(2004) 07 AHC CK 0091

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 281 of 1989

L.H. Sugar Factory Limited APPELLANT

Vs

Municipal Board and Another RESPONDENT

Date of Decision : 21-07-2004

Acts Referred:

Uttar Pradesh Municipalities Act, 1916 — Section 128, 131(1), 131(3), 157(3), 94

Citation : (2005) 1 AWC 766 : (2004) 3 UPLBEC 2538

Hon'ble Judges : R.K. Agrawal, J;K.N. Ojha, J

Bench : Division Bench

Advocate : Triloki Nath, for the Appellant; V.K. Dixit, for the Respondent

Final Decision : Allowed

Judgement

R.K. Agrawal and K.N. Ojha, JJ.—By means of the present writ petition filed under Article 226 of the Constitution of India, the petitioner, L.H. Sugar Factory Limited, seeks a writ, order or direction in the nature of mandamus commanding the respondents not to charge/realize octroi on sugarcane brought to the petitioner''s factory. It further seeks refund of a sum of Rs. 81,000,00/- which is claimed to have been illegally realized as octroi on the sugarcane brought to the petitioner''s factory from 14th November, 1988 to 15th January, 1989.

2. Briefly stated, the facts giving rise to the present writ petition are as follows :-

The petitioner is a public limited company incorporated under the Companies Act. It is engaged in the business of manufacture and sale of sugar by vacuum pan process and alied products at its factory situated within the Municipal Limits of Pilibhit. The petitioner purchases sugarcane from outside the Municipal Limits of Pilibhit and brings the same to its factory. The Municipal Board, Pilibhit, started charging octroi on the sugarcane brought to the petitioner''s factory at Pilibhit from outside the Municipal Limits @ 5 paise per quintal. The petitioner continued to pay octroi duty at the aforementioned rate till 31st August, 1982. Thereafter, the Municipal Board stopped realizing octroi duty from the petitioner on the sugarcane brought by it to its factory. According to the petitioner, the Municipal Board, Pilibhit published proposals proposing to levy octroi duty @ 20 paise per quintal on the sugarcane. The proposal was published in the UP. Gazette dated 7th November, 1981. Objections were invited from the public. The petitioner also filed its objections to the proposed levy of octroi duty @ 20 paise per quintal on the sugarcane. It appears that the Commissioner, Bareilly Division, Bareilly granted approval to the final list of items and the octroi duty leviable therein as per the recommendations of the Municipal Board, Pilibhit. The approved list was published in the U.P. Gazette on 28th August, 1982. The list was to be made effective from 1st September, 1982. In this list, sugarcane was omitted. From 1st September, 1982, the Municipal Board, Pilibhit stopped levying and realizing octroi duty on sugarcane brought by the petitioner from outside the Municipal Limits of Pilibhit to its factory. Subsequently, the State Government issued an order on 3rd July, 1987 purporting to be u/s 157(3) of the Municipalities Act, 1916 (hereinafter referred to as "the Act"). It directed that in those municipalities where octroi duty is leviable on sugarcane brought for crushing within the sugar factory at more than 10 paise per quintal, octroi should be realized only @ 10 paise per quintal. However, where the octroi duty was less than 10 paise per quintal, this order will not authorize the Nagar Palika to charge 10 paise as octroi. Taking shelter behind this Government Order, the Municipal Board, Pilibhit started realizing 10 paise per quintal as octroi duty on sugarcane from the petitioner. The petitioner paid octroi duty for the period of 14th November, 1988 to 15th January, 1989, which came to Rs. 81,000,00/-. The petitioner thereafter challenged the action of the Municipal Board on the ground that no octroi duty is payable under the aforesaid Government Order.

3. We have heard Sri Triloki Nath, the learneed Counsel for the petitioner and Sri V.K. Dixit, learneed Counsel appearing for the respondents.

4. Sri Triloki Nath, the learneed Counsel for the petitioner, submitted that the Municipal Board, Pilibhit had, while publishing the proposal on the Gazette dated 7th July, 1981 superseded its previous list of octroi duty which culminated in the final list dated 20th August, 1982 which was published on 28th August, 1982, effective from 1st September, 1982, in which sugarcane did not find any mention and therefore, from 1st September, 1982, no octroi duty is chargeable or payable. He submitted that u/s 128 of the Act, the Municipal Board has been authorized to levy octroi. The procedure for levy and imposition has been provided under Sections 131 to 136 of the Act. Section 131 of the Act provides for framing of preliminary proposals. Sub-section (3) thereof requires the municipality to publish in the manner prescribed in Section 94 of the Act the proposal framed under sub-section (1). In exercise of the powers u/s 131(3) of the Act, the notification dated 7th July, 1981 was published. The Municipal Board considered the objections and thereafter recommended a list of the items on which octroi duty was to be charged, to the Commissioner for his approval. The Commissioner approved the list which has been published in the U.P. Gazette on 28th August, 1982. It does not include sugarcane. The submission is that after

1st September, 1982 as the earlier list of items on which octroi duty was leviable, had been superseded, no octroi duty can be charged or realized on sugarcane. He submitted that the Government Order dated 3rd July, 1987 does not authorize the Municipal Board, Pilibhit to realize octroi duty on sugarcane where it is not payable at all and therefore, the action of the respondents in realizing the octroi duty on sugarcane is wholly illegal and without the authority of law.

5. Sri V.K. Dixit, the learneed Counsel for the respondents, submitted that even though in the list of items published in the U.P. Gazette on 28th August, 1982, sugarcane is not mentioned but in the list of exempted items, there is no mention of sugarcane and therefore, it will be deemed that sugarcane has not been exempted from octroi duty. He further submitted that even though in the proposals published on 7th July, 1981, it has been mentioned that earlier list of octroi duty is being superseded, there is no such mention in the Gazette notification dated 28th August, 1982 and therefore, the sugarcane continued to be chargeable to octroi duty at the old rate of 5 paise per quintal.

6. Having heard the learneed Counsel for the parties, we find that in the Gazette notification dated 7th July, 1981 in which the proposals have been published for levying octroi duty, 20 paise per quintal has been proposed as octroi duty on sugarcane. This is mentioned at Item No. 30 of List I of the proposal. This proposal had been issued in supersession of the earlier list. Relevant portion of the notification dated 7th July, 1981 is reproduced below :-

"S.A. 1020/23-72(80-81)-Nagarpalika Board, Pilibhit, Ne Apne Prachalit Adeya Chungi Kar Anusuchi Ko Atikramit Karke Apni Simayon Me Adeya Chungi Kar Wasul Karne Ke Liye Nimnalikhit Chungi Kar Anusuchi Banana Chahati Hai Jise Nagarpalika Adhiniyam, 1916 Ki Dhara 131(3) Ke Antargat Prakashit Kiya Jata Hai. Samsta Sambandhit Vyakti Jin Per Is Adeya Chungi Kar Anusuchi Ka Prabhav Parne Ki Sambhawana Hai, Appattiya Evam Sujhav Amantrit Kiye Jate Hai. Samasta Appattiya Evam Sujhav Iske Prakashit Hone Ke 30 Din Ke Andar Ayukta, Bareilly Mandal, Bareilly Ko Likhit Roop Me Bhejen, Nirdharit Awadhi Ke Uprant Prapta Hone Wale Kisi Bhi Sujhav Athawa Apatti Per Vichar Nahi Hoga."

7. In the Gazette Notification dated 20th August, 1982, which contains the list of approved items on which octroi duty is leviable, sugarcane does not find mention in any of the list. Thus, from 1st September, 1982 no octroi duty can be leviable on the sugarcane as the earlier list stands superseded. It is well settled by numerous decisions of the Apex Court that no tax or fee can be charged except by authority of law. [See State of Kerala and Others Vs. P.J. Joseph, ; Kunnathat Thathunni Moopil Nair Vs. The State of Kerala and Another, ; State of Kerala Vs. Madras Rubber Factory Ltd., ; Kapil Mohan Vs. The Commissioner of Income Tax, Delhi, ; Nagrik Upbhokta M. Manch Vs. Union of India (UOI) and Others, and Hindustan Times and Others Vs. State of U.P. and Another,]. As already held hereinbefore, the octroi list which provided for levy of octroi duty @ 5 paise per quintal on sugarcane, was superseded by the notification dated 7th November, 1981 and in the final list of items eligible to octroi duty published on 28th

August, 1982, sugarcane was not included. Thus, the respondents could not levy and charge any excise duty after 31st August, 1982 even under the garb of the Government Order dated 3rd July, 1987 as there was no statutory backing for such levy. Moreover, the said Government Order did not authorize to impose any fresh octroi duty on sugarcane. It had only fixed the upper limit for realization of octroi duty on sugarcane @ 10 paise per quintal where it was more than 10 paise.

8. It is further well settled that exemption from the tax can be granted only where it is leviable and not otherwise. If an item is not liable for octroi duty at all, then there is no question of granting any exemption. [See A.V. Fernandez Vs. The State of Kerala, and Hansraj and Sons v. State of Jammu and Hansraj and Sons Vs. State of Jammu and Kashmir and Others,]. Thus, the contention of Sri Dixit that if an item is not mentioned in the list of exempted goods, octroi duty is leviable, is misconceived.

9. In view of the foregoing discussion as there is no levy of octroi duty on sugarcane after 1st September, 1982 and the municipal Board also acted in the same manner by not charging any octroi duty from the petitioner from 1st September, 1982 till 13th November, 1988, the Municipal Board cannot, in the garb of the Government Order dated 3d July, 1987, realize any octroi duty from the petitioner. The petitioner is entitled for the refund of the octroi duty of Rs. 81,000.00 paid by it from 15th November, 1988 to 15th January, 1989. It is further entitled for refund of the amount collected thereafter pursuant to the interim order passed by this Court alongwith interest @ 10% p.a.

10. The writ petition succeeds and is,allowed. However, the parties shall bear their own costs.

