
(1983) 08 GUJ CK 0014
In the Gujarat High Court

I.C.G. Texturing Industry and Another	APPELLANT
Vs	
Surat Municipal Corporation	RESPONDENT

Date of Decision : 22-08-1983

Acts Referred:

Bombay Provincial Municipal Corporations Act, 1949 — Section 127(2)
Octroi Rules, 1965 — Rule 17

Citation : (1984) 1 GLR 197

Hon'ble Judges : P.D. Desai, Acting C.J.;G.T. Nanavati, J

Bench : Division Bench

Judgement

P.D. Desai, Acting C.J.

1. The question which arises in this petition relates to the true and correct interpretation of Rule 17 of the Octroi Rules and Standing Orders of the respondent (Surat Municipal Corporation)(hereinafter referred to as "the Octroi Rules").

2. The first petitioner is a Company incorporated and registered under the provisions of the Companies Act, 1956. The second petitioner is the Director of the first petitioner-company. For the sake of brevity, the petitioner will be referred to as "the petitioner" in the course of this judgment.

The petitioner is engaged in the business of manufacturing crimped texturised yarn. The registered office of the petitioner is situate at Surat, but its factory is situate at Ankleshwar, which is outside the local limits of the city of Surat. For the purpose of carrying on its manufacturing activities, the petitioner imports synthetic yarn. In respect of such imported yarn, which lands at the Bombay Port, a bill of entry is prepared and filed with the customs authorities at the Bombay Port. The yarn is thereafter sealed by the customs authorities and it is transported by the petitioner to Surat for being stored in the public bonded warehouse which is situate within the local limits of the respondent Corporation. The transport vouchers in respect of such goods are prepared by the customs authorities wherein the consignor is the Assistant Collector of Customs Bombay

and the consignee is the Assistant Collector of Customs, Surat. Under the relevant law governing the levy of custom duty, it is permissible to store such yarn in the bonded warehouse initially for a period of one year. The time limit is, however, extendable by the customs authorities. Having stored the yarn in the bonded warehouse, the petitioner clears the requisite quantity and quality of yarn from the bonded warehouse as and when required for the purpose of manufacture in the factory situate at Ankleshwar. Be it stated that the imported yarn is required to be brought to Surat for the purposes of storage because the only bonded warehouse in the vicinity is situate within the local limits of the respondent-Corporation.

3. When the imported yarn enters within the limits of the respondent-Corporation, the petitioner pays octroi duty on the consignments in question, although the goods are not imported within such limits for the purpose of consumption, use or sale. According to the petitioner, the respondent-Corporation authorities are not allowing refund of the said octroi duty, although the goods brought for the purpose of storage in the bonded warehouse are not consumed, used or sold within the limits of the respondent-Corporation and are taken out of such limits after a period of six months from the date of their import, on the ground that under Rule 17 of the Octroi Rules, the octroi paid on any goods is refundable only if such goods are exported beyond the octroi limits within a period of six months from the date of their import. The grievance of the petitioner is that octroi is leviable only if the goods are consumed, used or sold within the local limits of the respondent-Corporation and that since no such event takes place in connection with the imported goods of the petitioner, which are brought within such limits merely for the purpose of storage in the bonded warehouse and which are exported beyond such limits after a period of six months from the date of their import, the refusal of the respondent-Corporation to refund the octroi duty collected at the stage of entry of goods of amounts to levy of tax without authority of law. The petitioner submits that the time limit of six months for the export of goods prescribed in Rule 17 of the Octroi Rules for the export of goods out of the octroi limit is arbitrary and unreasonable and that it permits the respondent-Corporation to levy octroi duty illegally and without authority of law in cases where goods are not exported out of the octroi limits within the specified time limit.

4. Rule 17 of the Octroi Rules of the respondent-Corporation reads as under:

Subject to the Standing Orders, ninety per cent of the octroi paid on any goods, shall be refunded if such goods are exported beyond the octroi limits of the Corporation within six months from the date of their import:

Provided that:

(a) an application for refund in such form as may be prescribed by the Commissioner shall be made within one week of the date of exportation and such application shall be accompanied by such documents as may be prescribed by

the Standing Orders;

(b) the amount due for refund in respect of one export certificate shall not be less than five rupees;

(c) the importer continues to be in possession of the said goods till the moment they are exported and that the said importer and the exporter remain the same person;

(d) in the case of goods which have broken bulk, prior intimation in writing as to the breaking of bulk or quantity have been given to the officer specified in this behalf in the Standing Orders and the place or places of storage have been reported to him from time to time;

(e) the goods have not since their import changed hands or changed in any manner whatsoever their original form, conditions, state or appearance by any process of manufacture or otherwise;

(f) in case of commodities the sale whereof is regulated under the Agricultural Produce Markets Act, goods exported by bona fide purchaser have been purchased on the market yard and certified as such by the Secretary of the Market Committee, shall be eligible for refund.

The main part of the rule prescribes the conditions as to the eligibility for refund and provides that upon fulfilment of those conditions, the Octroi duty collected will become refundable to the extent provided therein. The main condition is that the goods which have been brought within the octroi limits should have been exported beyond the octroi limits within six months from the date of their import. If that event takes place, subject to the Standing Orders, ninety per cent of the octroi duty paid on any goods must be refunded. The proviso lays down certain further conditions which are also required to be satisfied. However, in the instant case, we are not concerned with those conditions and we need not, therefore, dilate on them.

5. According to the petitioner, the octroi duty paid by them on goods, which are imported within the octroi limits merely for the purpose of storage in the bonded warehouse, is not refunded to them although such goods are exported beyond the octroi limits where such export takes place beyond the period of six months from the date of their import, on the ground that under the main part of Rule 17, the claim for such refund is admissible only if the goods are re-exported within a period of six months from the date of their import. The question which, therefore, arises is whether the stand adopted by the respondent-Corporation in regard to the claim of the petitioner in respect of goods exported beyond the period of six months, from the date of their import is justified, having regard to the true and correct interpretation of Rule 17.

6. Before we consider the question of the interpretation of the rule in question, it is pertinent to point out that u/s 127, Sub-section (2) of the Bombay Provincial Municipal Corporations Act, 1949 (hereinafter referred to as "the Act"), the

Corporation is empowered to impose, for the purposes of the Act and subject to the provisions contained therein, the taxes therein named. One of the taxes specified in Sub-section (2) is octroi. The word "octroi" is defined in Clause (42) of Section 2 to mean a cess on the entry of goods into the limits of a city for consumption, use or sale therein." In *Burmah Shell Oil Storage and Distributing Co. India Ltd. Vs. The Belgaum Borough Municipality*, , the scheme of taxation under the Bombay Municipal Boroughs Act, 1925 was examined with particular reference to levy of octroi and the rules and by-laws made by the Municipality in relation to such levy. After examining the history of octroi and terminal taxes, the Supreme Court held that octrois were taxes on goods brought into the local area for consumption, use or sale" and that "they were leviable in respect of goods put to some use or other in the area but only if they were meant for such user. It was specifically clarified that the word "sale" was included only in 1954 in the said Act in order to bring the description of octroi in the Act in line with the Constitution and that the expressions "consumption" and "use" together "connote the bringing in of goods and animals not with a view to taking them out again but with a view to their retention either for use without using them up or for consumption in a manner which destroys, wastes or uses them up." The Supreme Court categorically held that an octroi duty was liable to be paid by a trading company on goods brought into the local area "(a) to be consumed by itself or sold by it to consumers direct, and (b) for sale to dealers who in their turn sold the goods to consumers within the Municipal area irrespective of whether such consumers bought them for use in the area or outside it", but it was "not liable to octroi in respect of goods which it brought into the local area and which were re-exported". In the course of the decision, the Supreme Court cited the observations of the Taxation Enquiry Commission (Vol. III Chapter IV, page 401), which are material and which may, therefore, be extracted and reproduced:

...the most important difference lies in the requirement peculiar to octroi that, for this tax to become leviable, the goods must not only enter the area, but must be "for the purpose of consumption, use or sale therein". Usually, this requirement is sought to be satisfied by (a) the ab initio exemption of the goods which merely pass through the area, whether the exit is immediate or after an interval, or (b) by the subsequent refund of the tax collected on such goods. Exemptions and refunds, therefore, are the distinguishing features of the octroi system.

7. The decision in *Burmah-Shell Co.*'s case was re-affirmed and followed in the case of *Hiralal Thakorlal Dalal Vs. Broach Municipality and Others*, .

8. From the decisions in *Burmah-Shell Co.* 's case as well as in *Hiralal Thakorlal Dalai*'s case, which are rendered in relation to a legislation which is in *pari materia* with the legislation under consideration so far as levy of octroi is concerned, it is apparent that there is no liability to pay octroi in respect of goods which are brought into the octroi limits but which are re-exported and that the

liability to pay octroi will arise only if the goods have entered the octroi limits for the purpose of consumption, use or sale therein, as explained in *Burmah-Shell Co. 's case*. To ensure that the levy becomes legal, a system of exemption and refund is devised in respect of goods which are brought into the local area but are re-exported. The relevant provisions in that behalf provide either for exemption of the goods which merely pass through the area, whether the exit is immediate or after an interval, or for the subsequent refund of the tax collected on such goods. Rule 17 in the Octroi Rules in question is enacted as a part of such system.

9. At first blush, it might appear that no claim for refund would be admissible under Rule 17 unless goods are exported from the octroi limits within a period of six months from the date of their import. A close scrutiny of the rule, however, reveals that there is no prohibition against the refund of octroi duty in cases where the goods are re-exported beyond the period of six months from the date of their import provided, of course, the other conditions for refund are satisfied. Rule 17, when read in the proper context and perspective, imposes an obligation to refund the octroi in cases where the goods are exported beyond the octroi limits within six months from the date of their import upon the fulfilment of the other conditions prescribed therein. A provision imposing an obligation in such affirmative terms cannot be construed as providing, by implication, that octroi duty must not be refunded if the goods are re-exported after the expiry of a period of six months from the date of their import even if all the other conditions are satisfied. A mandatory provision casting a duty upon the taxing authority to act in a particular manner upon fulfilment of certain conditions, including the condition which requires a corresponding act being performed within the specified time-limit by the tax-payer before he can call upon the taxing authority to perform its duty, cannot be construed as providing by implication that the taxing authority is prohibited from acting in exercise of its discretion in favour of the tax-payer even if all the conditions other than that relating to the corresponding act being performed within the specified time-limit are satisfied. Unless there are specific words imposing such a prohibition, the taxing authority's discretion to grant relief to the tax-payer cannot be deemed to have been taken away merely because the provision relating to the time-limit is not satisfied. This is the correct approach to the interpretation of Rule 17, because the levy of octroi itself might otherwise be exposed to the challenge that it is without power, authority and jurisdiction. In our opinion, therefore, the true and correct effect of Rule 17 is that while it imposes an obligation upon the respondent-Corporation to refund ninety per cent of the octroi paid on any goods if such goods are exported beyond the octroi limits of the Corporation within six months from the date of their import (subject to the Standing Orders and subject to the other conditions prescribed in the rule), the discretion of the respondent-Corporation to grant refund if such goods are re-exported after the period of six months from the date of their import is not taken away or in any manner restricted. Indeed, having regard to the scope and ambit of the power to levy

octroi and the scheme of exemptions and refunds, which are the distinguishing features of the octroi system, it will be within the discretion (as contra-distinguished from mandatory duty) of the respondent-Corporation to consider the claim for refund and to grant the same even in cases where goods are exported beyond the octroi limits after the expiry of the period of six months from the date of their import provided the other conditions laid down in Rule 17 are satisfied. Such discretionary power will have to be exercised by the respondent-Corporation if the conditions laid down for the exercise of discretion are satisfied. The authority is under a statutory duty to exercise the discretion if the conditions laid down for the exercise thereof are duly fulfilled and if there is omission to exercise discretion, inter alia, on account of the failure on the part of the authority to genuinely address itself to the matter before it or due to misconception of the scope of its power under the statute, mandamus can issue directing such authority to re-hear and determine the matter afresh according to law see *Aryakumar Mahasabha v. Town Planning Officer* (2) G.L.R. 543.

10. In light of the true scope of the provisions of Rule 17 as expounded hereinabove, it is manifest that if and when the petitioner approaches the respondent-Corporation with a claim for refund of octroi duty paid on any goods which are exported beyond the octroi limits after the expiry of the period of six months from the date of their import, such claim will have to be considered on merits by the respondent-Corporation and refund will have to be granted, subject, of course, to the other conditions for the grant of refund under the rule in question are being satisfied.

11. Under the circumstances, all the pending applications of the petitioner for refund as well as applications made hereafter claiming refund will have to be disposed of by the respondent-Corporation in light of the provisions of Rule 17 as explained above. The pending applications, if any, which are held back on the ground that the imported goods were not exported within a period of six months will be disposed of within a period of three months from the date of the receipt of the writ. Since there is no averment in the present petition and since no relief is sought in regard to the applications for refund, if any, which are already rejected on a misconception of the true scope and effect of Rule 17, no specific directions are required to be given herein in regard to such applications. It will be open to the petitioner, however, to apply to the competent authority to reconsider such applications on merits and in accordance with law and in light of the observations made hereinabove.

Rule made absolute accordingly with no order as to costs.