
(1967) 03 KAR CK 0014

In the Karnataka High Court

Case No : Regular Second Appeal No. 352 of 1963

Kantilal Manilal and Co.

APPELLANT

Vs

Belgaum Municipal Borough

RESPONDENT

Date of Decision : 28-03-1967

Acts Referred:

Citation : AIR 1968 Kar 323 : (1967) 2 MysLJ 85

Hon'ble Judges : Somnath Iyer, J

Bench : Single Bench

Judgement

(1) The appellant is a firm which manufactures soaps in Belgaum, and for such manufacture it used to bring into the limits of the Belgaum Municipal Borough castor oil and rosin. During the period between December 11, 1955 and April 23, 1956 it brought into the municipal limits rosin of the value of Rs. 60,817-6-0 and during the period between December 18, 1955 and April 4 1956 it brought 1,495 tins of castor oil. It was called upon to pay octroi on castor oil at Rs. 2-1-4 per cent of its value. The firm paid the octroi demanded under protest and instituted a suit against the Municipal Borough for the recovery of sum of Rs. 1,281-14-0 which, according to the firm, was the excess octroi collected. The court of first instance gave the firm the decree which it wanted, but that decree was reversed in the appeal preferred by the Municipal Borough. So the firm appeals.

(2) Mr. Joshi appearing for the firm contends that both rosin and castor oil which the plaintiff brought into the limits of the Municipal Borough were brought for the manufacture of soap and that the lower rate of octroi which is prescribed by item (3) (3) in class 3 of the schedule to the relevant octroi rules and bye-laws was the octroi properly payable. But the lower appellate court was of the opinion that the octroi payable on the castor oil brought into the limits of the Municipal Borough was that prescribed by item (1) A of Class 5(1) of the schedule, and that similarly the octroi payable in respect of rosin was that prescribed by item (4) of class 4.

(3) Item 5(1)(1) A says that the octroi payable in respect of castor oil brought

into the limits of the Municipal Borough is Rs. 2-1-4 per cent of the value of the castor oil brought. Similarly item 4(4) of the schedule prescribes an octroi duty of Rs. 3-2-0 per cent on the value of rosin brought into the octroi limits.

(4) But it was contended by Mr. Joshi that there is a special entry in the schedule which prescribed the octroi duty payable in respect of articles used for the preparation of soap, and that that portion of the schedule is class 3 (3)(3). It is true that the octroi payable in respect of articles used for the manufacture of soap is 1 per cent of the value of the articles so brought into the municipal limits, and, if nothing else could have been said about the matter, it would have been easy to reach the conclusion that the well known canon of interpretation of fiscal enactments produces the result that the octroi payable in respect of rosin and castor oil brought by the firm into the limits of the municipal borough for the manufacture of soap is the lower octroi prescribed by class 3(3)(3) of the schedule.

(5) But it was contended on behalf of the Belgaum City Municipal Council which is now functioning in place of the Belgaum Municipal Borough against which the suit was brought, that the suit brought by the firm is barred by the principles of *res judicata*. It is pointed out on behalf of the Municipal Borough that the question whether in respect of the castor oil and rosin brought into the municipal limits by the firm for the manufacture of soap, the octroi duty payable is that prescribed by Item (3) of Class 3(3) or whether it was the duty prescribed by Item (1) A of Class 5(1) in respect of castor oil and by Item (4) of Class 4 in the case of rosin, was the subject matter of final adjudication in an earlier suit brought by the firm in O. S. 385 of 1955 in the Court of the Civil Judge, J. D. Belgaum, and that the decision in that suit which was affirmed in appeal and in second appeal by this court was adverse to the firm.

(6) It is true that that question was the very question posed by the earlier suit in which the judgment of the court of first instance is Ex. 63. The issues 1 and 2 in that suit read:-

"1. Does plaintiff prove that he is importing rosin and castor oil for the purpose of manufacturing soaps and not for selling them as raw materials?

"2. If so, does he prove that he is entitled to be taxed on rosin and oil under Clause 3 sub-clause (3) of the Octroi Rules of the defendant Municipality under the heading "Washing article" at Item No. 3 and Castor Oil under class Item No. 4 of the sub clause (2) Class 3?"

(7) The finding of the court of first instance in that litigation on both the issues was against the firm and the effect of the finding on the second issue was that the higher octroi duty demanded by the municipal borough was what was properly payable by the firm.

(8) It is not disputed that the decree in that suit was affirmed in appeal and that the second appeal preferred by the firm to this Court was also dismissed on

November 22, 1961. Although there is no discussion in the judgment in that second appeal of the provisions of Item 3(3) of Class 3, what is perfectly manifest is that this court was of the opinion that the octroi payable in respect of castor oil was that prescribed by item 1(A) of Class 5(1) and that payable in respect of rosin was the octroi mentioned against item (4) in Class 4.

The relevant part of the judgment of this court in that second appeal which is S. A. No. 200 of 1958 reads:-

"In the instant case, castor oil is classified as a drug and duty imposed as such. It is not denied by the learned counsel for the appellant that castor oil is also a drug. Rosin which is the same as ral, is undoubtedly used as a building material. This fact again is not contested by the learned counsel for the appellant. But what he contends is that his client has been purchasing castor oil and rosin for manufacturing soap, therefore, his client should not have been taxed under either Class 5 of Sch."A" or under Class 4 of that schedule. In other words, his contention amounts to saying that the tax imposed must depend upon the nature of the use to which the articles got into the municipality are put. For this contention there appears to be no basis either in the provisions of the Act, or in the Rules. To repeat myself, what is taxed is the goods brought into the Municipality. The classification of those articles is left to the Municipality."

This Court again proceeded to observe:

"Sri Krishnaswami relying on various decisions contended the statutes which authorise the imposition of taxes on or the levy of fees from the public must always be strictly construed and unless a subordinate legislature or a statutory body is in express and unambiguous terms given authority by a competent legislature to impose taxes or to levy fees such authority must be denied to it; in other words, an authority to impose a tax or to levy fees cannot be deduced from provisions of doubtful import and when the words used in a statute are capable of two interpretations, one in favour of the taxing authority and the other in favour of the subject, the latter interpretation must hold the field; the reason for these rules is that it is opposed to the well recognised conceptions governing a progressive state of society to permit statutory bodies to assume by inference from the words of an enactment the authority to impose taxes or to levy fees, as nothing is more liable to abuse than such supposed authority. No exception can be taken to the principle enunciated by the learned counsel for the appellant. But the real question is whether that principle has any application to the facts of the present case. Sri Krishnaswami has not shown me any ambiguity in the language employed either in S. 73 or in S. 75 of the Act. Nor is it his case that the relevant rules are not in accordance with the provisions contained in the Act. All that he is disputing is that the classification made by the Municipal Borough has been unfavourable to his client. But that is not a grievance that can be entertained by this Court."

(9) Mr. Joshi appearing for the firm contends that the pronouncement in the

previous litigation has restricted operation and is not an adjudication with respect to the liability of the firm to pay octroi for the period subsequent to that period to which the previous litigation relates. He maintained that the liability to pay octroi duty is a recurring liability and that on each occasion on which the firm is called upon to pay octroi in excess of what it is liable to pay, the cause of action arises for a claim to refund of the excess octroi collected.

(10) But it is obvious that if the decision in the earlier litigation was based upon a principle which has application not only to the period to which the earlier suit related but also in respect of future liability, the firm cannot in respect of the subsequent period to which the demand relates, raise the same contention which failed in the earlier litigation. The principle which was decided in the earlier litigation being fundamental to the issue as to the octroi payable by the firm, that adjudication upon that basic matter bars an adjudication on the same contention in respect of the octroi demanded for the subsequent years.

If, on the contrary, the decision in the previous suit depended upon the facts and circumstances which were peculiar to the period to which that litigation related and did not involve the determination of the principle guiding the quantification of the octroi payable in respect of the future period, there would of course be no bar of *res judicata*. It is by the application of this test that the sustainability of the plea of *res judicata* has to be decided.

(11) The question which arose directly and substantially in the previous litigation was whether the octroi payable by the firm was that specified in class 3 or that specified in classes 4 and 5 as the case may be. It cannot be said that the liability to pay octroi varies from year to year so long as the schedule to the rules continues to remain in the condition in which it was when the earlier suit was brought, and, it is admitted that no alteration or amendment was made to the schedule thereafter.

The fundamental question which therefore arose for decision in the previous suit upon which the liability of the plaintiff to pay the octroi demanded by the Municipal Council depended, was whether, by reason of the fact that castor oil and rosin brought into the Municipal limits by the firm were used for the manufacture of soap, the entry in Class 5 in the case of castor oil and the entry in class 4 in the case of rosin had to yield to the entry in class 3 which expressly referred to an article brought into the Municipal limits for the manufacture of soap.

The liability to pay the octroi prescribed by classes 4 and 5 was not a liability peculiar to the period to which the earlier suit related, and, did not depend upon any facts which existed during that period which did not exist or stood altered during the subsequent period. The liability depended upon the interpretation of the very same entries which arose for interpretation in the earlier suit, and if that interpretation was adverse to the plaintiff in the earlier suit with respect to the period to which that suit related, the plaintiff is clearly precluded from bringing

another suit challenging the demand for octroi which succeeded in the earlier litigation when a similar demand was made for the subsequent periods.

(12) In *Hoystead v. Commissioner of Taxation* 1926 AC 155 the Privy Council made a clear elucidation that a fresh litigation in that situation could not be commenced and said this in that context:

"In the opinion of their Lordships it is settled, first, that the admission of a fact fundamental to the decision arrived at cannot be withdrawn and a fresh litigation started, with a view of obtaining another judgment upon a different assumption of fact: secondly, the same principle applies not only to an erroneous admission of a fundamental fact, but to an erroneous assumption as to the legal quality of that fact. parties are not permitted to begin fresh litigations because of new views they may entertain of the law of the case, or new versions which they present as to what should be a proper apprehension by the Court of the legal result either of the construction of the documents or the weight of certain circumstances. If this were permitted litigation would have no end, except when legal ingenuity is exhausted. It is a principle of law that this cannot be permitted, and there is abundant authority reiterating that principle."

(13) But Mr. Joshi contended that the plea of *res judicata* which was raised by the Municipal Council was withdrawn even in the Court of first instance and that no appeal could be made to that part of the defence which was so abandoned. My attention was asked to an observation in para 8 of the judgment of the Court of first instance which reads:

"Ex. 63 is a certified copy of the judgment in former R. O. s. No. 385 of 1955. It is an admitted fact that the plaintiff has preferred an appeal against this judgment and decree. It may be observed at the outset that this aspect of the defence is not stressed at the time of the final arguments. Further it is to be noted that in such matters there are recurring causes of action."

(14) On the basis of this observation the argument constructed was that, since the plea of *res judicata* was waived, the abandonment of that plea, as stated by the Court of first instance, makes its revival impossible.

(15) But Mr. Mahajan appearing for the Municipal Council repudiated the suggestion that there was any withdrawal from the plea of *res judicata* and submitted that the observation in the judgment of the Court of first instance is not susceptible of the meaning that there was its abandonment.

(16) It seems to me that Mr. Mahajan is right in making this submission. The Court of first instance did not say that the plea of *res judicata* was waived or abandoned, but used an expression of ambiguity when it made the observation that it was not "stressed". That observation merely means that the plea was not emphasised as much as it should have been, and, that that is how it should be understood is plain from the fact that the Court of first instance recorded a finding on the issue relating to *res judicata* in favour of the plaintiff and against

the defendant, which was not necessary if really the plea had disappeared by reason of withdrawal.

That there was no abandonment of that plea is also clear from the second ground in the memorandum of appeal which was produced before the lower appellate Court in which the finding of the Court of first instance that the suit was not barred by res judicata was called in question.

(17) It is very probable that by reason of the pendency of the second appeal from the decision n O. S. 385 of 1955, no sufficient stress was laid on the plea of res judicata, since it is plain that by reason of the pendency of the appeal the finding recorded in that suit by the Court of first instance was not conclusive. But, by the time the lower appellate Court decided the appeal, this Court had decided the second appeal in which the finding of the two Courts below that the firm was bound to pay the octroi specified in classes 4 and 5 was affirmed and the contention that the octroi payable was that prescribed by class 3 was negatived. Not unnaturally the lower appellate Court alluded to that plea and depended upon the pronouncement made in that second appeal, although it did not in so many words say that that decision operated as judicata.

But I have no doubt in my mind that the correct view to take is to say that the fundamental question as to the liability on the part of the firm to pay octroi was finally decided by this Court in S. A. No. 200 of 1958, and that that decision is what bars the plaintiff from bringing a suit again and again on an interpretation at variance with that placed by this Court on the entries in the schedule to the Octroi Rules. Any other view would make it possible for the firm to bring a suit for the recovery of the excess octroi duty on each occasion on which excess octroi duty is collected, in disregard of the interpretation placed by the Court as to the interpretation of the entries in the schedule in respect of the earlier period.

(18) I am of the opinion that the plea of res judicata succeeds and it is on this ground that I dismiss this appeal.

(19) But in the circumstances I make a direction that each party shall bear his or its own costs in all the three Courts.

(20) Appeal dismissed