(1990) 04 BOM CK 0031

In the Bombay High Court

Case No : Writ Petition No. 419 of 1990

Indian Aluminium Co. Ltd. APPELLANT

Vs

Thane Municipal Corporation RESPONDENT

Date of Decision : 18-04-1990

Acts Referred:

Maharashtra Municipalities (Octroi) Rules, 1968 — Rule 1
Maharashtra Municipalities Act, 1965 — Section 321(2)

Citation : (1990) 3 BomCR 188

Hon'ble Judges : V.V. Kamat, J;G.H. Guttal, J

Bench : Division Bench

Advocate : D. Shroff and Raj Darak, instructed by Crawford Bayley and Co, for the Appellant; K.K. Singhvi, H.K. Singahvi and Chitale, for the Respondent

Final Decision : Dismissed

Judgement

G.H. Guttal, J.

1 Indian Aluminium Co. Ltd. seek a writ/order under Article 226 of the Constitution of India, directing the Respondents-The Municipal Corporation to refund a sum of Rs. 13,54,101.79. which represents the amount of the allegedly excess octroi duty recovered by the respondents during the period from January, 1985 to 9th December, 1987.

2. This petition is placed before us for admission. We have heard Counsel for the petitioners and the respondents for over two hours. Learned Counsel for the petitioners made elaborate arguments and cited certain judicial decisions in support of his submission. We have not been persuaded in admit this petition.

3. The petitioner''s case is this :---

They were misled into believing that the rate of octroi duty on aluminium, a non ferrous metal, under Entry No. 77 in Schedule-1 of the Maharashtra Municipalities (Octroi) Rules, 1968, hereinafter referred to as the Rules, was 2% ad-valorem. Under Entry No. 77 in Schedule-1, Octroi duty leviable on non-ferrous metals is between Rs. 0.50 and Rs. 4.00. The respondents have been levying and recovering the octroi at the rote of 2% ad- valorem. According to the petitioners the rate of octroi on aluminium is between 0.25% and 1.25% ad-valorem. They rely upon Clause (l) of Part 1-A of the Schedule to the Rules introduced by the Maharashtra Municipalities (octroi) Amendment Rules, 1970 which prescribes concessional rate of Octroi, on goods specified inter alia in entry No. 77 which are imported for processing "within the (importer''s) undertaking and when declaration in respect thereof is issued by the undertaking in Form No. 14"1.

The respondents always led the petitioners to believe that the petitioners were not eligible to the concessional rate of octroi. The respondents published a booklet setting out the Schedule-1 of the Rules. This booklet does not state that import of aluminium carries octroi at the concessional rate. Similarly, the respondents in their Resolution No. 243 dated 6th December, 1973, referred to Part I-A of the Schedule to the Rules and sanctioned levy of octroi at concessional rates in respect of goods referred to in entries Nos. 4, 64, 65 and 70 of the Schedule, Since entry No. 77 under which aluminium falls, was not mentioned in the Resolution or the booklet, the petitioners thought that import of aluminium did not attract the concessional rate of octroi duty.

According to the petitioners, they paid excess octroi at 2% ad valorem notwithstanding the concessional rate of Rs. 0.25 to Rs. 1.25 to which they are entitled under Part 1-A of the Schedule to the Rules.

1. Rule (1) of Part 1-A

All goods specified in entries 6(c), 35, 40, 64, 66, 71, 77 and 86 in Schedule 1, and Khobra mentioned in entry 25, raw rubber and latex mentioned in entry 70 in that Schedule, when imported by an industrial undertaking for use as raw material for processing within that undertaking and when declaration in respect thereof is issued by the undertaking in Form 14, shall be subject to octroi by any Council at a rate not exceeding 1.25 per cent and not less then 0.25 per cent.

4. Neither the booklet published by the Respondents nor the Resolution can be the source of law in regard to concessional rate of octroi duty available on certain items. The law in regard to the payment, recovery and concessions in the payment of octroi duty is contained in the Maharashtra Municipalities (Octroi) Rules, 1968. Schedule to these Rules sets out the goods liable to octroi duty and the maximum and minimum rules leviable by the Rules. Item No. 77 of Schedule 1 reads:

"Non-ferrous metals, that is to say, brass, copper, tin, aluminium, lead, zinc, German, silver stainless steel, their alloys, wires, wares and sheets, ignots and circles".

Therefore, when the Rules came into force on 14- 8-1968, all non-ferrous metals which answer the description in entry No. 77 to Schedule I were subject to minimum of Rs. 0.50% and maximum of Rs. 4.0% on the value of the goods, The concessional rate came into force only from 20-1-1970 when the Government of Maharashtra, in exercise of its power conferred by sub-section (2) of section 321 of the Maharashtra Municipalities Act, 1965 amended the Maharashtra Municipalities (Octroi) Rules, 1968. One of the amendments was that Part 1-A was introduced after part 1 in the original Rules Clause (1) of Part 1-A to the Schedule lays down, inter alia, that the goods specified in entry No. 77 which in relevant to this petition, when imported by an industrial undertaking, shall be subject to octroi at a rate hot exceeding 1.25 per cent and not leass than 0.25 per cent. But this concessional rate is subject to two conditions:

(i) The goods in item No. 77 must have been imported by an industrial undertaking for use as raw material for processing within that undertaking; and

(ii) the undertaking shall have made a declaration in respect thereof in form No. 14.

In view of these two statutory conditions, the concessional octroi prescribed by Part 1-A is attracted only when the petitioners fulfil the two conditions set out above. Form No. 14 in annexed to the Rules which contains a declaration by the undertaking that it shall not use the goods for any other purpose for sale or otherwise dispose them of to any other party for any other purpose without paying the difference between the octroi due on such goods at ordinary rate''s and the octroi paid at concessional rates. The rule is intended to encourage the use of the non-ferrous metals as raw material within the undertaking by reducing the octroi duty. Where the undertaking wishes to use the good, in such manner as it pleases, it is required to pay the difference between the concessional rates and in the normal rates under entry No. 77. The concession in the octroi is subject to the two conditions precedent, if one of them is not fulfilled, the law does not allow the concession.

5. If the undertaking did not make a declaration in Form No. 14, then rule (1) of Part 1-A does not apply to it and, therefore, the under-taking is not entitled to the concession said down in Rule (1) of Part 1 A, This is the law embodied in the statutory rules.

6. The petitioner, however claim that they were ignorant about this law and that in view of clause (1) of Part 1-A they ware not liable to pay octroi duty not at the rate of 2% ad valorem, but at the reduced rate. Consequently, the argument proceeds the octroi duty paid under a mistake of law should be refunded. The submission is totally misconceived. The petitioners were liable to pay octroi duty at the rate they were paying before the commencement of Maharashtra Municipalities (Octroi) (Amendment), Rules 1970, unless they fulfilled the two conditions said down in Rule (1) of Part 1 -A. In other words, unless they made a declaration in Form No. 14, which admittedly they have not, they continue to be liable to pay octroi duty at 2% ad-valorem. Since no such declaration was made, the lower rate of octroi duty introduced by Part 1-A is not applicable to the

petitioner''s case.

7. However, Mr. Shroff relied upon certain judicial decisions. In D. Cawasji and Co. and Others Vs. State of Mysore and Another, . The law whereunder the Education Cess was levied was unconstitutional and therefore was no law under which the cess could have been levied. In the case before us, there was always a valid law whereunder the octroi has been recovered and the petitioner was not entitled to the concessional rate of octroi. In view of this distinction, the decision has no application to this case.

In Kirpal Singh Duggal Vs. Municipal Board, Ghaziabad, the Supreme Court held that "the Municipality is under a statutory obligation, once the procedure followed is fulfilled, to grant refund of the toll." This position of law cannot be disputed. But admittedly the petitioners have not fulfilled the conditions said down by the Rules. Therefore, the judgment does not advance the petitioners case.

The case of Burmah Shell Oil Storage and Distributing Co. India Ltd. Vs. The Belgaum Borough Municipality, also does not help the petitioners. The Supreme Court held "But to enable the Company to save itself from tax in that case it has to follow the procedure laid down by rules for refund of taxes".

The decision of the Karnataka High Court in Asstt. C.C. Ex. Vs. Kashyap Engineering and Metallurgicals (P) Ltd., has no application to this case because in the case before Karnataka High Court, admittedly the goods were exempt from payment of customs duty.

Since the petitioners have not admittedly fulfilled the conditions precedent to the entitlement of concessional rate of octroi and have therefore paid the correct amount of octroi, the question of refund does not arise.

8. In our opinion, therefore, the petitioners who did not comply with the two conditions necessary to attract the concessional rate of octroi, were not entitled to the concessional rate prescribed by Clause (1) of Part 1-A of the Schedule to the rules. The octroi paid by them was entirely in accordance with law. There is no question of a mistake of law.

The resolution of the respondents which excluded a reference to entry No. 77 and the booklet which kept the petitioners ignorant of the requirements of clause (1) of Part 1-A of the Schedule, cannot override the Rules.

9. After the arguments concluded and we decided to postpone the judgment to this date, Mr. Shroff sought leave to withdraw the petition. We do not think it proper that a litigant should argue his case for two hours, take a chance with the Court''s verdict, and when the Court is likely to decide against him, he should seek leave to withdraw the case. Since elaborate arguments were made and the petitioners chose to invite our decision, we have not thought it fit to permit the petitioners to withdraw the petition.

10. In our opinion, there is no merit in this petition. The petition is dismissed summarily.