
(1939) 09 AHC CK 0023
In the Allahabad High Court

Hardwari Mal Harnath Das Firm

APPELLANT

Vs

Municipal Board

RESPONDENT

Date of Decision : 15-09-1939

Acts Referred:

United Provinces Municipalities Act, 1916 — Section 128(1)(xiii)

Citation : AIR 1939 All 736 : (1939) 9 AWR 762

Hon'ble Judges : Verma, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Verma, J.—This is plaintiffs appeal and arises out of a suit brought by him for a declaration that the defendant, the Municipal Board of Dahra Dun, had no authority to levy "terminal tax or octroi" on such Roods of the plaintiff as were received by him at the railway station of Dehra Dun and were then taken by him to his shop at Rajpur which is beyond the municipal limits of Dehra Dun, and were neither "kept nor sold" within the municipal limits of Dehra Dun for a perpetual injunction restraining the defendant from levying such a tax on the goods mentioned above; and the recovery of a sum of Rs. 86-0-6 which the Municipal Board had realized from the plaintiff between 28th March and 9th August 1933, as terminal tax on such goods. Both the Courts below have agreed in dismissing the suit.

2. Section 128(1), Clause (xiii), U.P. Municipalities Act, (2 of 1916) provides that, subject to any general rules or special orders of the local Government in this behalf a municipality may impose "a tax on goods imported into...any municipality...." Under the powers conferred on them by Section 296 of the Act, the Local Government have framed "Rules for the assessment and collection of terminal tax in the Dehra Dun Municipality". The word "import" is defined in Rule 1(a) thus : "Import" shall mean the bringing of goods into the terminal tax limits from outside those limits"; and in Sub-rule (b) "importer" is defined as meaning

the person in whose name the railway document is made out and shall include the person in possession of the goods on which the tax is leviable.

3. Sub-rule (c) provides that

terminal tax shall mean the tax imposed u/s 128(1)(xiii), United Provinces Municipalities Act, 1916, (United Provinces Act, 2 of 1916)....

4. By Rule 3 it is provided that, subject to certain exemptions with which we are not concerned in this case, terminal tax shall be payable on all goods of the description mentioned in the annexed schedule, and at the rates specified therein. It is further provided in this sub-rule that when such goods are imported within the terminal tax limits of the municipality the tax due shall be paid to the railway authorities who shall furnish the importer with a receipt for the amount of the tax paid. There is a note appended to this Rule which provides that

no tax shall be levied on goods booked through the railway agency to Mussorie, Rajpur and Chakrata or rebooked to any other station.

5. In the schedule annexed to these Rules, para. 1 reads thus:

A tax on goods brought within municipal limits when conveyed to Dehra Dun municipality on consignment to that place by rail to be levied at the rates shown in Schedule "A" below.

6. It has been held by the Courts below that the plaintiff is not entitled to the declaration sought for the simple reason that on a correct interpretation of the law the Municipal Board are authorized and entitled to levy the tax complained of. They have further held that no refund can be allowed. The goods in question are taken from the railway station into the municipal limits of Dehra Dun on their way to Rajpur. Learned Counsel for the appellant has argued that goods which the defendant receives at the railway station of Dehra Dun and subsequently despatches to Rajpur cannot be said to be "imported or brought into" the municipal limits of Dehra Dun. His contention is that only those goods can be said to have been imported or brought into the municipal limits of a town which are either kept, consumed or sold by the consignee of the goods within those municipal limits. We find no justification for this interpretation of the word "import". The word "import" literally means "carried into" or "brought into". The Rules framed by the Government explain the word "import" as "the bringing of goods into." It seems to us, on the plain meaning of the word, that when goods are received by a consignee and are brought by him into the municipal limits, he imports them within the meaning of the Act and of these Rules. The appellant is clearly an "importer" as defined in the Rule quoted above. Learned Counsel has invited our attention to para. 198 of the Municipal Account Code. That paragraph occurs in Chap. 10 of the Code which deals with octroi. The case before us is, concerned with terminal tax and not with octroi. Apart from the question therefore whether this paragraph of the Account Code can be pressed into service for interpreting the Act and the rules framed by Government thereunder

or not, it seems to us that this paragraph which deals with octroi cannot be relied upon by learned Counsel in a case in which no question as to octroi arises. It may be mentioned here that the word "octroi" used by the plaintiff in his reliefs has been added by some mistake or under some misapprehension because the tax which has been levied on his goods is "terminal tax" and not octroi, which is quite a different tax.

7. Learned Counsel has referred to the case in *Sheikh Ajmeri Vs. Emperor*, . That is a case which dealt with facts which were entirely different and was concerned with the interpretation of Section 155, Municipalities Act. It is of no assistance in the present case. The next case relied upon is that in *Nek Mohammad and Others Vs. Emperor*, . That is a case decided by a learned (Single Judge and the dictum that the words "bring" and "import" contain an element of pause and repose has been relied on by the learned Counsel. That case again dealt with a totally different point and can be of no assistance in the present case. It may also be pointed out that the dictum of the learned Judge relied on by the appellant has been dissented from by a Bench in *Emperor Vs. Har Datt*, . In our judgment the decision of the Courts below is correct, and we dismiss Mini appeal with costs.