

(1927) 07 AHC CK 0027
In the Allahabad High Court

Jagannath Bhagwan Das

APPELLANT

Vs

Municipal Board of Allahabad

RESPONDENT

Date of Decision : 06-07-1927

Acts Referred:

Limitation Act, 1963 — Section 15
Limitation Act, 1963 — Section 15
Limitation Act, 1963 — Section 15

Citation : AIR 1928 All 136 : 108 Ind. Cas. 454

Hon'ble Judges : Sen, J; Mukerji, J

Bench : Full Bench

Final Decision : Partly Allowed

Judgement

Mukerji, J.—This appeal is on behalf of a firm of Government contractors who sued the Municipal Board, the respondent in the case, for a refund of octroi duty paid by them when they imported certain goods within the municipal limits. Their case was that the goods were obtained in order that they might fulfil certain contracts with the military authorities and that these goods, having been appropriated to the use of the Government under these contracts and the necessary certificates having been obtained from the military authorities, they were entitled to a refund.

2. The Municipal Board resisted the application on the ground that the shape in which the goods were accepted by the Government officers was not the shape in which they were brought within the municipal limits. In other words, their case was that the rule as to refund of the octroi duty applied only where goods imported were handed over without any alteration of shape or size or character to the Government officers for Government purposes. In the course of trial it was found that a portion of the goods in question was handed over bodily, without any change, to the Government departments. As to these, the plaintiffs' claim for refund has succeeded. As to the rest the suit has been dismissed by both the Courts below who accepted the contention of the respondent.

3. The question before this Court is one of pure law, viz., the interpretation of the Municipal Account Code, Ch. 3, Rule 27, Expl. 2. It says (leaving out more or less unimportant words):

Goods, the property of which is not vested in the Government at the time they pass the barrier, but which are imported with a view to the fulfillment of a Government contract... shall, on passing the barrier, be declared in writing as intended... in fulfillment of a certain contract. The duty on them shall then be paid; and subsequently, if they actually do become the property of the Government, the duty shall be refunded on a certificate to the effect signed by the departmental officer concerned....

4. There can be no doubt that, on the language quoted above, the rule implies that the goods that are imported should become the property of the Government in order that a refund of the octroi duty may be obtained. The question of identity may no doubt arise. But that question of identity has to be solved, not by the Municipal Board or its officers, but by the departmental officer concerned" who has to certify as to the identity. For example, a contractor may, in fulfillment of a Government contract, import, say, 10,000 yards of canvas to make tents. He may use up 7,000 yards in making the requisite number of tents. It will be the duty of the "departmental officer" who takes those tents on behalf of the Government to see that he does not certify for refund as to the entire 10,000 yards of canvas. Again, hides and leather may be imported by a contractor and he may use a portion of these in making boots etc., for the military. When the boots are accepted, in fulfillment of a contract, the departmental officer must see that the imported hides have all been consumed in fulfilling the contract. If he fails in his duty, the municipality would suffer, inasmuch as the contractor would obtain a larger refund than he is entitled to.

5. It is clear to my mind that the object of the rule is that the octroi duty shall not come out of the pocket of the Government. If a contractor has to pay octroi duty on goods which he is to employ for manufacturing articles for the Government, he will ultimately obtain the duty from the Government. Otherwise he will be a loser. Although, therefore, the contention of the Municipal Board is partially right that, at some time or other, some officer of the Government has to look into the identity of the goods, it does not follow that the Municipal Board is entitled to withhold repayment of octroi duty when the necessary certificate has been granted by the departmental officers." In the present case the certificates are entirely in form and are to the effect that the very goods that passed the municipal barriers were used in fulfillment of contracts with the Government.

6. It would follow that the plaintiffs are entitled to succeed. But on behalf of the respondents their learned Counsel has repeated a plea of limitation which was successfully taken in the Court of first instance, but which failed in the Court of appeal. The argument is based on Section 326, Municipalities Act. According to this section no suit can be maintained against the Municipal Board for any act done unless it is instituted within six months of the arising of the cause of action.

Under this section there is a further proviso that the claimant shall give a notice of two months to the Board explaining his claim. u/s 15, Lim. Act, where any such notice has to be given, the period of notice has to be excluded. Thus a claim made eight months after the arising of the cause of action must be held to be time barred. In this case portions of the claim, viz., that relating to the two sums of Rs. 700-15-0 and Rs. 126-3-6 appear to be time barred. The certificates were granted on 31st January 1923. Application for refund to the Municipal Board had to be made within 14 days of the grant of the certificate. It does appear that the application to the Municipal Board was made within time. The application was made in fact on 1st February 1923. The suit was, however, instituted on 20th November 192(SIC). This portion of the claim is therefore time barred.

7. It was argued on behalf of the appellants, and that argument found favour with the Court below, that the cause of action of the appellants arose only when the Municipal Board definitely said in writing that they were not going to entertain the application. This argument does not appeal to us. The act mentioned in Section 326, Municipalities Act, must be interpreted to include an omission: vide General Clauses Act, Section 4. The omission to pay the plaintiffs' claim is the cause of action. In this case there was a good deal of correspondence, but that could not extend the period of limitation unless a portion of the correspondence amounted to an acknowledgment on the part of the Municipal Board. No such acknowledgment has been put before us to show that the period of limitation was extended u/s 19, Lim. Act. If the Municipal Board had decided to send no reply whatsoever to the applicant it could not be said that no cause of action arose or that the limitation never began to run. I am therefore, of opinion that the plaintiffs' claim must be reduced by the amount of Rs. 827-2-6 and interest thereon.

8. I would, therefore, allow the appeal in part and decree the plaintiff's claim to the extent indicated above with interest and proportionate costs. I would allow the parties costs in proportion to their respective success and failure

Sen, J.

9. This appeal arises out of a suit by the plaintiffs appellants against the Municipal Board of Allahabad for refund of octroi duty. As Government contractors and in fulfillment of certain contracts with the Government, the plaintiff had imported some dutiable goods within the municipal limits of Allahabad. At the time of passing the octroi barrier, the property in the goods did not vest in the Government. The result was that the plaintiffs paid the necessary octroi duty. They delivered a portion of the goods to the Government in the condition as imported. The rest they delivered as finished articles as per orders received from the departmental officer concerned and in terms of the contract. Declaration as required by Rule 27, Expl, 2, Ch. 3, Municipal Account Code, was made with due formality. A certificate was obtained from the departmental officer concerned setting out that the plaintiffs had imported the goods and supplied the same in fulfillment of their contract. These formalities having been gone through,

the plaintiffs claimed a refund of the octroi duty paid by them to the municipal authorities. The above rule is based upon public policy and is intended to save the State from the incidence of taxation and to extend the protection to a private individual who fulfills his engagements with the State.

9. The Municipal Board refused to refund the octroi duty on the short ground that the goods delivered to the Government were not identical with the goods imported, inasmuch as their original condition was altered and the finished products supplied by the plaintiffs were not the goods imported. This plea did not exactly fit in with the facts of the case as disclosed by evidence, for it was undoubtedly proved that a portion of the goods imported had been delivered in their original condition. The trial Court therefore decreed the plaintiff's claim in part and as to the rest, it sustained the plea put forward by the Municipal Board and rejected the claim.

10. On appeal to the learned District Judge the plaintiffs claimed their right to refund on the ground that they had fulfilled all the essentials as required by the Municipal Account Code. The respondent pleaded limitation and also that the plaintiffs' case was outside the rule, because before delivery to the Government officer concerned, the goods have passed through changes so great as to destroy their identity. The learned District Judge rejected the plea of limitation. He agreed with the trial Court that the goods supplied were not identical with the goods imported and, therefore, the plaintiffs were not entitled to the benefit of Rule 27, Expl. 2.

11. In construing Rule 27, the Courts below have not correctly applied the principle that a fiscal enactment must be strictly construed; it should be interpreted generously towards the subject.

12. It is not disputed that the plaintiffs imported the goods with a view to fulfil a Government contract. They made the declaration as required by Rule 27. They paid the necessary duty. They produced the certificate which in the plainest language vouched as to the identity of the goods. All the conditions necessary to clothe the plaintiff with the right to call for a refund were rigidly complied with. The plaintiffs, therefore, were entitled to a decree. It was not open to the Municipal Board to probe into the correctness, legality, or validity of the certificate granted by the departmental officer concerned and it is doubtful if the framers of the rule intended to provide either the necessity or the desirability of an enquiry as to the correctness of the certificate which is neither ambiguous nor uncertain as a condition precedent to the granting of the refund.

13. I am in complete accord with my learned brother both as to his construction of Rule 27, Expl. 2, Municipal Account Code, and also his view on the question of limitation. The result is that the appeal succeeds in part. Under the circumstances I agree as to the order proposed.

14. The appeal is allowed in part and the claim is decreed as indicated in the judgments above with proportionate costs and interest. Interest after the date of

the institution of the suit shall be at 6 per cent per annum.