioned above these writ petitions deserve to be dismissed.

14. In view of the above discussions we find no force in these writ petitions and the same are accordingly dismissed with no order as to costs.

