

(1993) 09 OHC CK 0002

In the Orissa High Court

Case No : Original Jurisdiction Case No. 6057 of 1992

Indian Aluminium Co. Ltd.

APPELLANT

Vs

Bhubaneswar Municipality

RESPONDENT

Date of Decision : 14-09-1993

Acts Referred:

Orissa Municipal Act, 1950 — Section 131(1)

Citation : AIR 1994 Ori 11

Hon'ble Judges : B.L. Hansaria, C.J;R.K. Patra, J

Bench : Division Bench

Advocate : B.P. Das, B.Pr. das and R. Das, for the Appellant; G.K. Achanty, R.P. Kar, A.K. Ray, O.P. Samal and S.P. Pradhan, for the Respondent

Final Decision : Dismissed

Judgement

R.K. Patra, J.—By this writ petition. the petitioner seeks to challenge the validity of levy/collection of octroi on the goods covered under the octroi payment passes dated 17-8-1992, 19-8-1992 and 20-8-1992 mentioned in Annexures 5 to 10 series.

2. Facts may be briefly stated to get the hang of the issue involved. The petitioner was incorporated under the Indian Companies Act, 1913 as a public company limited by shares and is an existing public company within the meaning of the Companies Act, 1956. It has engaged itself in the business of mining of bauxite, aluminium, smelting and manufacture of aluminium fabrication products. It operates through different agencies and various plants situated in the States of Orissa, Bihar, West Bengal, Kerala, Karnataka and Maharashtra. It is the case of the petitioner that it has its place of business at Rudrapur P.C. Baliana, District Puri where its warehouses taken on rent from M/s. High Way Complex are located beyond the municipal limits of Bhubaneswar and what is housed within the municipality is the General Co-ordination Manager's Office at (295, Forest Park, Bhubaneswar. Its place of business as well as the location of the warehouses are situated outside the limits of the Bhubaneswar Municipal

area. In support of this plea, the petitioner has filed the certificate of registration at Annexure-1 granted under the Orissa Sales Tax Act, 1947. It is stated that on 17-7-1992 petitioner's factory at Alupuram in the State of Kerala despatched certain consignment of goods to Rudrapur, P.O. Baliana supported by invoices and consignment notes and the municipal authorities at its octroi check gate at Khandagiri allowed the trucks to proceed to its destination after being satisfied with the transaction that they were not for consumption, use or sale within the municipal limits. However, when similar consignments from Alupuram reached at the octroi check gate at Khandagiri in the month of August, 1992, they were subjected to illegal levy of octroi. Petitioner contends that the goods covered under the impugned levy were not meant for consumption, use or sale within the limits of municipality as they were destined to reach at Rudrapur beyond the municipal limits of Bhubaneswar and the impugned collection of octroi being thus without jurisdiction the same is refundable.

3. The Municipality has filed its counter affidavit wherein the claim of the petitioner that its place of business of situated outside the limits of municipal area has been denied. It asserts that the petitioner has only its go-downs/ warehouses at Rudrapur "whereas its place of actual business or sale of its goods remains at Forest Park, Bhubaneswar within the limits and jurisdiction of Bhubaneswar Municipality". Regarding the impugned levy it has been stated that the invoices have been sent in the address of the petitioner at Forest Park, Bhubaneswar for sale of the goods. The agreement at Annexure-2 entered into by the petitioner and M/s. High Way Complex has been referred to say that the petitioner's go-downs at Rudrapur are only for storing its various products.

4. Shri B. P. Das, learned counsel for the petitioner has submitted that the goods in question despatched from Alupuram were destined to Rudrapur beyond the jurisdiction of the municipal limits and they being not meant for consumption, use or sale within Bhubaneswar Municipality, collection of octroi at Khandagiri check gate was without any authority. In support of his contention, he has referred to the judgment dated 31-8-1993 of this court in Batliboi & Company Ltd. v. Cuttack Municipal Council rendered in O. J. C. No. 6892 of 1992. Counsel for the Municipality on the other hand contended that although the go-downs/ warehouses of the petitioner are located outside the municipal limits but the sale having taken place at its office located in Forest Park, Bhubaneswar, the collection of octroi cannot be questioned. He has in this connection referred to the decision of the Supreme Court in A.V. Thomas and Co. Ltd. Vs. Deputy Commissioner of Agricultural Income Tax, .

5. The facts of the aforesaid case and the ratio laid down therein have absolutely no bearing on the issue involved in the present case. The question that arose for consideration there was about the assessment of sales tax on the tea under the Travancore-Cochin General Sales Tax Act. In other words, the question was whether the sale of tea took place at Willingdon Island which was within the territory of Travancore-Cochin State for which it was exigible to sales tax under

the aforesaid Act or the sale was outside the State of Travancore-Cochin. The assessee used to store tea in the go-downs at Willingdon Island which was in the State of Travancore-Cochin. Samples of those teas were taken to Fort Cochin which was at the relevant time in the State of Madras where by samples of the teas were sold by public auction in lots. After the consideration money was paid at Fort Cochin delivery orders were given to the buyers addressed to the go-down keepers at Willingdon Island and actual delivery of teas was taken there. It was the contention of the assessee that as the sales were effected at Fort Cochin which was outside the State of Travancore-Cochin, they were not exigible to tax because of the ban mentioned by Article 286(1)(a) of the Constitution. That Article with the Explanation at the relevant time prohibited a State to impose tax on the sale or purchase of goods where such sale or purchase took place outside the State. The Court in paragraph 9 of the judgment found that title to the goods passed at Fort Cochin within the State of Madras. Accordingly, in paragraph 10 of the judgment it was observed that the sale was an "outside sale" and cannot be said to be "inside sale" qua Travancore-Cochin because the title passed at Fort Cochin within the State of Madras. The principle laid down in that case has no application to the facts and circumstances of the present case because it was a case of exigibility of sales tax which depended upon passing of title to the goods.

6. In the case at hand, the problem is elsewhere. We are here concerned with Section 131(l)(kk) of the Orissa Municipal Act, 1950 which provides as follows:

"131.(l)The municipal council may, from time to time, at a meeting convened expressly for the purpose of which due notice shall have been given subject to the provisions of this Act impose within the limits of the municipality the following taxes and fees or any of them.

(a) to (k) xx xx (kk) an octroi on goods brought within the limits of a municipality for consumption, use or sale therein".

Entry 52 of List II in Schedule VII of the Constitution empowers the State Legislature to make law on "taxes on the entry of goods into a local area for consumption, use or sale therein". As the field of State Legislature is circumscribed by List II of Schedule VII, the power given by Section 131 of the Orissa Municipal Act cannot be more extensive. In *Indian Oil Corporation Vs. Municipal Corporation, Jullundhar and others*, , the Supreme Court while considering Section 113 of Punjab Municipal Corporation Act (which is in pari materia with Section 131(l)(kk) in paragraph 9 of the judgment observed as follows:--

"Entry of goods within the local area for consumption, use or sale therein is made taxable by the State Legislature on the authority of Entry 52 of List II of Schedule VII. The municipality derives its power to tax from the State Legislature and it obviously cannot have any authority more extensive than the authority of the State Legislature. Since the State Legislature in view of Entry 52 of List II, Schedule VII is competent to levy a tax only on the entry of goods for

"consumption, use or sale" into a local area, the municipality cannot under a legislation, enacted in exercise of the powers conferred by Entry 52 of List II, have the power to levy tax in respect of goods brought into the local area for purposes other than consumption, use or sale. Section 113 of the Act has, therefore, reasonably to be read subject to the same limitations as are contained in Entry 52, List II of Schedule VII."

7. The construction of the expression "consumption, use or sale therein" came up for consideration before a Constitution Bench of the Supreme Court in *Idol of Thakurji Shri Govind Deoji Maharaj Vs. Board of Revenue, Rajasthan, Ajmer and Others*, . It was a case of charging octroi on the products of Burmah-Shell Company brought inside the octroi limits of Belgaum Municipality for sale. Section 73 of the Bombay Municipal Boroughs Act, 1925 provided, inter alia, that a municipality may impose an octroi on animals or goods brought within the octroi limits for consumption, use or sale therein. In paragraph 20 of the judgment the Court observed as follows:

"..... The two expressions "use" and "consumption" together therefore 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. In this context, the word "consumption", as has been shown above, must receive a larger meaning than merely the act of consuming in the generally understood sense"

By giving a restrictive meaning to the word "sale" in para 21 of the judgment, the Court observed that the act of sale is merely the means for putting the goods in the way of use or consumption.

8. The Burmah-Shell case to be cited before a Division Bench of the Supreme Court consisting of three Hon'ble Judges in *M/s. Hiralal Thakarlal Dalai v. Broach Municipality* 1975 SCC 166. Krishna Iyer, J. in paragraph 3 of the judgment observed as follows:

"..... 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."

9. Thereafter, that very case came up before the Constitution Bench for hearing

which has been reported in *Hiralal Thakorlal Dalal Vs. Broach Municipality and Others*, Shinghal, J. in paragraph 5 of the judgment observed as follows:

"The law on the subject-matter of the present controversy has thus been laid down quite clearly in the *Burmah Shell Oil Storage and Distributing Co. India Ltd. Vs. The Belgaum Borough Municipality*, and the present case squarely falls to be governed by it. We are also in agreement with that interpretation of the law. It may be mentioned that the learned Counsel have not been able to advance any new argument justifying a reconsideration of the decision."

10. What is the exact ratio of the *Burmah Shell* (supra) has been indicated in *Tata Engineering and Locomotive Company Limited and another Vs. The Municipal Corporation of the City of Thane and others*,). In the last sentence of para 10 of the judgment, it has been stated that the "ratio is thus not a mere sale inside that attracts octroi but a sale intended for consumption of the goods inside the octroi area though ultimately the person to whom it was sold for consumption does not consume the goods inside but does the same outside the limit".

11. The aforesaid being the legal position, location of petitioner's warehouses/godowns outside the municipal limits has no direct relevancy in order the octroi to become leviable on the goods in question. Equally unclenching is the plea of sale said to have been taken place within the municipal limits in respect of the goods as pleaded by the Municipality in the case. Entry of goods within the limits of a municipality being the taxable event for imposition of octroi, which aspect has been emphasised by Shri Das, the goods in question upon their Entry into the Bhubaneswar municipal limits attracted prima facie a taxable event. In *Burmah Shell* case (supra) the Supreme Court held that when the goods enter the "local area" for purposes of consumption, use or sale, it is not an ingredient of the taxable event that there should be actual consumption, use or sale. In paragraph 21 of the aforesaid judgment, the Court observed as follows :

"..... The word "therein" does not mean that all the act of consumption must take place in the area of the municipality. It is sufficient if the goods are brought inside the area to be delivered to the ultimate consumer in that area because the taxable event is the entry of goods which are meant to reach an ultimate user or consumer in the area. Indeed, the consumer may never consume them as, for example, a motorist buys a tin of oil and finds that it does not suit his vehicle and leaves it lying on his shelf. The goods must be regarded as having been brought in for purposes of consumption when a person brings them either for his own use or consumption, or to put them in the way of others in the area, who are to use or consume. In this process the act of sale is merely the means for putting the goods in the way of use or consumption. It is an earlier stage, the ultimate destination of the goods being use or consumption.....,"

12. It is not the case of the petitioner that the goods after making entry into the municipal limits reached the godown at Rudrapur for purposes of onward

movement across the highways without the goods being consumed or used within Bhubaneswar municipal limits. In that event, it could have been said that the goods did not enter the local area at all because even if the onward journey is intercepted at Rudrapur for the purposes of unloading, sorting or reloading or for any such reason, the entry was only incidental to the transit journey or onward journey. This class of goods must be held to be the goods with specific purpose -- not of consumption, use or sale therein -- of onward journey. The petitioner having failed to establish that the goods after having entered the municipal area reached at Rudrapur and was not retained either for use without using them up or for consumption in a manner which destroyed, wasted or used them up, no fault can be found with the municipality in collecting the octroi in question. It is for this reason that we are not addressing ourselves on the question as to where the sale actually took place. Even if it be at the General Co-ordination Manager's office in Bhubaneswar following which the purchasers bring the goods from the godown at Rudrapur, as is the petitioner's case, there is no denial that the goods were "put in the way of others" inside the limit of municipal area to use and consume therein, which would bring the case squarely within what was stated in the emphasised part of paragraph 21 of the judgment in *Burmah Shell* and would, therefore, authorise the municipal council before us to realise octroi from the petitioner; and not only from purchasers as contended by Shri Das.

13. Let us examine if the decision rendered by this Court in *M/s. Batliboi & Company* (supra) can come to the rescue of the petitioner. In paragraph 7 of the judgment this Court has clearly recorded the finding that the consignment in question was despatched from Pune for delivery at Rajgangpur and in course of transit it came inside the municipal limits of Cuttack and remained in the Company's godown for certain period. Admittedly, the consignment was later despatched/re-exported to Rajgangpur. The Court was accordingly of the view that assuming that sale had taken place at Cuttack but the sale was not to a person for the purpose of consumption or use of such person in the area of Cuttack Municipality since it was meant for consumption or use at Rajgangpur beyond the limits of Cuttack Municipality, and hence, the consignment could not have been subjected to levy of octroi at the hands of Cuttack Municipality. The fact situation in that case being quite different, the petitioner cannot get any sustenance from it.

14. The result is that we do not find fault with the realisation of octroi in question from the petitioner. The petition is, therefore, dismissed,

Hansaria, C.J.

15. I agree.