

(1969) 01 GUJ CK 0004

In the Gujarat High Court

Case No : Second Appeal No's. 187 and 657 of 1961

Jafarabad Municipality

APPELLANT

Vs

Kathiawar Industries Limited

RESPONDENT

Date of Decision : 18-01-1969

Acts Referred:

Constitution of India, 1950 — Article 286, 286(1)
Saurashtra Octroi and Terminal Tax Rules, 1949 — Rule 2, 3, 4, 5, 6
Saurashtra Terminal Tax and Octroi Ordinance, 1949 — Section 2, 3, 4

Citation : AIR 1969 Guj 344

Hon'ble Judges : N.G. Shelat, J; Akbar S. Sarela, J

Bench : Division Bench

Advocate : D.U. Shah, for the Appellant; H.C. Shah, for the Respondent

Final Decision : Allowed

Judgement

Sarela, J.—These two second appeals (Appeal No. 187/61 and Appeal No. 657/61) which arise from two suits between the same parties heard together by the Civil Judge, Senior Division, Bhavnagar, raise identical questions of fact and law. He delivered a common judgment decreeing the suits. The appeals by the defendants to the District Judge, Amreli, from the decrees in the two suits were heard together and disposed of by a common judgment dated 24th October 1960 substantially confirming the trial court's decision. Against that judgment these two appeals have been filed. They have been argued together and as the points raised in both of them are identical they would be disposed of by a common judgment.

2. The appellant in both the appeals is the Jafarabad Municipality (hereinafter referred to as the Municipality). That Municipality was the defendant in the suits. The respondent in both the appeals is the Kathiawad Industries Ltd., a firm carrying on salt business, of which part is within the limits of the Municipality and part outside of those limits. There were two suits filed by the respondent against the Municipality. The first suit being Regular Civil Suit No. 192/55 was filed in the

Court of the Civil Judge, Senior Division, Bhavnagar. The second suit being Regular Civil Suit No. 81 of 1955 was first filed in the Court at Rajula and later transferred to the Court of the Civil Judge, Senior Division, Bhavnagar and numbered as 150/56. In the suits the principal relief claimed was a declaration that the salt manufactured by the plaintiff Company at its salt works and exported uncrushed or crushed was not liable to octroi duty. The second prayer was for an injunction ordering the Municipality not to hinder or obstruct the free passage of the said salt. Then there were further reliefs sought in respect of the amount claimed by the Municipality as arrears of unpaid octroi duty. The Municipality had claimed a sum of Rs. 7289-6-0 as such arrears in respect of the octroi on the salt brought by the Company within the octroi limits for certain purposes. The plaintiff prayed for an injunction ordering the Municipality not to recover the said amount. It appears that before the suit No. 192/55 was filed, a sum of Rs. 250/- had been paid by the Company to the Municipality between 18th and 23rd January 1965 towards the said claim of Rs. 7289-6-0 for octroi and the Company claimed refund of that amount in that suit. Three further payments were also made by the plaintiff towards that claim namely Rs. 359-6-0, Rs. 475 and Rs. 437-8-0 totalling Rs. 1271-14-0 during the period between 21st March 1955 to 25th of April 1955. It was this sum of Rs. 1271-14-0 which was claimed in the second suit which was filed in the Rajula Court and then transferred to the Bhavnagar Court.

3. The trial Court by its judgment and decree dated 7-4-1959 declared that the salt manufactured by the plaintiff at its salt works at Jafarabad and exported either in crushed or in uncrushed form was not liable to octroi duty and ordered an injunction to be issued against the Municipality from recovering Rs. 7289-6-0 and from hindering or obstructing the free passage of that salt and the Court further ordered the Municipality to refund the sums already paid to the Municipality. The Appellate Court by its judgment and decree modified the decree slightly by clarifying that the declarations given by the trial Court related to the rights of the parties under the existing law and the perpetual injunction granted by the trial Court in so far as it related to restraining the defendant Municipality from hindering or obstructing the Company from the free passage of its salt related to the salt manufactured in its salt works at Jafarabad and which was to be exported, and would not apply to its salt entering the octroi limits for consumption or use for a factory situated within the octroi limits of the Municipality. Against these decrees the Municipality has come in appeal. In the trial Court the plaintiff had claimed exemptions also in respect of other goods and articles such as machinery, etc. brought by it within the octroi limits for the purpose of its salt business. This claim was negatived by the trial Court and the matter was not pursued by the plaintiff in the appellate Court.

4. The only question arising before us in these appeals is whether the salt manufactured by the plaintiff Company outside the octroi limits of the Municipality and brought by it within those limits for the purpose of being crushed into powder in its factory situated within those limits and then being

exported is liable to octroi. There is no dispute about the rate of octroi. In order to appreciate the submissions of parties some facts bearing on them may first be stated. The plaintiff owns what is known as Nawab Sidi Mohammad Khan Salt Works. This salt works consists of (i) salt pans; (ii) stacking ground for the salt collected from the pans; (iii) trolley track for carrying salt from stacking ground to the factory within the octroi limits of the Municipality and to the jetty which is outside the octroi limits; (iv) jetty; (v) power house; (vi) store-room, (vii) workshop and (viii) grinding mill which is referred to in the evidence as the crushing factory. Of these, the crushing factory and part of the trolley track (about 1400 feet) are within the octroi limits of the Municipality and the rest outside these limits. This has been found by both the lower courts. It has been urged by Mr. H. C. Shah, the learned advocate for the respondent, that although the works other than the crushing factory and part of the trolley track are outside the Municipal limits they are within the octroi limits, a point which will be considered later, but for the present it is sufficient to mention that according to the appellate court they are outside the octroi limits and only the crushing factory and part of the trolley track are within the octroi limits. Now, the plaintiff Company prepares salt in the salt pans and the salt so prepared is stacked on the stacking ground and then it is taken by trolley. The salt which is to be crushed is, taken to the crushing factory and the salt which is not to be crushed is taken in uncrushed form direct to the jetty over the trolley track part of which passes through the octroi limits of the Municipality. The salt that is crushed in the crushing factory is also after crushing taken by the trolley to the jetty. From the jetty the salt whether crushed or uncrushed, as the case may be, is exported by steamers. The power house, the storeroom and the workshop are all used for the purpose of this business. The case of the plaintiff is that no part of this salt whether crushed or uncrushed was liable to octroi duty; the case of the Municipality is that the salt which is brought to the crushing factory for the purpose of crushing is liable to the octroi duty but not the salt which is directly exported without being brought to the crushing factory. Both the courts took the view that the salt so exported whether crushed or uncrushed was not liable to octroi duty.

5. It will be convenient to refer first to the relevant provisions of law. The United State of Saurashtra within the territorial limits of which the Municipality is situate published an Ordinance on 31-8-1949 being Ordinance No. 47 of 1949 called the Saurashtra Terminal Tax and Octroi Ordinance, 1949 (hereinafter referred to as the Ordinance). The Ordinance extended to the whole of the State of Saurashtra and came into force from that date. Octroi was defined in Clause (2) of Section 2 as including a terminal tax. Section 3 empowered the Government to impose terminal tax and octroi duty. Under that section octroi may be imposed on "animals or goods, or both, brought within the octroi limits for consumption, or use therein". Section 4 conferred on the Government power to make rules and such rules inter alia may provide for the fixing and alteration of octroi limits and stations, for the exhibition of tables of octroi; the grounds on which, and the goods or class of goods in respect of which exemptions are to be granted; and

the rules so made may also prescribe the system on which refunds are to be allowed and other matters specified. The other sections of the Ordinance are not relevant for the present purpose. In exercise of the powers under the Ordinance the State Government made rules relating to octroi known as the Saurashtra Octroi and Terminal Tax Rules (hereinafter referred to as the rules) which were dated 8th of December 1949 and published on 15th December 1949 in the Saurashtra Government Gazette. Rule 2 of those rules empowered the Collector to fix octroi nakas meaning octroi stations. Rule 3 is the charging rule under which octroi is payable in respect of goods set out in the Schedule I attached to the rules and provides that the octroi shall be payable at the nakas at the rates set out therein subject to Schedule II. Rule 4 provides for cases where cash payment is not immediately possible and time is required for payment. Rule 5 provides for lodging of objections, if any, by the person paying octroi. Rule 6 for refunds and Rule 7 for appeals. Refund under Rule 6 is available in respect of goods brought in for approval or goods in transit and goods declared to be meant for export and exported intact. In Schedule I in which the articles chargeable for octroi and the rates are set out, Item 23 in the Second Group of items is "salt for factory." The Item is in Gujarati but both the advocates of both the sides before us agree that it is correctly translated by the lower Courts. The second Schedule which gives the list of items which are exempt from octroi contains in Item No. 6 a sub-item in Gujarati which means "salt". There is a third Schedule containing instructions which have not been referred to in the course of arguments. Reading the rules in the light of the Schedules referred to it is apparent that salt for factory was chargeable and no other salt, that is to say, salt brought within the octroi limits for consumption or use was not chargeable except when brought for the factory.

5-A. The short question that arises in the present appeals is whether the salt which has been charged with octroi in the present case was brought "for the factory" of the respondent meaning for consumption or use by the factory. It is conceded on behalf of the appellant that it was not brought for consumption and therefore the only point which the court is required to consider is whether it was brought for use by the factory. Both the lower courts pointed out that the purpose for which the salt was brought was to crush it into powder form. This is not in dispute. Both the lower courts in effect stated that bringing salt for the purpose of crushing it in the factory did not amount to bringing it for use by the factory. The trial Court stated:

"In this case the salt is merely crushed. This crushing or grinding process does not consume salt. The weight also remains the same. The substance remains the same. By the process of crushing, the salt remains the same and does not become commercially different from the uncrushed salt. So merely crushing or grinding is not consumption, use or sale."

The appellate Court said:

"Clearly salt for a factory would mean salt taken to a factory to be consumed and

used either as an ingredient for manufacturing some chemical or for manufacturing another article. . . Clearly salt for a factory would mean salt for being used for manufacturing some other article and not for merely crushing salt so that the substance would remain the same."

On that footing the court came to the conclusion that the salt in this case cannot be said-to have been brought for use by the factory and was not chargeable.

***** 6-8. That takes us to the only other question argued namely whether the uncrushed salt in this case was brought for the factory meaning for use by the factory within the octroi limits. Both the courts below proceeded on the premise that crushing is not use as contemplated by the legal provisions and that to amount to "use" the process done on salt must change its character. It (salt) should become according to the trial Court, "commercially different" and according to the appellate court "some other article". Mr. H. C. Shah has adopted before us the same approach. His argument is that salt to be chargeable under the Ordinance and rules must be for consumption or use and that this consumption or use must be for the factory, that is to say, the factory must consume or use it. So far he is right. He further argues that in this case there is no plea or proof of consumption by the factory and there again he is right. He then proceeds to argue that although there is a plea of use that plea is not made out. His submission is that the word "use" must in the context mean "used up" that is consumed and there can be no using up of the salt brought in unless the salt is used up by the factory to produce a different article. If however, says he, what happens is only change of form and salt remains salt there is no using of the salt by the factory.

9. This raises the question what meaning is to be attached to the word "use" in this taxing provision. That word is not denned in the Ordinance. It must, therefore, carry its ordinary meaning subject to such modification as the context requires. In Shorter Oxford Dictionary the word "use" as a verb has been given a large number of meanings, the most appropriate of which so far as we are concerned is "to make use of (some immaterial thing) as a means or instrument; to employ for a purpose. To employ (an article, etc.) esp. for a profitable end; to turn to account. To wear as an article of apparel". In Webster's New Twentieth Century Dictionary also several meanings are given of which two may be mentioned as appropriate; they are "(i) to put or bring into action or service; to employ for or apply to a given purpose (ii) to consume, expend or exhaust by use". Black's Law Dictionary has defined the word "use", as a verb, to mean "to make use of, to convert to one's service, to avail one's self of, to employ." It will be noticed therefore that the word "use" carries a very wide meaning. As pointed out in *Shell-Mex & B. P. Ltd. v. Clayton* (1955) 3 All E. R. 102 to which Mr. D. U. Shah for the appellant invited our attention, the word "use" in its natural meaning is a word of wide import and reference is made in that decision to the first meaning assigned to that word in Johnson's Dictionary, as "to employ to any purpose." Therefore, it would appear that the word "use" is generally meant

to convey the meaning "to employ for or apply to a given purpose". Now Mr. H. C. Shah is right when he contends that the meaning to be attached to the word "use" in the taxing provision must take colour from its context though he is not, in our opinion, right in his contention that the context requires that the word be construed as meaning "using up". The point to be noticed in the matter of context is that we are considering a taxing provision and the word "use" has been used along with the word "consumption". It is therefore reasonable to hold that the use contemplated in the word "use" is other than consumption, for consumption would also be user in the natural meaning of the word "use". It is obvious having regard to the context that the use that is made chargeable is not the same as consumption. If use was no other than consumption the legislature would be exercising itself needlessly. In the Constitution of India where octroi is dealt with under Entry 52 of List II to the Seventh Schedule, the tax is described as a tax "on the entry of goods into the local area for consumption, use or sale therein." The Constitution therefore sets out three different uses for which an entry of goods into the local area makes the goods chargeable for tax in the nature of octroi. Even the history of the octroi tax as traced by the Supreme Court in *Burmah Shell Oil Storage and Distributing Co. India Ltd. Vs. The Belgaum Borough Municipality*, shows that the tax has been imposed for the entry of goods into the local area for consumption, use or sale. If that is so the expression "use" must have been intended to carry a meaning other than consumption. Now the word "consumption" as used in the Constitutional Entry as well as in the Municipal taxation relating to octroi has been interpreted by the Supreme Court in *Burmah Shell Oil Storage and Distributing Co. India Ltd. Vs. The Belgaum Borough Municipality*, as "using up". Their Lordships first pointed out that the word "consumption" in its primary sense means the act of consuming and in ordinary parlance means the use of an article in a way which destroys, wastes or uses up that article, but in some legal contexts as in the explanation to Sub-article (1) of Article 286 of the Constitution as it stood before its amendment by Constitutional (6th Amendment) Act 1956 it has a wider meaning which does not involve using up. Then with reference to the word "consumption" used in the taxing entry relating to octroi their Lordships say (para 20):

"Added to the word "consumption" is the word "use" also. There may be certain commodities which though put to use are not "used up" in the process. A motor car brought into an area for use is not used up in the same sense as foodstuffs. 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."

If, therefore, the word "consumption" in the context of octroi has been used in that sense of using up an article in some manner it will not be possible to accept the argument of Mr. H. C. Shah that the word "use" also has been used to carry the same meaning namely using up. Indeed there are several articles on which

octroi is levied which are not consumed in the sense of being used up. A piece of steel furniture can be used but would not be used up within memory; no doubt steel may wear out but the wearing out would be so slow and so insignificant over measurable time that it could be ignored. The same would be the case of a precious stone or a gold ornament. Octroi could be levied also on animals brought in. In the first Schedule to the octroi rules in the present case some of the items which are chargeable are a gramophone, a radio, a motor car, steel and iron machinery, cutlery and firearms. Therefore, construing the word "use" in the context, it will not be possible to accept Mr. H. C. Shah's submission that it only means "using up".

10. Mr. H. C. Shah's alternative argument is that there cannot be a user of an article unless the article undergoes some change not merely in form but in substance. He relied on the decision of the Supreme Court in *Anwarkhan Mahboob Co. Vs. The State of Bombay (Now Maharashtra) and Others*, . Before considering that decision we may examine the argument on merits. It is obvious that there can be no user of an article unless it is employed for a given purpose. The purpose may be a purpose to the use of which the article of that class is normally put or it may be special purpose. A motor car can be said to be used when it is used for transport. It is therefore not necessary or imperative that the article must undergo a visible change in form or substance. Although a change in the article would be indicative of use, there would be user without any noticeable change as in the instances earlier mentioned. Whether or not there should be a change in the article would depend upon the nature of the article and the purpose of its employment. It may well be that the article is such and the purpose for which it is brought in is such that a change in the article is to be expected if it is used. The relevant factors to be considered whether or not there has been user of an article therefore are the nature of the article and the manner in which it is dealt with or the purpose for which it is employed

11. In *Anwarkhan Mahboob Co. Vs. The State of Bombay (Now Maharashtra) and Others*, to which Mr. H. C. Shah invited our attention in support of his, argument that the word "use" involves the concept of change of substance in the article, the case related to levy of purchase tax on tobacco leaves. The appellant Company situated within the State of Bombay used to bring tobacco leaves from outside that State into the State in raw form called "akho bhuko". In the State the stems and dust were removed from those leaves and after removal of such waste materials the patti, as the leaves were now called, were exported for consumption outside the State. The argument was that the tobacco was not chargeable because under the explanation to Article 286 of the Constitution as it then stood, the consumption must take place inside the State which levies the tax. The court was called upon to consider whether the process effected on the tobacco amounted to such consumption. Their lordships examined the meaning of the word "consumption" as used in that explanation and construed it as having been used in that explanation in a wide sense. Instancing the case of cotton where different processes take place on cotton at different states before a

wearing apparel comes into being they said;

"When raw cotton is delivered in State A for being ginned in that State, it is delivered for consumption in State A; when ginned cotton is delivered in State B for being spun into yarn it is delivered for consumption in State B; when yarn is delivered in State C for being woven into cloth in that State, it is delivered for consumption in State C; when woven cloth is delivered in State D for being made by tailor in that State into wearing apparel, there is delivery of cloth for consumption in State D; and finally when wearing apparel is delivered in State E for being sold as dress in that State, it is delivery of wearing apparel for consumption in State E. Except at the final state of consumption which consists in using the finished commodity as an article of clothing, there will be noticed at each stage of production the bringing into existence of a commercial commodity different from what was received by "the producers. This conversion of a commodity into a different commercial commodity by subjecting it to some processing, is consumption within the meaning of the explanation to Article 286 no less than the final act of user when no distinct commodity is being brought into existence but what was brought into existence is being used up."

Applying this test they held that by the removal of stems and dust from raw tobacco a different commercial article known as bidi patti came into existence which had a different marketability from that of raw tobacco. They therefore held that there was consumption within the State, Mr. Shah states that on this reasoning unless a different commercial commodity comes into existence it cannot be said that the uncrushed salt has been used by the factory. Their Lordships were construing the word "consumption" in a different context and were not expressing themselves on the word "use" in relation to octroi. The decision is not therefore attracted.

12. Therefore in considering whether uncrushed salt in the present case was brought for use by the factory one must take into account the nature of the article and, the manner it is dealt with or the purpose for which it is employed. The relevant questions are (i) what the factory is for and (ii) what happens to the salt. The factory is for crushing uncrushed salt which is brought to it for that purpose. The business activity of the factory is to crush salt. It is for the purpose of that business activity that salt is brought to it. Prima facie, therefore, the salt is brought to the factory for being used by the factory in order to carry on its business. But Mr. H. C. Shah argues that the use in this case is of the factory for the salt and not of the salt by the factory. A little consideration will show that what happens happens to the salt and not to the factory. The factory keeps on crushing the salt in its normal activity and the commodity used is salt in uncrushed form and the result of the use is salt in crushed form which is commercially different from the salt in uncrushed form. If the salt crushed is commercially different from the salt in uncrushed form, as it undoubtedly is, it is difficult to escape the conclusion that the factory uses uncrushed salt for carrying on its activity of producing a different commercial product. The fact that the

chemical composition does not change and only the form changes does not make any difference. The confusion in the argument advanced in this case arises partially from the fact that the owner of the uncrushed salt and the owner of the factory are the same. If the owners were different the position would appear in clearer perspective, as the owner obviously brings salt for use by his factory for the purpose of preparing a different commercial article. Though the article so produced is also known as salt and is the same in composition it has a marketability different from the uncrushed salt. Therefore considering the purpose for which the uncrushed salt is brought and the effect on that salt on the accomplishment of that purpose there is no doubt that uncrushed salt was brought in for use by the factory and we hold that octroi is leviable on the uncrushed salt so brought to the factory for crushing.

13. That disposes of the main point arising in these appeals. It was urged by Mr. H. C. Shah that the Municipality was levying octroi also on uncrushed salt directly sent from the stacking ground to the jetty through the octroi limits by means of trolley. No such specific point was made in the plaint or considered by both the Courts below. The whole case proceeded on the footing that salt whether crushed or uncrushed would not be salt used by the factory as a commodity and therefore no liability arose. Mr. D. U. Shah appearing for the Municipality, however, concedes that if uncrushed salt is not brought to the factory but is taken directly to the jetty for export it would not be liable for octroi. In view of that concession in order that no difficulty may arise in the execution of the decree in this case we propose to give a declaration in respect of the uncrushed salt directly exported without being brought to the factory for the use of the factory.