

(1975) 02 SC CK 0043

In the Supreme Court Of India

Case No : Civil Appeal No. 1823 Of 1969

Hiralal Thakorlal Dalal

APPELLANT

Vs

Broach Municipality and Others

RESPONDENT

Date of Decision : 05-02-1975

Acts Referred:

Citation : (1975) 3 SCC 876

Hon'ble Judges : V. R. Krishna Iyer, J;K. K. Mathew, J;A. C. Gupta, J

Bench : Full Bench

Judgement

V.R.KRISHNA IYER, J.-The construction of three words in common use consumption, use or sale which find a place in Entry 52 of the State list in the Seventh Schedule to the Constitution falls for decision in this appeal, informed by the history of octroi in India, controlled by the expressions in the constitutional provision and illumined by the *Burmah Shell* case

2. The appellant carries on a wholesale business in certain commodities and acts as commission agent for others, both for purchase and sale. His business is carried on within the municipal limits of Broach. His grievance, ventilated in a writ petition before the High court, was that he was buying commodities on behalf of other principals bringing them into the municipal area and selling them from there to other principals in Mangalore and that such sales are not assessable to tax under the Bombay Municipal Boroughs Act (18 of 1925) in view of the connotation of the expressions used in Entry 52 of the State list in the Seventh Schedule aforesaid. The entry itself overshadows the legislative provision in the Municipal Act concerned and leads as under: Taxes on the entry of goods into a local area for consumption, use or sale therein. The ruling relied upon by the petitioner, namely the *Burmah Shell* case (*supra*) was considered at length by the "High court but it held that the ratio of that case operated to exempt the petitioners from tax. Nevertheless, in the concluding portion of the judgment, it was directed that the municipal authorities would receive applications for refund and consider them on their merits in the light of the

Judgment of the High court. The upshot of the decision of the High court appears to be that, on the admitted facts, the trader is liable to pay tax. Therefore, he has come up with an appeal to this court challenging the finding on the simple question of law stated above.

3. The short point is whether a person who brings goods into a taxable territory and sells it there for being taken outside the territory for consumption or use is liable to pay octroi. We have been taken, by Counsel on both sides, through the judgment of this court and while we are inclined to the view that the thrust of the judgment is in favour of limiting taxability to such sales within the territory as are intended to be consumed or used in part or in whole within the territory there are observations which strike a different note. A plain reading of the words used impose no qualification of the expression "sale therein" but the judicial construction based on the history of octroi has also been an input in the interpretative exercise in *Burmah Shell*. Be that as it may, we feel that there are blurred areas of sale within the territory which may attract a tax under Entry 52 left uncertain by the decision of this court. We, therefore, regard this case as requiring further clarification particularly because the point is of some substance and affects municipal finances and the business community in the whole country.

4. We, therefore, regard this matter as deserving consideration by a larger bench and place it before the chief justice for his consideration in this behalf.