

(2022) 12 BOM CK 0097
In the Bombay High Court
Case No : Writ Petition No. 1573 Of 2019

Hyprecision Hydraulik

APPELLANT

Vs

State Of Maharashtra And Others

RESPONDENT

Date of Decision : 21-12-2022

Acts Referred:

Constitution Of India, 1950 — Article 226

Mumbai Municipal Corporation Act, 1888 — Section 139, 192, 194(1), 194(2)

Citation : (2022) 12 BOM CK 0097

Hon'ble Judges : S. V. Gangapurwala, J; Arif S. Doctor, J

Bench : Division Bench

Advocate : Bharat Raichandani, Rishabh Jain, Anoop Patil, Pooja Yadav, Sunil Sonawane, Amit Shastri, Himanshu Takke

Final Decision : Allowed

Judgement

Arif S. Doctor, J

1. The present Writ Petition impugns a letter dated 16th December, 2017 issued by Respondent No.3 i.e. the Deputy Assessor & Collector Octroi, by which the Petitioner's claim for refund of octroi came to be rejected.

Facts Briefly Stated

2. On 15th July, 2015 the Petitioner entered into a Contract/Agreement with the Weapons Department (Indian Navy) which was essentially in the nature of a repair, refit and service contract. Pursuant to the said contract, a Work Order Bearing No. DYT/INCOD/12-13/204(d)PL-WEA/FACT 81-TYPHOON//455 (the said work order) was issued to the Petitioner by the Indian Navy. The said work order inter alia specified the details of the spare parts that were to be imported and supplied by the Petitioner to the Indian Navy.

3. On 17th March, 2016, an octroi exemption certificate was issued by the Ministry of Defence to Respondent No.3. The said certificate made reference to the said work order and certified that the items listed therein would be exempted

from payment of octroi duty. The said certificate further stated that the items which were being imported were being transported to the Naval Dockyard, Mumbai.

4. It is the Petitioner's case that on 28th March 2016 the Petitioner filed a declaration of the same date with Respondent No. 3 under Rule 194 (2) of the MMC Act. By the said declaration the Petitioner called upon Respondent No.3 to register the Petitioner's letter under Section 194 (2) of the MMC Act and also informed Respondent No.3 that the Petitioner would in due course be submitting its claim for refund of octroi duly supported with the octroi exemption certificate from Naval Dockyard Mumbai. On 30th March, 2016, Petitioner cleared the said goods and made payment of octroi duty thereon in an amount of Rs.16,71,401/- (Rupees Sixteen Lakhs Seventy One Thousand Four Hundred One) vide demand draft No.387622. Petitioner had filed Bill of Entry No. 4720347 dated 28th March, 2016 and Form-B dated 30th March, 2016 with Air Cargo Complex, Sahar, Andheri East, Mumbai.

5. On 22nd April, 2016, the Weapons Department issued a "Goods Receiving Certificate" which made specific reference to the said work order and certified that the said goods as per the said work order had become the property of the Government. The said Certificate also enclosed the particulars of the said goods.

6. It was in the backdrop of these facts that the Petitioner on 28th April, 2016 filed its claim for refund of octroi paid under Section 194(2) of the MMC Act with Respondent No.3 and enclosed the following documents in support of its claim, viz.

"1) Purchase order No.DYT/INCOD/12-13/204(D)PL-WEA/FACT 81-TYPHOON/455 dated 15.07.2015.

2) Octroi paid (Form-B) No.0496275 dated 30.03.2016.

3) Import invoice No.326014755 dated 15.02.2016.

4) Delivery Challan No.012 dated 13.04.2016.

5) Octroi Exemption Certificate from Naval Dockyard Mumbai.

6) Goods Receiving Certificate.

7) Our bank details are as under

Bank: Bank of India

BR: Chakala

A/C: 006730100050114

MICR No.: 400013012"

7. By a letter dated 16th December 2016, Respondent No.3 called upon Petitioner to submit the following;

- i. Original registration certificate book for verification, and
- ii. Original declaration duly certified by the Octroi Inspector.

Petitioner, by its letter dated 1st March, 2017, addressed to Respondent No.3 informed Respondent No.3 that the Custom House Agent (CHA) engaged by the Petitioner to clear the said consignment had erroneously not mentioned Section 194(2) of the MMC Act when filing in the details of Form-B and therefore the Petitioner was unable to process the said declaration. Petitioner pointed out that this had also resulted in Petitioner's claim for octroi being rejected. Petitioner explained that they had since met several officers in the Octroi Department and tried to explain that this failure to mention Section 194(2) on Form-B was purely on account of human error. That the Petitioner had also re-sent the challan copies duly certified by the Indian Navy confirming along with good receiving certificate that the items have been supplied to Naval dockyard, Mumbai only. However, since there was no response from the Respondents, Petitioner made further representations to the Respondents seeking a refund of octroi paid. Petitioner had vide a letter dated 1st March, 2017 addressed to Respondent No. 4 and a letter dated 20th March, 2017 to addressed Respondent No. 3 requested for a refund of octroi paid.

8. However, Respondent No. 3 by its letter dated 16th December, 2017 (the impugned communication) informed the Petitioner that its claim for refund of octroi had been rejected and no further correspondence would be entertained with regard to this matter in the future. By the said letter, Respondent No. 3 called upon the Petitioner to collect the original documents failing which the documents would be filed and case would be treated as closed.

9. Thereafter, the Petitioner once again made several representations to Respondent Nos. 2 and 3 and also personally visited the office of Respondent Nos.2 and 3. Vide a letter dated 9th February, 2018, the standing committee of the Mumbai Municipal Corporation set out the grievance of the Petitioner and directed the concerned officers of Respondent No. 3 to issue necessary orders for refund paid by Petitioner as octroi. However, even despite this, there was no response from either Respondent No. 2 and/or 3.

10. Petitioner thus filed an Appeal before Respondent No. 2 vide its letter dated 18th March, 2019 and once again submitted all the relevant documents and requested for a refund of octroi. However, no action was taken or communication received on the said Appeal. It was thus that Petitioner filed the present Petition.

Submissions of Mr. Raichandani on behalf of the Petitioner.

11. Mr. Raichandani, learned counsel appearing on behalf of the Petitioner submitted that rejection of Petitioner's claim for octroi was manifestly unjust and with complete non application of mind on the part of the Respondents. He submitted that Petitioners were squarely eligible for a refund of octroi under Section 194(2) of the MMC Act, as the Petitioner had fully complied with the

provisions thereof. He invited our attention to Section 194 (2) of the MMC Act which reads as thus viz,

"If any article on which octroi is paid is imported under a written declaration signed by the importer that such article is being imported for the purpose of fulfilling a specified contract with the Government or otherwise for the use of the Government, the full amount of the duty paid thereon shall be refunded on production, at any time within six months after importation, of a certificate signed by an officer empowered by the Government concerned in this behalf certifying that the articles so imported has become the property of Government, is used or intended to be used solely for a public purpose and is not used or intended to be used for purposes of profit."

He pointed out from a plain reading of the said Section that in order to be eligible for a refund of octroi under Section 194(2) of the MMC Act the following two criteria were required to be fulfilled viz.,

- i. A written declaration signed by the importer that such article was being imported for the purpose of fulfilling a specified contract with the Government or otherwise for the use of the Government; and
- ii. A certificate signed by an officer empowered by the Government in this behalf certifying that the article so imported had become the property of the Government.

Mr. Raichandani submitted that in the present case, both the said criteria had squarely been complied with . Insofar as the first requirement namely a written declaration signed by the importer, he invited our attention to the octroi exemption certificate dated 17th March, 2016 issued by the Government of India, Ministry of Defence in favour of Respondent No.3. Insofar as the second requirement namely a certificate signed by an officer empowered by the Government, in this regard he placed reliance upon the Goods Receiving Certificate dated 22nd April, 2016, issued by the Weapons Department. He thus submitted that the requirements and/or conditions for being entitled and eligible for a refund of octroi under Section 194 (2) of the MMC Act had fully been complied with and that the Petitioner was thus entitled and eligible for a refund of octroi paid in terms of Section 194(2) of the MMC Act.

12. Mr. Raichandani submitted that the only reason for rejecting and/or disallowing the Petitioner's claim for refund of octroi was that the Petitioner had failed to produce the original declaration duly certified by the Octroi Inspector. He submitted that even assuming this to be correct the same would not by itself deprive the Petitioner for a refund of octroi since the Petitioner had fulfilled the requirements of Section 194(2) of the MMC Act and was thus eligible for a refund of octroi. He submitted that it was incumbent upon the Respondents to apply their mind and ascertain whether the Petitioner had complied with the substantive provisions of Section 194(2) of the MMC Act, and not merely reject the Petitioner's claim for refund on the ground that the requisite procedure had

not been followed. He submitted that the conduct of Respondent No.3 belied a total non application of mind which resulted in manifest injustice to the Petitioner. He submitted that it was a settled legal position that the doctrine of substantial compliance was a judicial invention based on equity and designed to avoid hardship in cases where a party has done all that it was reasonably expected to do but had failed to comply with some procedural aspect. He submitted that it was in these cases that the Court was required to determine whether statute had been followed sufficiently so as to carry out the intent of the statute and accomplish the reasonable objective thereof.

13. He submitted that a choice between a strict and a liberal construction would arise only in the case of doubt. He submitted that, if the words of the statute are plain and clear and leave no manner of doubt then there is no need for any interpretation. It is well settled that the stringency and mandatory nature of an exemption provision must be justified by the purpose intended to be served. He submitted that law on exemption provision was very clear and that once it was established that a person/entity claiming an exemption establishes that such person/entity was eligible to claim the benefit of such exemption, then the entitlement to such benefit ought not to be rejected and/or denied on the ground of technicalities and/or procedural lapses. In support of his contention, he placed reliance upon a judgment of the Hon'ble Supreme in the case of Mangalore Chemicals & Fertilizers Ltd. Vs. Deputy Commissioner 1991 (55) E.L.T. 437 (S.C.) with particular reference to paragraph Nos.11 and 12 which read thus viz.,

11. We have given our careful consideration to these submissions. We are afraid the stand of the Revenue suffers from certain basic fallacies, besides being wholly technical. In Kedarnath's case, the question for consideration was whether the requirement of the declaration under the proviso to Sec. 5(2)(a)(ii) of the Bengal Finance (Sales-tax) Act, 1941, could be established by evidence aliunde. The Court said that the intention of the Legislature was to grant exemption only upon the satisfaction of the substantive condition of the provision and the condition in the proviso was held to be of substance embodying considerations of policy. Shri Narasimhamurthy would say the position in the present case was no different. He says that the notification of 11th August, 1975 was statutory in character and the condition as to 'prior permission' for adjustment stipulated therein must also be held to be statutory. Such a condition must, says counsel, be equated with the requirement of production of the declaration form in Kedarnath's case and thus understood the same consequences should ensue for the non-compliance. Shri Narasimhamurthy says that there was no way out of this situation and no adjustment was permissible, whatever be the other remedies of the appellant. There is a fallacy in the emphasis of this argument. The consequence which Shri Narasimhamurthy suggests should flow from the non-compliance would, indeed, be the result if the condition was a substantive one and one fundamental to the policy underlying the exemption. Its stringency and mandatory nature must be justified by the purpose intended to be served. The mere fact that it is statutory does not matter one way or the other. There are

conditions and conditions. Some may be substantive, mandatory and based on considerations of policy and some others may merely belong to the area of procedure. It will be erroneous to attach equal importance to the non-observance of all conditions irrespective of the purposes they were intended to serve.

In *Kedarnath's case* itself this Court pointed out that the stringency of the provisions and the mandatory character imparted to them were matters of important policy. The Court observed:

" The object of S. 5(2)(a)(ii) of the Act and the rules made thereunder is self-evident. While they are obviously intended to give exemption to a dealer in respect of sales to registered dealers of specified classes of goods, it seeks also to prevent fraud and collusion in an attempt to evade tax. In the nature of things, in view of innumerable transactions that may be entered into between dealers, it will wellnigh be impossible for the taxing authorities to ascertain in each case whether a dealer has sold the specified goods to another for the purposes mentioned in the section. Therefore, presumably to achieve the two fold object, namely, prevention of fraud and facilitating administrative efficiency, the exemption given is made subject to a condition that the person claiming the exemption shall furnish a declaration form in the manner prescribed under the section. The liberal construction suggested will facilitate the commission of fraud and introduce administrative inconveniences, both of which the provisions of the said clause seek to avoid."

[See: (1965) 3 SCR 626 at 630] (Emphasis Supplied)

Such is not the scope or intendment of the provisions concerned here. The main exemption is under the 1969 notification. The subsequent notification which contains condition of prior-permission clearly envisages a procedure to give effect to the exemption. A distinction between the provisions of statute which are of substantive character and were built-in with certain specific objectives of policy on the one hand and those which are merely procedural and technical in their nature on the other must be kept clearly distinguished. What we have here is a pure technicality. Clause 3 of the notification leaves no discretion to the Deputy Commissioner to refuse the permission if the conditions are satisfied. The words are that he "will grant". There is no dispute that appellant had satisfied these conditions. Yet the permission was withheld-not for any valid and substantial reason but owing to certain extraneous things concerning some inter-departmental issues. Appellant had nothing to do with those issues. Appellant is now told "we are sorry. We should have given you the permission. But now that the period is over, nothing can be done". The answer to this is in the words of Lord Denning: "Now I know that a public authority cannot be estopped from doing its public duty, but I do think it can be estopped from relying on a technicality and this is a technicality" [See *Wells v. Minister of Housing and Local Government*: 1967 (1) WLR 1000 at 1007].

Francis Bennion in his "Statutory Interpretation", 1984 edition, says at page 683:

"Unnecessary technicality: Modern Courts seek to cut down technicalities attendant upon a statutory procedure where these cannot be shown to be necessary to the fulfilment of the purposes of the legislation."

12. Shri Narasimhamurthy against relied on certain observations in Collector of Central Excise, Bombay-I & Anr. v. Mis. Parle Exports (P) Ltd., [1989 (1) SCC 345 = 1988 (38) E.L.T. 741 (S.C.)], in support of strict construction of a provision concerning exemptions. There is support of judicial opinion to the view that exemptions from taxation have a tendency to increase the burden on the other unexempted class of tax-payers and should be construed against the subject in case of ambiguity. It is an equally well-known principle that a person who claims an exemption has to establish his case. Indeed, in the very case of M/s. Parle Exports (P) Ltd. relied upon by Sri Narasimhamurthy, it was observed:

"While interpreting an exemption clause, liberal interpretation should be imparted to the language thereof, provided no violence is done to the language employed. It must, however, be borne in mind that absurd results of construction should be avoided."

The choice between a strict and a liberal construction arises only in case of doubt in regard to the intention of the Legislature manifest on the statutory language. Indeed, the need to resort to any interpretative process arises only where the meaning is not manifest on the plain words of the statute. If the words are plain and clear and directly convey the meaning, there is no need for any interpretation. It appears to us the true rule of construction of a provision as to exemption is the one stated by this Court in Union of India & Ors. v. M/s. Wood Papers Ltd. & Ors., [1991 JT (1) 151 at 155]:

" Truly, speaking liberal and strict construction of an exemption provision are to be invoked at different stages of interpreting it. When the question is whether a subject falls in the notification or in the exemption clause then it being in nature of exception is to be construed strictly and against the subject but once ambiguity or doubt about applicability is lifted and the subject falls in the notification then full play should be given to it and it calls for a wider and liberal construction "

(Emphasis supplied)

He submitted that from the enunciation of law laid down in the case of Mangalore Chemicals & Fertilizers Ltd. (supra), there would be no doubt that the Petitioner was eligible to the refund of octroi and was denied entitlement of the same on the venial and technical grounds. He submitted that such denial to a benefit to which a person/entity was otherwise eligible was totally unjust.

14. He then pointed out that the declaration dated 28th March, 2016 filed by the Petitioner constituted a valid and proper declaration. He pointed out that the same made specific reference to Section 194(2) of the MMC Act as also made specific reference to the said work order. The said declaration specifically stated

that the goods were being supplied to the Naval Dockyard, Mumbai. Thus the mere failure/omission to mention the Bill of Entry number thereon would not invalidate the said declaration or dis-entitle the Petitioner from the substantive benefit of Section 194(2) of the MMC Act.

15. Without prejudice, Mr. Raichandani submitted that, in any event Form-B was nothing but a declaration which a supplier was required to submit to the Octroi Inspector. He submitted that the mere absence of the specific mention of Section 194(2) of the MMC Act in the Form-B would not by itself render the same as being an invalid declaration. He pointed out that Form-B contained information of the octroi duty paid as well as description of the imported articles as also that the same made clear reference to the description of articles as also the amount of octroi duty paid. Mr. Raichandani submitted that even assuming Form-B did not qualify as being a valid and/or complete declaration that by itself would not dis-entitle Petitioner to the refund of octroi if Petitioner had substantially complied with the requirement of Section 194(2). He submitted that the declaration made in terms of Form-B was subject to verification and scrutiny by the Octroi Inspector. He submitted that a declaration made in Form-B when a party is entitled to refund of octroi would not by itself entitle a party to seek refund of octroi. He submitted that the Octroi Inspector was duty bound to apply his independent mind to ascertain the eligibility of a party seeking a refund of octroi. He submitted that merely because all the details could not and/or were omitted to be declared would not by itself lead to the conclusion that a party, who was otherwise eligible for a refund of octroi, would be deprived of the same. He thus submitted that the production of the said declaration was therefore a procedural requirement and mere failure to produce the same could not by itself be a ground to deny the Petitioner the benefit of refund, if the Petitioner was otherwise eligible for the same.

16. Mr. Raichandani then submitted that even the standing committee of Mumbai Municipal Corporation had seen the merit of the Petitioner's claim and had therefore requested Respondent No. 2 to consider Petitioner's claim for refund of octroi vide its letter dated 9th February, 2018.

Submissions of Mr. Patil behalf of Respondent Nos. 2 to 4

17. Mr. Patil, learned counsel appearing on behalf of the Respondents at the outset submitted that the present Petition ought to be dismissed in limine for the following two preliminary reasons/grounds, namely;

i. Alternative remedy: That the Petitioner had an alternate remedy which the Petitioner ought to have availed of; and

ii. Delay: That the goods/articles had been imported by the Petitioner on 30th March, 2016 and octroi had been abolished throughout India in July, 2017. Thus the Petition having been in the year 2021 was filed at a belated stage and thus deserved to be dismissed in limine without going into merits of Petitioner's claim.

18. On merits, Mr. Patil submitted that the Petitioner was not entitled to the refund of octroi as the Petitioner had failed and neglected to comply with the precondition required in Section 194(2) of the MMC Act, namely to furnish a copy of the declaration duly certified by the Octroi Inspector. He submitted that this was a mandatory precondition for the Petitioner to be eligible for a refund of octroi and thus failure to comply with the same would dis-entitle the Petitioner from claiming the benefit of the refund of octroi. He submitted that it is only when such a precondition was fulfilled that the Petitioner would be considered eligible for a refund of octroi.

19. He submitted that the declaration relied upon by the Petitioner was dated 28th March, 2016 while the date of import of articles took place on 30th March, 2016 which itself disproved the very contention of the Petitioner that the declaration had been submitted. Without prejudice to this contention, he submitted that the said declaration relied upon by Petitioner was merely a proforma of declaration which contained blanks and thus the same was bereft of the necessary details. He also submitted that the said declaration bore no proof of submission by way of any endorsement of the Octroi Inspector/Octroi Department at the octroi clearing center. He submitted that endorsement of the Octroi Inspector/octroi department was necessary for the same to be considered as a valid declaration. He submitted that the said declaration did not even have acknowledgment of the office of Respondent No.3 and therefore Petitioner had not complied with the essential condition which was production of a valid declaration as contemplated under Section 194(2) of the MMC Act and was thus dis-entitled to the claim for refund as sought for.

20. He then submitted that Petitioner, at the time of import on 30th March, 2016 had paid octroi under Section 192 of the MMC Act which is a tax on the entry of articles into Mumbai, for use, sale and consumption as was clearly evident from the receipt which showed collection of octroi. He submitted that where octroi payment had been made under Section 194 (2) of MMC Act, the receipt showing collection of octroi would have a categoric mention of the said fact as also a mention of the fact that the goods were being imported for supply to the Government. He submitted that this was also not mentioned in Form-B as relied upon by Petitioner. He submitted that Petitioner by its letter dated 1st March, 2017 had accepted that the form as filed was not in conformity with Section 194(2) of the MMC Act. He submitted that compliance of the conditions being mandatory rejection of Petitioner's claim was entirely justified. He submitted that, Petitioner, without complying with the mandatory conditions of Section 194(2) of the MMC Act, was not entitled to receive a refund of octroi.

21. He submitted that the Application for refund of octroi which was received by the Respondents on 2nd July, 2016 did not contain any documents which would provide proof of submission of the declaration under Section 194(2) or the declaration itself. He submitted that upon receipt of the said Application, the office of Respondent No. 3 through the Administrative Officer (Excess & Wrong

Recovery) with a view to verify the correctness of the claim for refund and to further verify if the Petitioner was in fact entitled to claim refund of octroi under Section 194(2) wrote to the Superintendent, Sahar Cargo (Import Section) and sought for entries of the register maintained at the Octroi Collection Centre at Sahar Cargo under Section 194(2) for verifying if on the date of import of the articles by the Petitioner i.e. 30th March, 2016 the Petitioner had in fact registered its claim or submitted its declaration as required under Section 194(2) with the concerned authorities. He submitted that upon such information being sought, a reply dated 27th July, 2016 was received from the Superintendent, Sahar Cargo confirming that no such entry in the name of the Petitioner was found in the official register maintained under Section 194(2).

22. He submitted that even otherwise as the application for refund filed by the Petitioner was incomplete as regards the documents to be submitted for consideration of the application for refund of octroi under Section 194(2). He submitted that, despite letters and reminders the Petitioner failed and neglected to submit the required information/ documents and hence Respondent No.3 was left with no other alternative but to reject the claim for refund vide its letter dated 16th December, 2017.

23. He submitted that despite the aforementioned letter being issued to the Petitioner intimating the rejection of its claim, the Petitioner approached the Chairman of the Standing Committee who in turn referred the said grievance of the Petitioner to the Additional Municipal Commissioner (Projects) requesting that the said be considered and appropriate orders be passed therein. He submitted that, based on the said letter, the issue raised by the Petitioner was placed before the Additional Municipal Commissioner (Projects) vide a report and an appropriate reply dated 25th April, 2018 was issued to the Chairman of the Standing Committee duly informing that the claim of the Petitioner cannot be considered for the reasons mentioned in the reply letter. He submitted that, for the aforementioned reasons the claim of the Petitioner for refund of the octroi under Section 194 (2) is not maintainable and the same had rightly been rightly rejected by the office of the Respondent. He reiterated that since Petitioner had not complied with the mandate of Section 194(2) i.e. furnishing a declaration duly certified by the Octroi Inspector, the Petitioner was not eligible for a refund of octroi.

24. Mr. Patil submitted that it was well settled that (a) exemption provisions must be strictly construed (b) that the requirements/conditions of the provisions for claiming an exemption must be strictly complied with and (c) that the onus of proving entitlement to the benefit of an exemption was on the party claiming the exemption. In support of his contention he placed reliance upon the following judgments viz.

i. *Krishi Upaj Mandi Samiti, New Mandi Yard, Alwar Vs. Commissioner of Central Excise & Service Tax, Alwar* (2022) 5 SCC 62.

- ii. State of Jharkhand and Ors. Vs. Ambay Cements and Anr. (2005) 1 SCC 368
- iii. Commissioner of Central Excise, Delhi Vs. Hari Chand Shri Gopal and Ors. (2011) 1 SCC 236.
- iv. State of Maharashtra Vs. Shri Vile Parle Kelvani Mandal and Ors.. (2022) 2 SCC 725.
- v. Essar Steel India Limited & Anr. Vs. State of Gujarat and Anr. (2017) 8 SCC 357.
- vi. ONGC Commission of India Vs. MCGM (2017) SCC Online Bom 9206.

Submissions of Mr. Raichandani in Rejoinder

25. Mr. Raichandani submitted that there was no merit in the preliminary objections raised by the Respondents. He pointed out that while Respondents had claimed that the Petitioner had an alternate remedy, the Respondents did not specify or set out what the alternate remedy available to the Petitioner was. Insofar as the contention of delay, he pointed out that there had in fact been no delay as the Petitioner had been diligently following up and making representations to the Respondents seeking justice and that since Respondents had failed and neglected to act upon the said representations, the Petitioner had filed the present Writ Petition within a reasonable time.

26. Insofar as Respondent No.3's contention that tax was paid under Section 192 and not 194(2) of the MMC Act. He submitted that Section 192 of the MMC Act relates to rate of tax to be levied and the tax would be payable at the rates specified in Section 192. He pointed out that it was Section 194(2) of the MMC Act which provided for refund. Therefore, Petitioner could not have made payment of tax under Section 194(2) of the MMC Act as submitted by Respondent No.2. He submitted that this argument was one of desperation and was totally bogus and without application of mind.

27. On merit, Mr. Raichandani submitted that insofar as compliance with Section 194(2) of the MMC Act was concerned, Petitioner had fully complied with the same as was evidenced by viz.,

- i. The contract dated 15th July, 2015 entered into between the Hon'ble President of India and the Petitioner.
- ii. The octroi exemption certificate dated 17th March, 2016 issued by the Indian Navy.
- iii. The goods receiving certificate dated 22nd April, 2016 issued by the Weapons Department of the Indian Navy.

He thus submitted that there had been full compliance with the requirement of Section 194(2) of the MMC Act and thus the Petitioner's eligibility for a refund of octroi had clearly been established. Mr. Raichandani submitted that the requirement of producing an octroi exemption certificate was not a criteria which

determined the Petitioner's eligibility for refund of octroi under Section 194(2) of the MMC Act but was one of procedure which would entitle Petitioner to claim the benefit of refund of octroi. He thus submitted that this requirement of producing an octroi exemption certificate was therefore in the realm of procedure for making the claim of octroi and nothing more. He thus submitted that denial of the refund of octroi on this ground alone was therefore manifestly unjust, arbitrary and perverse. He submitted that the authority, namely, Respondent No.3 was required to apply its mind and ascertain whether the Petitioner had in fact fulfilled the eligibility criteria for refund of octroi under Section 194(2) of the MMC Act, and if so, then Respondent No.3 ought to have granted such refund of octroi.

Reasons and Conclusions

28. We have heard the learned counsel appearing for the parties and have perused the pleadings and considered the relevant case law cited. Before however dealing with the merits of the case, we shall first deal with the two preliminary grounds on which the Respondents have sought dismissal of the present Writ Petition, namely, (i) the alternate remedy and (ii) delay. We have considered both these preliminary grounds and find that there is no merit in either of them. We find that while the Respondent has alleged the availability of an alternate remedy, we find that no specific provision and/or details of the same have been stated. In any event we find in the facts of the present case, that the Petitioner is justified in approaching this Court under Article 226 of the Constitution of India. In so far as delay is concerned, we find that there has in fact been no delay so as to deny the Petitioner relief if the Petitioner is otherwise entitled to the same. It is well settled law that there is no rule of law, which says Courts under Article 226 of the Constitution cannot enquire into claims despite the passage of time. The test is to see whether the illegality complained of is manifest and whether the same can be sustained solely on the ground of laches. The test is not the physical running of time but the fact that justifiable reasons exist for warranting a Courts action in cases where injustice has been done or justice has been denied. All that the Court has to see is whether the delay and laches on the part of the Petitioner is such as to disentitle a Petitioner of the relief claimed. It is now well settled that where a case has been made out to merit interference under Article 226 relief would not be denied solely on the ground of delay. Thus, both the preliminary grounds of objection are rejected as entirely baseless and without any merit.

29. Now coming to the issue on merits, we find that what we really have to consider in the facts of the present case is viz.,

- i. Whether the Petitioner was eligible for a refund under Section 194(2) of the MMC Act, and
- ii. Whether failure to provide a declaration duly certified by the Octroi Inspector would render the Petitioner ineligible for a refund of octroi under Section 194(2)

of the MMC Act.

We have examined the provisions of Section 194(2) of the MMC Act and find that a plain reading of the same makes clear that the purport of Section 194(2) of the MMC Act is to exempt from octroi those articles which are imported for the purpose of fulfilling a specified contract with the Government or otherwise for the use of the Government. Section 194 (2) does not provide for an exemption of octroi at the threshold i.e. at the time of import but entitles a person/entity to claim a refund of octroi provided that such person/entity is eligible. The eligibility criteria provided for in Section 194(2) of the MMC Act is twofold viz.

- i. A written declaration signed by the importer that such article was being imported for the purpose of fulfilling a specified contract with the Government or otherwise for the use of the Government; and
- ii. A certificate signed by an officer empowered by the Government in this behalf certifying that the article so imported had become the property of the Government.

Thus, we find that the above two criteria are the only two substantive requirements to determine the eligibility for a refund of octroi paid on articles imported for the purpose of fulfilling a specified contract with the Government or otherwise for the use of the Government. We find Petitioner has squarely complied with both the said eligibility criteria as is evident from the following documents, viz.

- i. The contract dated 15th July, 2015 entered into between the Hon'ble President of India and the Petitioner.
- ii. The octroi exemption certificate dated 17th March, 2016 issued by the Indian Navy.
- iii. The goods receiving certificate dated 22nd April, 2016 issued by the Weapons Department of the Indian Navy. Most pertinently, we find that the Respondents in their Reply are totally silent on this aspect. The only contention raised by the Respondents to hold Petitioner ineligible is failure to furnish a declaration duly certified by the Octroi Inspector. We find that Section 194(2) of the MMC act does not mandate the production of a declaration duly certified by the Octroi Inspector as a criteria to determine the eligibility for refund of octroi under Section 194 (2) of the MMC Act. This requirement (if any) of the production of such declaration duly certified by the Octroi Inspector is therefore merely a procedural requirement to enable an eligible party to claim entitlement to the benefit of such refund of octroi under Section 194(2) of the MMC Act. We say "if any" because nothing was shown to us by the Respondents either from the provisions of the MMC Act or the relevant octroi rules which mandated the requirement of declaration duly certified by the Octroi Inspector. In any event we find that even assuming that the MMC Act or the octroi rules provide/mandate for such declaration duly certified by the Octroi Inspector we find that the failure to

provide such declaration would not by itself render the Petitioner ineligible for a refund of octroi. Once the Petitioner has established its eligibility by complying with the provisions of section 194 (2) of the MMC Act the Octroi Inspector would be duty-bound in law to issue/certify such declaration to the Petitioner. In the present case, the Petitioner has explained that the only reason why section 194 (2) was not mentioned on was on account of inadvertence on the part of Petitioner's CHA in omitting to mention the same. We find that the Petitioner has explained and in fact made repeated representations to the Respondents explaining that this was the reason as to why there was no mention of Section 194(2) on Form-B filed with the customs authorities. We find that the Respondents were duty-bound in law to apply their mind to the representations and demands for justice made by the Petitioner and ascertain the Petitioner's eligibility to claim refund under section 194(2) of the MMC Act. We find that the Respondents have failed and neglected to do so and thereby have caused grave prejudice and injustice to the Petitioner.

30. We have considered the various judgments cited by learned counsel for the Respondents and find that all of them deal with the interpretation of exemption provisions/notifications. The said judgments inter alia hold that exemption provisions/notifications must be strictly construed and that the person/entity claiming exemption must strictly comply with the provisions of the relevant exemption provision/notification. The said judgments reiterate that exemption notifications especially in taxing/fiscal statutes must be construed strictly and not liberally and that there must be strict compliance with the provisions of the exemption statutes/notifications so as to grant the benefit/exemption contemplated therein to a person/entity claiming the benefit of such exemption. We are in complete agreement with the proposition laid down in the judgments relied upon by the Respondents. However, the same is of no assistance to the Respondents in the facts of the present case and in view of our finding above that in the facts of the present case, the Petitioner has complied with the substantive provision of section 194 (2) of the MMC act and that the submission of the duly certified octroi exemption form was not a substantive requirement of section 194 (2) of the MMC Act but was one of procedure so as to entitle the Petitioner to claim the benefit of refund of octroi to which the Petitioner was eligible having complied with the substantive requirements of Section 194 (2) of the MMC Act. We find that even the judgment of this Hon'ble Court in the case of Oil and Natural Gas Commission of India Vs. Municipal Corporation of Greater Bombay & Ors. 2017 SCC OnLine Bom 9206 upon which heavy reliance was placed since the same dealt with Section 194 of the MMC Act is of no assistance to the Respondents as the facts in the said case are entirely different from the facts in the present case. In the case of ONGC the issue involved pertained to the powers of the Municipal Corporation of Greater Bombay to levy octroi on natural gas that was being imported by the Petitioner in that case (ONGC) within the Municipal limits of the Municipal Corporation of Greater Bombay. In the facts of that case Section 139 of the MMC Act specifically conferred powers upon the

Municipal Corporation to impose four different types of taxes including octroi in terms of Entry 22(a) of Schedule-H. Entry 22(a) of Schedule-H reads as under:

"22(a) Mineral Oils of all sorts, diesel oil, petrol, aviation spirit, all kinds of lubricating oils, white oil, spindle oil, furnace oil, petroleum products, mava oil, sevasol, solvent oil, other fuel oils, oils used as insecticides, natural gasoline, paint solutions and compositions, Turkey Red Oil, and by-products of mineral oils, but nothing herein before contained shall include kerosene and Crude Oil 1 percent ad-valorem."

It was in this context that the Municipal Corporation of Greater Bombay had demanded octroi on natural gas imported by the Petitioner in that case (ONGC) on the ground that natural gas was similar to liquefied petroleum gas and was therefore chargeable under Class-IV Entry 22(a). Therefore the finding in paragraph 28 of the said judgment which reads thus:

"28. If exemption is to be claimed, the same is required to be claimed under sub-section (1) of Section 194 by producing a certificate of an officer empowered by the Government concerned in this behalf stating that the article at the time of importation is a property of the Government. Such certificate has to be produced at the time of importation of the goods. This procedure is admittedly not followed in this case. Hence, the petitioner is disentitled to claim exemption."

Therefore even the said judgment of ONGC is of absolutely no avail to the Respondents as the same was delivered and applicable in entirely different facts. Additionally as we have already held in the facts of the present case, the Respondent No.3 was duty bound to duly certify the octroi exemption since Petitioner had fulfilled the eligibility criteria. Petitioner could not therefore be deprived of its entitlement to octroi refund on failure of Respondent No.3 discharging its duties as required in law. Thus we hold the judgment relied upon is of no avail to the Respondents.

31. We therefore have no hesitation in holding that the Petitioner is eligible for a refund of octroi under Section 194 (2) of the MMC Act of an amount of Rs.16,71,401/- (Rupees Sixteen Lakhs Seventy One Thousand Four Hundred and One only) paid as octroi on the said articles imported pursuant to the said work order under Bill of Entry No.4720347905001/2S-MAR-16. We also find that in the facts of the present case the failure to provide a declaration of duty certified by the octroi officer would not render the Petitioner ineligible for a refund of octroi of Rs.16,71,401/- (Rupees Sixteen Lakhs Seventy One Thousand Four Hundred and One only) paid as octroi on the said articles imported pursuant to the said work order.

32. The Petition is therefore allowed. The impugned letter dated 16th December, 2017 is set aside. The Respondents shall refund amount of Rs.16,71,401/- (Rupees Sixteen Lakhs Seventy One Thousand Four Hundred and One only) to the Petitioner within three months from today, failing which interest at the rate of 7% per annum shall be payable on the said amount from the date of filing of

Petition till realisation.