(2001) 05 RAJ CK 0075

In the Rajasthan High Court

Case No : Civil Writ Petition No. 2358 of 1993

Khinv Raj and Party — APPELLANT

Vs

Municipal Board, Jaisalmer — RESPONDENT

Date of Decision : 30-05-2001

Acts Referred:
Rajasthan Excise Act, 1950 — Section 107(5)
Rajasthan Municipalities (Octroi) Rules, 1962 — Rule 14, 8

Citation : (2002) 1 RLW 247 : (2002) 1 WLC 230 : (2001) 4 WLN 666

Hon'ble Judges : Rajesh Balia, J

Bench : Single Bench

Advocate : N.M. Lodha, for the Appellant; Bhim Arora, for the Respondent

Final Decision : Allowed

Judgement

Balia, J.—Heard learned counsel for the parties.

2. Ashort issue has been raised. The petitioner was granted licence for retail shops for selling IMKI. under the Rajasthan Excise Act, 1950. Under the said Act the petitioner was required to pay the exclusive privilege price for securing licence to the State Govt. On grant of licence the petitioner was permitted to secure supply of liquor from wholesale dealers or the manufacturers who were licensed to trade in wholesale. The process of payment of exclusive privilege price to the State was to deposit proportionate amount in the Govt. treasury before lifting the liquor from the wholesale outlet at the price fixed for that liquor.

3. The petitioner is a retail dealer and had be bring the liquor within the local limits of the respondent Municipality and on that octroi duty was payable under the Rajasthan Municipalities Act, 1959 as prescribed under the Rajasthan Municipalities (Octroi) Rules, 1962. The octroi duly payable on the liquor brought within the municipal limits for use or consumption or sate therein. The relevant rule governing the determination of the value of goods for assessment of octroi is Rule 14 which reads as under:

Rule 14:- (1) Determination of the value of goods for assessment of octroi -(1) Before the octroi duty is paid the original invoice (bijak) bearing the signature of the selling dealer or the despatching agent, if any, shall be produced and may be considered valid and accepted as evidence of the value of the goods. The original or its copy produced by the person bringing the goods shall be pasted on the bill-cum-receipt in Form 2.

(2) All goods, on which an ad-valorem octroi is leviable will be taxed according to their full value as given in the original bill or invoice (Bijak).

Note :-Full value includes all taxes or excise duty and charges but does not include Railway freight, commission or other incidental charges on the goods.

(3) If the person bringing the goods fails to produce the invoice or bill of the goods being brought by him, or he refuses to produce the information as required under Rule 8, the incharge of the octroi outpost shall forward the goods to the Octroi Superintendent under the charge of Municipal employee for appraisement and recovery of the octroi due.

(4) The Octroi Superintendent on receipt of such goods shall appraise the same as per market rate with the assistance of at least two dealers dealing in the same commodities and shall levy the octroi due.

(5) If the invoice is subsequently received and presented by such person within thirty days of the date of payment of octroi after appraisement of goods by the Octroi Superintendent, the amount of octroi charged in excess, if any, shall be refunded.

(6) If there is any dispute between such person and the Octroi Superintendent regarding acceptance of the invoice or bill value, the matter shall be decided by the Executive Officer.

(7) In case the Incharge octroi outpost charges any excess amount of octroi due to some error, mistake or by wrong calculation, the amount, so charged, in excess, shall, on the application of the payee within thirty days of the deposit of octroi amount, be refunded to him after verification of the correctness of the amount.

(8) In case where the State Government have, under Sub-section (5) of Section 107 of the Act, exempted any class of goods from payment of octroi subject to the production of certificate from concerned authorities and the person bringing such goods does not produce the requisite certificate at the time of entry of the goods within Municipal limits, he shall have to forthwith deposit such amount as is equivalent to the amount of octroi leviable on such goods.

Provided that the amount so deposited shall be refunded to the payee if he makes an application within a period of 2 months from the date of such deposit, along with the aforesaid certificate.

4. From the perusal of the aforesaid Rule it is clear that only evidence which is

material on the basis of which octroi duty is leviable is the original bill or invoice covering the goods which are brought within the municipal limits.

5. The note appended to Sub-rule (2) clearly postulates that full value includes all taxes or excise duly and other charges but does not include railway freight, commission or other incidental charges on the goods. A separate procedure is prescribed where the person bringing the goods within the municipal limits fails to produce the invoice or bill of the goods being brought by him, or he refuses to furnish the information as required under Rule 8. The Octroi Superintendent is required to appraise the goods at market rate with the assistance of atleast two dealers dealing in the same commodities and to levy the octroi duty as per that determination of its value.

6. Significantly Sub-rule (5) envisages if the invoice is presented within thirty days of the date of payment of octroi after appraisement of goods by the Octroi Superintendent, the amount of octroi charged in excess, if any, shall be refunded.

7. Thus, it is apparent that only material which can form the basis of charging of octroi duty in respect of goods on which an ad-valorem octroi is leviable, is the invoice where ever available, and the goods entry the municipal limits were to be taxed according to their full value as given in the original bill or invoice which is produced by the person bringing the goods within the limits of the municipal either at the time of bringing the goods within the municipal limits or within thirty days of appraisal of its value under Sub-rule (4). The fact that on production of invoice within thirty days with respect to goods which have been subjected to appraisement by the Superintendent, he is required to assess the octroi duty in terms of the invoice and refund the excess, leads to irresistible conclusion that in the presence of the invoice accompanying the goods showing its value no other material is permissible to look. However, enquiry can be made about the genuineness of the bill.

8. Keeping in view the aforesaid principle, it is apparent that the amount of exclusive privilege price which is payable by the petitioner directly to the Govt. treasury as licence fee for procuring the licence ordinarily does not form part of the invoice issued by the seller but is subject of separate deposit through challan.

9. Be that as it may manufacturer or wholesale dealer, the note appended to Sub-rule (2) is enough to cover all taxation, Excise Duty, or other charges except railway freight, commission or other incidental charges on the goods. The charges separately shown in the invoice, because the mere bifurcation of value of goods into different heads, would not result in diminishing the value of goods as shown in the invoice in totality except to the extent, the charges which were to be excluded under note railway freight, commission or other incidental charges. Charges which do not form part of the invoice cannot be imported for considering the value.

10. In the aforesaid circumstances, the contention of the petitioner merits acceptance that the octroi duly is leviable only on the invoice price and not on

the exclusive privilege price paid independently of the invoice to the govt. treasury. This issue does not appear to have been considered by the Octroi Authority at all.

11. In these circumstances, the petition is allowed. The respondents are directed to re-value the octroi duty on the basis of invoices which have been submitted by the petitioner at the time of bringing the goods within the local limits and adjust such duty against the amount for which in terms of the orders passed by this Court dt. 7.5.93 has been kept in a separate account and make appropriate orders in consequence thereof. In doing so, the respondents shall also decide the question of refund in accordance with the provisions of the Act and Rules, if the amount lying with them and found in excess of the demand of octroi.

12. There shall be no order as to costs.

