(1961) 12 MP CK 0008

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 87 of 1961

Loonkaran Parakh and Others APPELLANT

Vs

State of Madhya Pradesh and Another RESPONDENT

Date of Decision : 06-12-1961

Acts Referred:
Central Provinces and Berar Municipalities Act, 1922 — Section 66, 66(1), 85
Octroi Rules, 1965 — Rule 30, 38, 45

Citation : AIR 1962 MP 196 : (1962) JLJ 151 : (1962) 7 MPLJ 297 : (1962) MPLJ 297

Hon'ble Judges : P.V. Dixit, C.J;K.L. Pandey, J

Bench : Division Bench

Advocate : A.P. Sen and A.H. Saifi, for the Appellant; J.V. Jakatdar and R.S. Dabir, for the Respondent

Final Decision : Partly Allowed

Judgement

Dixit, C. J.

By this application under Article 226 of the Constitution the applicants challenge the validity of certain amendments made in Rules 30, 38 and 45 of the Rules for the assessment, collection and refund of octroi tax within the limits of Raipur Municipality. The amendments were made by Notification No. 52-776-XVIII-U, issued by the State Government on 14th March 1961 in the exercise of powers conferred by Sections 71, 76 and 85 of the Central Provinces and Berar Municipalities Act, 1922. The applicants pray that a writ in the nature of certiorari be issued for quashing the aforesaid notification in so far as it amends Rules 30, 38 and 45 and that a direction be issued to the respondents restraining them from giving effect to those amendments.

The petitioners are wholesale dealers in cloth, food-grains and other kirana goods doing business within the limits of Raipur Municipality. During the course of their business they import large quantities of goods within the municipal limits and are also required to take them through those limits. The Raipur Municipality has imposed octroi duty on several articles and goods brought within the municipal limits for sale, consumption or use within those limits. On 4th June 1951 the State Government notified the Rules for the assessment, collection and refund of octroi tax within the limits of the Committee. Rule 30 provided:--

"Goods imported by rail or road and intended for immediate, export and in transit through the municipality shall not be subject to any duty on the arrival of such goods at an outpost and after the declaration under Rule 9 has been made, the official in charge shall grand a pass in the prescribed form called the ''Transit Pass''. The goods shall then proceed under escort of a peon to the outposit by which they are to go out or to the bonded warehouse. As soon as they go out or enter the bonded warehouse, the pass will be surrendered to the moharrir in charge of the exit post or the bonded warehouse. After verifying the entries in the pass, he shall certify thereon that the goods have passed out of the municipal limits or have entered the bonded warehouse and send the pass to the octroi superintendent. If the pass is not surrendered at the exit outpost or bonded warehouse, the importer will be liable to pay the full octroi duty On- the goods entered thereon."

By the amendment made in this rule on 14th March 196], for the words "called the Transit Pass" the words "called the transit pass on the payment of a fee of thirtyseven naya paisa fcr each Pass" were substituted. After the filing of this petition this rule was further amended by Notification: No. 181-6986-U-XVIII dated 25th September 1961 so as to substitute "0.12np." in place cf 0.37nP. The result of these amendments is that whereas in 1951 the transit pass could be obtained without payment of any fee to-day a fee of 0.12nP. has to be paid for the transit pass under Rule 30.

Rule 38 dealt with refund of octroi tax in certain circumstances. The amendments made on 14th March 1961 made an alternation in the period within which a refund could be claimed and in the limit of the minimum amount of tax which could not be refunded. The amendment also inserted in this rule a provision with regard to the declaration for claiming the refund and another provision disentitling the importer from claiming any refund due to alternation in the nature of the article originally imported further amendments in this rule were made by the notification dated 25th September 1961 referred to earlier. By this amendment the period within which refund could be claimed was again altered. The amended Rule 38 now stands thus:--

"38. Refund--, Every importer of an article who had paid octroi tax on it at the time it was) imported into octroi limits shall be entitled to a refund of octroi tax paid by him less 12% per cent on such article when it is exported by him out of the octroi limits without being sold, used or consumed within such limits:

Provided that no refund shall be given:

(i) If the claim for refund is not supported by the receipt for the octroi tax paid by the person claiming refund on such articles.

(ii) If the amount to be refunded is less than five rupees.

(iii) If the refund challan with the certificate duly obtained thereon under Rule 48 is presented to the Central Octroi Office after the expiry of fifteen days, from the date of export

Note.:--The importer at the time of import shall specify the goods that he will take out at octroi limits within the time prescribed by the above rule. Failure to give this declaration will mean, that the importer brought the goods for sale, consumption or use in the town and he will not be entitled to refund.

(iv) If the nature of the articles exported differs from that it was at the time of import.

(1) Any claim for refund should be within the following time limit from the date of imports of, the goods:--

(i) For perishable goods--one week.

(ii) Cloth, grain and metals--six months.

(iii) Kirana and other goods-- four months."

Rule 45 is concerned with applications for refunds. The explanation to this rule as framed originally inter alia prescribed, "Not there than one application for refund shall be received from an exporter for goods passing through an exit post in a day." The rule was first amended on March 14, 1961 so as to substitute the words" "through any one exit post in the day" for the words "through an exit post in a day". This was again amended on 25th September 1961 by substituting the word ''''any'' for the words "any one".

The petitioners contend that the amendment made in Rule 30 imposing a fee of 0.12nP. for a transit pass is illegal as the Municipal Committee has no power under the Act to levy any such fee which is virtually a terminal tax; and that the levy of this fee is without the authority of law. It is further contended that the amendments made in Rules 38 and 45 putting various restrictions on the refund of the octroi duty paid on article which could not he subjected to duty under the rules were contiscatory in nature and were an unreasonable restriction on freedom of trade.

In our judgment, the levy of a fee for a transit pass under Rule 30 is wholly unwarranted and has no foundation in the provisions of the Act. The power of the Municipal Committee to impose a tax or fee or rate or toll upon a person or property is strictly confined within the limits prescribed by the Act. It must be expressly conferred and cannot be extended upon mere inference. Now, Section 66(1) (e) empowers a Municipal Committee to impose an octroi on animals or goods brought within the limits of the municipality for sale, consumption or use within those limits. An octroi duty is thus leviable on goods brought within the Municipal limits for sale, consumption or use within those limits. It cannot be levied on goods which are in transit through the municipal limits.

Under Rule 9(c) of the octroi rules of the Raipur Municipality the person bringing dutiable articles within the limits is required to make a declaration at the outpost whether the goods or articles are intended for sale, use or consumption within the Municipal limits, or whether they are for immediate export beyond the limits or whether they will be temporarily detained within the limits and eventually exported. If the goods are for immediate export beyond the limits of the Municipality or for export after a temporary detention within the Municipal limits, then clearly no octroi dulty is payable in respect of them. to was on a recognition of this principle that Rule 30 provided originally that goods imported by rail or roao and intended for immediate expert and in (transit through the Municipality shall not be subject to any duty and after the declaration under Rule 9 has been made, the official in charge shall grant a transit pass. If such goods in tranit, are not liable to any duty, then clearly no tee of any kind can be exacted in respect of their transit through the Municipal limits.

There was some debate at the bar on the question whether the fee of 0.12 nP. for a transit pass was in the nature of a tax or a fee for services rendered. Shri Sen, learned counsel for the petitioners, said that it was in the nature of a terminal tax.. On the other hand, Shri Jakatdar appearing for the Municipal Committee submitted that it was a fee for services rendered by the Municipal Committee. Whether the levy of 0-12 nip. for a transit pass is regarded as a tax or a fee, in either case it is an altogether unauthorized imposition. As the goods in transit are not liable to any octroi duty, the levy cannot be justified1 as being one in the nature of an octroi duty. It is not a terminal tax on goods imported into the limits of the Municipal Committee; and even if it is so regarded it cannot be effective along with an octroi duty when the proviso to Section 66(1) (o) clearly says that a terminal tax and an octroi duty shall not be imposed by any Municipality at the same time. Section 66 nowhere lays down that a Municipal Committee may impose a fee on goods in transit through the Municipal limits.

It is difficult to contemplate the services rendered by the Municipal Committee to the carriers of goods in transit for which according to the learned counsel for the respondent Municipal Committee the transit pass fee has been levied. It cannot be argued with any degree of force that the transit pass is a kind of licence granted by the Municipal Committee under the Act; and; therefore, the Committee is empowered u/s 70 to charge a fee for such licence or permission. We are unable to discern in the Act any provision affording the slightest foundation for the imposition of a fee for a transit pass under Rule 30. In our opinion, that tee is not warranted by the Act.

Learned Counsel for the Municipal Committee was inclined to suggest that under Rule 30 M was not obligatory for a person to obtain a transit pass, but that if he desired such a pass he had to pay a fee for the same. The language of Rule 30 does not lend support to this suggestion. On the other hand, the provision in the rule that or the transit pass is not surrendered at the exit outpost or bonded warehouse the importer will be liable to pay the full octroi duty on the goods entered thereon shows that it is obligatory for a person to obtain a transit pass if he desires any exemption from the payment of octroi duty on the ground that the goods are intended for immediate export and are only in transit through the Municipal limits. If such a person cannot obtain a transit pass except on payment of a fee it means that goods in transit are subject to a duty in violation of the provisions of the Act. We are dear in our mind that the imposition ot a transit fee is illegal and invalid.

The attack on the validity of the amendments made in rules 38 and 45 which is based on a misconception of the two rules must fail. Rules 38 and 45 are in no way concerned with the refund of octroi duty paid in respect of goods on which no octroi duty could be levied. They deal with refunds in those cases where a perosn imports goods and articles within the Municipal limits for sale, consumption or use within the limits any has paid duty on them at the time of import but who later on intends to take the goods outside the limits on finding that; they have not] been sold, used or consumed within, the Municipal limits- This is clear from the requirement of Rule 38 that the importer claiming a refund must have paid octroi tax on the article at the time it was imported inito the Municipal limits and the article in respect of which refund is claimed is being exported outside the limits without being sold, used or consumed within the limits and the further requirement that the nature of the article being exported does not differ "from that it was at the time of import".

The liability for the payment of an octroi duty does not depend on the question whether the goods brought within the Municipal limits have or have not been actually sold, consumed or used within those limits. If goods are brought within the Municipal limits for sale, consumption or use within those limits, then octroi duty is payable in respect of them irrespective of the fact whether subsequently the goods are or are not sold, used Or consumed within the limits.

If, therefore, once goods are brought within the limits of the Municipal Committee for sale, consumption or use within those limits and octroi duty has been paid on them, the Municipal Committee is not bound to refund the octroi duty it after the import the goods are not sold, used or consumed. Rules 38 and 45 permitting refund in cases where unconsumed, unsold or unused goods are taken out of the Municipal limits thus give a concession. In regard to such a concession, this Municipal Committee has the power to prescribe the conditions and limitations and the procedure under which refunds would be allowed. Section 85 of the Act expressly empowers the Government to make rules regulating the refund of taxes and imposing limitation on such refunds. It further says that no refund of a tax shall be claimable by any person otherwise than in accordance with the provisions of the Act and the rules made thereunder. No objection can, therefore, be taken to the said rules merely because they do not provide for the refund of the entire octroi tax amount, or because they prescribe a period of limitation for refunds, or because they do not allow refund of an amount less than Rs. 5/-or because they prescribe a certain procedure for claiming a refund.

We are fortified in the view we have taken about the scope of Rule 38 by the decision of a Division Bench of this Court in Vrijilal Manilal and Co. v. Province of Central Provinces and Berar, ILR (1955) Nag 718: F.A. No. 26 of 1950 D/- 25-11-1954. In that case the validity of Rule 36 of the Sagar Municipality (somewhat analogous to Rule 38 of the Raipur Municipality) was considered and it was held that Rule 36 was within the competence of the Government. Rule 36 of the Sagar Municipality was as follows:--

"36. On the exportation of dutiable goods outside Municipal limits, the exporter shall be entitled to a refund of duty paid on them at the time of their import; Provided that:--

(a) x x x x (b) No refund shall be given if the amount to be refunded be less than 4 annas, or, if the claim be made after the expiry of two months From the date of export, unless the exporter is able to explain satisfactorily the reason for the delay.

(c) The refund on exported goods which have been manufactured within the Municipality from imported raw material; liable to octroi shall/not exceed the octroi on the raw materials used in the manufacture."

x x x x x The Division Bench observed that the intention, with which goods are, imported has to be ascertained from the declaration made under the rules and that that is the point of time with reference to which ft is to be decided whether duty is leviable on the goods or not and the incidence of the duty cannot be affected merely by changing the intention and instead of selling, consuming or using them within the Municipal limits, re-exporting them; that if an octroi duty has been lawfully collected from a person, then even if he later on changes his mind and does not consume, sell or use the goods within the Municipal limits and eventually exports them, the initial levy cannot be regarded as transit duty and does not become unlawful or illegal; and that in such a case the person only becomes entitled to a refund under Rule 36. It was also pointed out that Section 85(1) permits limitations on refunds and that, therefore, Rule 36 was within the competence of the provincial Government.

For all these reasons this petition is al lowed in part and the amendment made in Rule 30 imposing a fee for a transit pass is declared to be illegal. The notifications dated 14th March 1961 and 25th September 1961 in so far as they impose a fee of 0.12 nP. for a transit pass under Rule 30 are quashed; and the opponents are restrained from giving effect to the notifications to this extent. The petitioners shall have costs of this application. Counsel''s fee is fixed at Rs. 150/-- The outstanding amount of the security deposit shall be refunded to the petitioners.