
(1993) 12 OHC CK 0011
In the Orissa High Court
Case No : O.J.C. No. 5 of 1991

Kedar Sons

APPELLANT

Vs

Cuttack Municipality and Another

RESPONDENT

Date of Decision : 24-12-1993

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (1994) 1 OLR 194

Hon'ble Judges : D.P. Mohapatra, J;D.M. Patnaik, J

Bench : Division Bench

Advocate : A.K. Ray, for the Appellant; S.K. Nayak (1), for the Respondent

Final Decision : Allowed

Judgement

D.M. Patnaik, J.—The petitioner invokes the extraordinary jurisdiction of this Court under Arts. 226 and 227 of the Constitution of India to quash Annexure-1, a notice issued by opposite party No. 2, the Octroi Superintendent, Cuttack Municipality.

2. The petitioner-firm is a registered dealer carrying business in purchase and sale of textile goods within the octroi limit of the Cuttack Municipality. It claims, whenever such goods are brought from outside for sale he used to pay the octroi tax at the check gate and there has been no evasion in this regard. Opp. party No. 2. the Octroi Superintendent by notice dated 7-12-1990 (Annexure-1) required the petitioner to produce its stock register, sale register and other documents, such as invoices etc. in support of the purchase of goods which were brought within the Cuttack Municipality so as to verify evasion of payment of any tax during the period from 1987-88, 1988-89 and 1989-90. The firm was required to produce the documents before opp. party No. 2 on 17-12-1990 at 11 a. m.

The petitioner assails this notice as illegal being without jurisdiction. According to him, such direction amounts to a roaving enquiry, not permissible under Clause

11(b) of the Octroi Bye-laws of the Cuttack Municipality under which the notice is purported to have been issued.

In the counter opp. party. No. 2 justified his action in issuing such a notice.

3. Heard Mr. A. K. Ray, learned counsel for the petitioner and Mr. S. K. Nayak, learned counsel for the opposite parties.

4. The notice is purported to have been issued under Clause 11(b) of the Octroi Bye-laws of the Cuttack Municipality. The same reads as follows :

"11-(a) xx xx xx

(b) If any article is brought within the limits of the Municipality by evading payment of Octroi and it is proved to the satisfaction of the Octroi Superintendent that the articles are liable to payment of Octroi and have been brought without payment of Octroi, the said Superintendent may after giving reasonable opportunity to the owner or person in charge by serving a notice on him may make the necessary assessment and impose a penalty not exceeding the tax due and on such assessment the owner or the person in charge of the articles shall be liable to pay the Octroi including the penalty ; so imposed and on default, he shall be liable to prosecution for evasion of such dues and any person aggrieved by the order of the Superintendent may file an appeal before the District Magistrate against the said order within one month and the order of the District Magistrate shall be final and binding. " As will be seen, the language of Clause 11(b) is very clear and does not need any nicety of interpretation. The clause lays down three ingredients ; first, some specific, identified and ascertained articles or goods which may comprise in one consignment or a number of consignments must have been brought within the octroi limit of the municipality; secondly, such articles or goods must be liable to be imposed with octroi tax, and thirdly, payment of such tax must have been evaded. When the Octroi Superintendent is satisfied about the above three ingredients, then only the clause requires him to serve a notice so as to give the person concerned a reasonable opportunity to have his say in the matter of assessment and imposition of penalty. It is only for these purposes that opp. party No. 2 gets jurisdiction to issue notice and for no other purpose. The rule does not authorise him to issue a notice asking any one to produce the stock register or any books of accounts. The Octroi-Bye-laws nowhere cast any obligation on any person liable to pay such tax to produce any books of accounts for verification of accounts to detect whether there has been any evasion of payment of octroi tax or not. The obligation is to satisfy the person in authority at the point of entry of the goods or articles brought within the octroi limit, whether the goods or articles are liable to be imposed with octroi tax. The notice under Annexure-1 to produce the accounts in the manner indicated therein is clearly beyond the competency of opp. party No. 2 and hence is invalid.

5. In the result, the notice under Annexure-1 is quashed. It is, however, open to opp. party No. 2 to issue notice to the petitioner with regard to such article or

articles whice are liable to be paid tax and the opp. party No. 2 is satisfied that payment of tax in respect of those articles has been evaded. The writ petition is allowed. There shall be no order as to costs.

D.P. Mohapatra, J.

I agree.