
(2014) 08 AHC CK 0120

In the Allahabad High Court

Case No : Civil Misc. Writ Petition (Tax) Nos. 1264, 1266 and 28328 of 2008

Hindustan Petroleum Coporation Ltd.

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 04-08-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 34

Uttar Pradesh Municipalities Act, 1916 — Section 128 128(viii) 135(2) 136 173A

Citation : (2014) 7 ADJ 683 : (2015) 126 RD 282

Hon'ble Judges : Vivek Kumar Birla, J; Tarun Agarwala, J

Bench : Division Bench

Advocate : Bharat Ji Agrawal, Piyush Agrawal and Aditya Pandey, Advocate for the Appellant; Anil Tiwari, Advocate for the Respondent

Judgement

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Tarun Agarwala, J.—This bunch of writ petitions is against the issuance of the citation for recovery of arrears of octroi and are being decided together. For facility, the facts of Writ Petition No. 1264 of 2008 are being taken into consideration. The petitioner is a Government of India undertaking and is controlled by the Ministry of Petroleum and Natural Gas and is engaged in the business of manufacture, sale and supply of Petroleum Products including Motor Spirit High Speed Diesel Oil and Kerosene.

2. The facts leading to the filing of the writ petition is, that the Municipal Board, Bareilly issued a notification dated 7.5.1963, under Section 135(2) read with Section 136 of the U.P. Municipalities Act, 1916 (hereinafter referred to as the Act of 1916), imposing Octroi on goods and animals being brought within the octroi limit of Bareilly Municipality.

3. However, various exemptions were given exempting certain items from levy of octroi duty. One such exemption related to mineral oil classified as motor spirit, diesel and kerosene brought within the octroi limit of Bareilly Municipality.

Consequently, mineral oils remained exempted from payment of octroi duty. However, by means of a notification dated 27.8.1969, the octroi schedule was amended and motor spirit, diesel and kerosene were included for levy of octroi duty. As a result of this notification, octroi duty became leviable on mineral oils w.e.f. 27th August, 1969.

4. Certain dealers of District Bareilly filed two writ petitions before this Court challenging the validity of levy of octroi duty on the mineral oils by means of notification dated 27.8.1969, in which the petitioner was impleaded as a respondent. A learned single Judge by a judgment dated 26.9.1972 allowed these writ petitions and quashed the notification dated 27.8.1969. The writ Court restrained the Municipal Board, Bareilly from realizing the octroi duty on mineral oils classified as motor spirit, diesel and kerosene. The learned single Judge further issued a direction that any amount so deposited as octroi duty during the pendency of the writ petition shall be refunded by the Municipal Board to the petitioner

5. Against the judgment of the learned single Judge, the Municipal Board filed a Special Leave Petition, which was dismissed by a Division Bench and, being aggrieved, filed a Special Leave Petition before the Supreme Court, which was entertained. The Supreme Court of India, by judgment dated 4.12.1989, allowed the Civil Appeal of the Municipal Board holding that the Municipal Board, Bareilly had the authority to levy octroi on mineral oils and that the High Court was in error in quashing the notification and restraining the Municipal Board from collecting octroi duty. The said judgment is in *Municipal Board, Bareilly Vs. Bharat Oil Company and Others*, .

6. The petitioner allege that pursuant to the judgment of the learned single Judge, octroi duty was not being paid by them since the said notification was quashed and after the decision of the Supreme Court in 1989, no steps were taken by the Municipal Board to realize the octroi duty. The petitioner contends that, for the first time, it received a notice dated 4.1.2007 demanding octroi duty for the period dated 1.5.1969 to 2.5.1986 amounting to Rs. 6,63,24,542.70 including interest @ 12% per annum upto 31.8.2006. Upon receipt of the said notice, the petitioner pointed out that no octroi duty could be recovered from the petitioner as arrears of land revenue, inasmuch as, the petitioner was not liable to pay any octroi duty. The petitioner contended that inspite of submitting a reply, the respondents issued a recovery certificate/citation dated 5.6.2008 for recovery of Rs. 6,63,24,542.70. The petitioner, being aggrieved by the said citation, has filed the present writ petition for the quashing of the citation dated 5.6.2008 as well as for the quashing of the attachment order by which the bank account of the petitioner was attached. The petitioner has also prayed, that a writ of prohibition should be issued prohibiting the respondents from realizing any octroi duty for the period 1.5.1969 to 2.5.1986.

7. The respondents have filed a counter affidavit contending that at the relevant moment of time in 1969 there existed a Municipal Board, Bareilly, which was

upgraded to a Mahapalika and now it has become a Nagar Nigam and is governed by the U.P. Nagar Mahapalika Adhiniyam, 1959 (hereinafter referred to as the Act of 1959) and that all the rights and liabilities of the erstwhile Municipal Board has been taken over by the Corporation. The respondents contended that they are entitled to recover the arrears of octroi duty from the petitioner.

8. The respondents contended that at the relevant point of time, the Municipal Board was governed by the provisions of the Act of 1916, but since the Municipal Board has now been upgraded as a Nagar Nigam, it is now governed by the Act of 1959. The learned counsel for the respondents contended that under the Act "octroi" is a tax which can be imposed and recovered as arrears of land revenue. The respondents contended that pursuant to the notification of 1969, octroi duty was liable to be paid by the petitioner, which they did not pay, instead, they challenged the notification. The notification was ultimately upheld by the Supreme Court holding that the Municipal Board had the authority and the jurisdiction to levy octroi on mineral oils. Consequently, pursuant to the decision of the Supreme Court, notices were issued on 5.5.2000 demanding the petitioner to pay the octroi for the period 1.9.1969 to 2.5.1986. In spite of the receipt of the demand notice, the petitioner failed to pay the amount. The respondents contend that in this regard demand notices dated 21.10.2000, 21.12.2000, 9.11.2001, 27.7.2004, 27.8.2004 and 13.10.2006 were sent directing the petitioners to pay the arrears alongwith interest and eventually, when all efforts failed in recovering the amount, necessary steps were taken to recover the same as arrears of land revenue. The respondents further contended that octroi duty was liable to be paid from 1.9.1969 to 2.5.1986 for the reason that the State Government abolished octroi duty w.e.f. 2.5.1986.

9. Sri Bharat Ji Agarwal, the learned Senior Counsel contended that there is no provision under the U.P. Municipalities Act, 1916 to recover octroi as arrears of land revenue and, consequently, the impugned citation was liable to be quashed on this ground itself. The learned Senior Counsel contended that under Section 173-A, a tax other than octroi could be recovered as arrears of land revenue.

10. In response to the said submission, the learned counsel for the respondent Sri Anil Tiwari submitted that recovery is being sought under the provisions of Section 503 of the Act of 1959 and that the provisions of the Act of 1916 are not applicable.

11. The learned counsel submitted that even though Section 503 does not provide recovery of the amount as arrears of land revenue, nonetheless, in view of the decision of the Division Bench in Smt. Nirmala Devi and others v. State of U.P. and others in Writ Petition No. 1068 of 2008 decided on 3rd December, 2009 recovery can be made against a defaulter as arrears of land revenue.

12. In order to appreciate the submission of the learned counsel for the parties, it would be necessary to peruse few provisions of the Act of 1916.

Section 128(viii) of the Act of 1916 provides as under:

"128. Taxes may be imposed--(1) Subject to any general rules or special orders of the State Government, in this behalf, the taxes which a board may impose in the whole or any part of a Municipality are -

(viii) an octroi on goods or animals brought within the municipality for consumption, use or sale therein."

A perusal of the aforesaid indicates that octroi is a tax, which could be imposed by the municipality.

Section 173-A of the Act of 1916 as it existed initially is extracted hereunder:

"173-A. Recovery of taxes as arrears of land revenue:

(1) Where any sum is due on account of a tax, other than octroi or toll or any similar tax payable upon immediate demand from a person to a board, the board may, without prejudice to any other mode of recovery, apply to the Collector to recover such sum together with costs of the proceedings, as if it were an arrears of a land revenue.

(2) The Collector on being satisfied that the sum is due shall proceed to recover it as an arrear of a land revenue."

13. A perusal of the aforesaid provision indicates that any tax imposed by the municipality other than octroi could be recovered as arrears of land revenue.

Section 173A of the Act of 1916 was amended by U.P. Act No. 9 of 1991. The words "other than octroi" was substituted by the word "any tax". As a result of the amendment made by U.P. Act No. 9 of 1991, Section 173-A now reads as under:

"173-A. Recovery of taxes as arrears of land revenue.--(1) Where any sum is due on account of a tax, other than any tax payable upon immediate demand, from a person to a Municipality, the Municipality may without prejudice to any other mode of recovery apply to the Collector to recover such sum together with costs of the proceedings as if it were an arrear of a land revenue.

(2) The Collector on being satisfied that the sum is due shall proceed to recover it as an arrear of land revenue.

By U.P. Act No. 9 of 1991, sub-clause (viii) of Section 128 was also deleted. It was contended that in view of the deletion of octroi under Section 128 octroi was no longer a tax and, therefore, Section 173-A cannot be invoke. Such submission is incorrect.

14. Undisputedly, octroi was a tax under Section 128 till it was deleted by U.P. Act No. 9 of 1991. The reason for deletion of octroi from Section 128 was on account of the fact octroi was abolished in the year 1986 and, therefore, there was no occasion for octroi to remain in the statute. By deletion of octroi as a tax under Section 128 does not mean that octroi is not a tax. In our opinion, octroi still remains a tax and by reason of the amendment made under Section 173-A,

by U.P. Act No. 9 of 1991, arrears of octroi could now be recovered as arrears of land revenue under Section 173-A of the Act. The reason is not far to see. Section 173-A is only the procedural aspect for recovery of any sum due on account of tax payable upon a demand from a person to the Municipal Board. Upon failure to pay the demand the same would be recovered as arrears of land revenue.

15. The contention of the respondents that the Act of 1916 is not applicable and that the Act of 1959 would be applicable in the instant case is not correct. In this regard, Section 577 of the Act of 1959 comes into play. For facility, Section 577(a) of the Act of 1959 is extracted hereunder:

"577. Continuing of appointments, taxes, budget estimates, assessments, etc.-- Save as expressly provided by the provisions of this Chapter or by a notification issued under Section 579 -

(a) any appointment, delegation, notification, notice, tax, order, direction scheme, licence, permission, registration rule, bye-law, regulation, form made, issued, imposed or granted under the U.P. Municipalities Act, 1916, or the Cawnpore Urban Area Development Act, 1945, or the U.P. Town Improvement Act, 1919, or any other law in force in any local area constituted to be a City immediately before the appointed day shall, in so far as it is not inconsistent with the provision of this Act, continue in force until it is superseded by any appointment, delegation, notification notice, tax, order, direction scheme, licence, permission, rule, bye-law, or form made, issued, imposed or granted under this Act or any other law as aforesaid, as the case may be.

A perusal of the aforesaid provision clearly indicates that any tax, etc imposed under the U.P. Municipalities Act, 1959 shall in so far as it is not inconsistent with the provisions of the Adhiniyam continue in force until it is superseded by any notification etc. imposed under the Adhiniyam of 1959.

16. In the light of the aforesaid provision, the procedure under the Adhiniyam of 1959 is not required to be followed. The octroi was not levied under the Adhiniyam of 1959, it was levied earlier under the provisions of the Act of 1916. The said demand continues under Section 577 when Bareilly city came under the Adhiniyam of 1959. Similar view was given by the Supreme Court in Fertilizer Corporation of India Ltd., Gorakhpur Vs. Nagar Mahapalika, Gorakhpur, .

17. Consequently, we are of the opinion that the power to levy octroi under the Act of 1916 was not taken away merely because the Municipal Board has now become a Nagar Nigam, which is covered under the Act of 1959. In our view, octroi which was levied under the U.P. Municipalities Act, 1916 can be recovered under Section 173-A of the same Act as arrears of land of revenue.

18. It was also urged by the learned Senior counsel for the petitioner that no interest is payable since there is no provision under the Act to 1916 to pay interest on account of non-payment of octroi. It was also contended that equity

does not justify payment of interest merely by reason that octroi has now become payable by reason of a subsequent decision of a Court. In support of this submission, the learned counsel for the petitioner has relied upon a decision of the Supreme Court in *Shree Cement Ltd. and another v. State of Rajasthan and others*, 2000 (119) STC 10.

19. The learned counsel for the petitioner contended that assuming without admitting that interest was payable, interest can only be charged from the date of demand and not from 1969 onwards. In support of his submission, the learned counsel placed reliance upon a decision of the Supreme Court in *Food Corporation of India v. State of Haryana and another*, 2000 (119) STC 1.

20. The learned counsel further submitted that, in any case, interest cannot exceed the principal amount, which in the instant case exceeded the principal amount. In support of his submission, the learned counsel placed reliance upon a decision of a Division Bench of this Court in *M/s. Shiv Nath Singh Yadava v. Assistant Collector (Grade-I)/Sub Divisional Magistrate, Bharthana and others*, 2010 NTN (44) 359.

21. On the other hand, the learned counsel for the Nagar Nigam submitted that once the amount is due and payable, the party responsible for withholding the same must pay interest at the rate considered reasonable by the Court. In support of his submission, the learned counsel placed reliance upon a decision of the Supreme Court in *Union of India Vs. Justice S.S. Sandhawalia (Retd.) and others*, wherein the Supreme Court held that once the amount was legally due to a party and was not paid, the party responsible for withholding the same was required to pay interest, which the Court considered it fit to pay at the rate of 12% per annum. The learned counsel also placed reliance upon a decision of the Supreme Court in *Clariant International Ltd. and Another Vs. Securities and Exchange Board of India*. The learned counsel also placed reliance upon Section 34 of the Code of Civil Procedure where the power was given to the Court to direct payment of interest as it deemed reasonable to be paid on the principal amount.

22. In this regard, the Court finds that octroi became payable pursuant to the notification dated 27th August, 1969. The notification was quashed by the High Court by judgment dated 26th September, 1972 and the Court directed the Municipal Board to refund the amount. This decision was set aside by the Supreme Court on 4th December, 1989. Thus till 4th December, 1989, the Municipal Board could not make a demand for realization of octroi because of the law declared by the High Court. The law declared by the Supreme Court subsequently eclipsed or rather reversed the decision of the High Court, on the basis of which, the Municipal Board, which by then had become a Nagar Nigam became empowered to realize the octroi. In 1989, octroi was not legally leviable as it was abolished in 1986. The Nagar Nigam, therefore, could recover the arrears of octroi from the petitioner's only by raising a fresh and valid demand pursuant to the judgment of the Supreme Court. Even though, the judgment was

delivered by the Supreme Court in 1989, the Nagar Nigam did not stir in the matter and only demanded it when they issued a demand notice on 5th May, 2000 as is clear from paragraph 20 of their counter affidavit. From this demand notice, the respondents claimed the octroi as under:

"Bharat Petroleum - Rs. 20,02,050/-

Indian Oil - Rs. 41,03,447/-

Hindustan Petroleum - Rs. 23,28,140/-"

23. The Court further finds that subsequent demand notice added interest at the rate of 6% then 9% and eventually the citation includes the principal amount plus interest calculated at the rate of 12% per annum. The Court finds that the respondents themselves were not sure as to what would be the correct rate of interest. However, interest has been charged from 1969 onwards.

24. Having considered the rival submission of the learned counsel for the parties, the Court finds that there is no dispute as to the actual amount of octroi that is required to be paid by the petitioners as per the demand notice dated 5th May, 2000 issued by the respondents. The law declared by the Supreme Court makes it imperative for the respondents to pay the arrears of octroi, which they have denied paying to the Municipal Board now Nagar Nigam from 1969 onwards. The petitioners cannot contend at this stage that they are not liable to pay the demand raised by the Nagar Nigam vide notice dated 5th May, 2000. Once, such a fresh demand, which is valid, has been issued pursuant to the judgment of the Supreme Court, the petitioners were required to pay the amount, failing which interest becomes payable.

25. Interest can be awarded in terms of an agreement or a statutory provision. Interest can also be awarded by reason of usage or trade having force of law or on equitable consideration. In the absence of any agreement or statutory provision, interest can be paid on the totality of the circumstances justifying exercise of equitable jurisdiction as held by the Supreme Court in *The Municipal Corporation of Delhi Vs. Smt. Sushila Devi and Others*, . In *Executive Engineer, Dhenkanal Minor Irrigation Division, Orissa, Vs. N.C. Budharaj (Dead) by Lrs. etc.* etc., , the Supreme Court held that a person deprived of the use of money to which he is legitimately entitled has a right to be compensated in deprivation by whatever name it may be called, namely, interest, compensation or damages. Same view was again reiterated by the Supreme Court in *Clariant International* (supra).

26. We are accordingly of the opinion that when a fresh demand notice dated 5th May, 2000 was issued the petitioners were required to pay and upon failure to pay were liable to pay interest from that date onwards but not from 1969.

27. The respondents have charged interest at the rate of 6%, which was increased to 9% and thereafter by the impugned recovery certificate/citation, interest has been charged at the rate of 12% per annum. Considering the fact

that the petitioner is a Government of India undertaking and had raised a valid issue before the Court challenging the levy of octroi on mineral oils and considering the overall circumstances, we are of the opinion that it would be reasonable for the petitioners to pay simple interest at the rate of 9% per annum from 5th May, 2000 onwards.

28. There is another aspect in matter. Recovery provisions under the Act of 1916 or under the Act of 1959 are meant for speedy and prompt collection of revenue. These provision are not meant for the benefit of defaulting tax payers nor can such defaulters claim that the amount of interest is not payable by them on delayed tax payment. The petitioners are in an equitable jurisdiction and the Court is of the opinion that equity is not in favour of them. We accordingly, allow the writ petition in part and quash the impugned citation subject to the direction that the petitioners would pay the principal amount of octroi as demanded by the respondents vide their demand notice dated 5th May, 2000 alongwith interest calculated at the rate of 9% per annum w.e.f. 5th May, 2000. The said payment would be made by the petitioners within a period of six weeks from today failing which it would recovered as arrears of land revenue.

In the circumstances of the case, parties shall bear their own cost.