

(1999) 08 MP CK 0051

In the Madhya Pradesh High Court

Case No : Writ Petition No. 905 of 1999

Moolji Bhai and Others

APPELLANT

Vs

State of Madhya Pradesh and Another

RESPONDENT

Date of Decision : 18-08-1999

Acts Referred:

Madhya Pradesh Municipal Limits Rules, 1996 — Rule 3, 4

Madhya Pradesh Municipalities Act, 1961 — Section 127, 127(6), 129

Citation : AIR 2000 MP 38 : (2000) 2 MPHT 477

Hon'ble Judges : Saraswati Prasad Khare, J

Bench : Single Bench

Advocate : Imtiaz Hussain, for the Appellant; P. Singh, R.N. Singh and A.J. Pawar, for the Respondent

Final Decision : Partly Allowed

Judgement

S.P. Khare, J.—This is a petition under Article 226 of the Constitution of India challenging the imposition of terminal tax by respondent Nagar Panchayat, Timarni on export of timber, fuel wood, coal and bamboos as per Section 129 of the M.P. Municipalities Act, 1961 (hereinafter to be referred to as the Act).

2. By resolution dated 13-8-1995 (Annexure P-2) respondent No. 2 Nagar Panchayat, Timarni has revised the terminal tax levied u/s 127(6)(n) of the Act on the goods exported from its Municipal limits. The revised rate is 0.50 per cent on the price of bamboos, fuel wood, coal and timber. The terminal tax was originally imposed by the respondent No. 2 by the notification dated 19-5-1992 of the State Government. The State Government has now framed the Terminal Tax (Assessment and Collection) on the Goods Exported from the M.P. Municipal Limits Rules, 1996 (hereinafter to be referred to as the Rules) by the notification dated 21-2-1997 published in M.P. Gazette on 7-3-1997. It is admitted during the course of arguments that these rules are binding on the respondent Nagar Panchayat and the levy of the terminal tax has to be in conformity with these rules. There is a schedule appended to these rules which provides the name of

the commodity and the rate at which the terminal tax is to be levied. As per item No. 10 of this Schedule terminal tax at the rate of 0.50% on the basis of price can be levied on "all sorts of timber used for building construction". Therefore, the rate of the terminal tax which is being levied on this item by the respondent No. 2 is unaffected. But bamboo and fuel wood or coal made from wood are not covered by this item. Fuel wood and bamboo cannot be said to be "timber" used for building construction. These three items would come under the residuary item No. 15 on which terminal tax at the rate of 0.10% only can be levied.

3. The learned counsel for the petitioners has raised only two other points at the time of hearing (a) the petitioners do not have any shop or establishment within the municipal limits of the nagar panchayat, Timarni and therefore they are not liable to pay this tax and (b) the respondent No. 2 cannot recover the tax on the barrier or naka. These points are to be answered in this order.

4. Point (a) Rule 3 of Hindi version of the Rules is as under :

3- izR;sd O;Drh] O;kikjh] LFkku rFkk e;/izns"k ?"kh mit e.Mh vf/kfu;e] 1972 ?
ekad 24 lu~ 1973 ds v/khu vuqKfIr /kkjd dk nkf;Ro gksxk fd ;fn og vuqlwph es
nf"kZr fdLh eky dk Lo;a fu;kZr djrk gS ;k fu;kZr ds iz;kstu ls eky dk fo?; djrk gS
rks vuqlwph esa fofufnZ"V nj ls lhek dj laxzg.k djs

Hindi version is considered to be authentic. The English translation of this rule is inartistic and confusing. According to Rule 3 every "person" if he himself exports any goods he would be liable to pay the terminal tax as per Schedule. This rule does not require that the said person must have a shop or establishment in the Municipal area. Rule 3 is actually the charging provision. Rule 4 is the machinery provision. That requires such person to deposit in the Municipal treasury the amount of terminal-tax collected during a month on the goods exported from the Municipal limits, through their "shop establishment" along with the return up to 10th day of every month. The use of the words "shop establishment" In Rule 4 is not appropriate. The drafting is not proper. But that does not render the levy of tax invalid. As already stated the tax is to be levied as per Rule 3 read with Sections 127 and 129 of the Act. Every person exporting goods from the Municipal limits is liable to pay the terminal tax as per Schedule. It is not necessary that he must have a shop of establishment within the said municipal limits. The deposit of this tax is to be made in the Municipal treasury as per Rule 4. Therefore, the first argument of the petitioners is not acceptable.

5. Point (b)

The second argument of the petitioners must be accepted. It has been conceded on behalf of the respondent No. 2 that the terminal tax cannot be collected at the check-post, barrier or naka by stopping the truck or other vehicle in which the goods are being carried. That system of recovery of the terminal tax must be discontinued, According to Rule 4, as stated above, the tax is to be deposited every month by 10th of the following month in the Municipal treasury with the prescribed Return. This is really self-assessment subject to the checks and

balances provided in Rules 4 to 8. The rules repose full trust in the person exporting the goods and he should deposit the terminal tax due from him as per rules. The system of naka or barrier has been abolished as that was very inconvenient to everyone and was also a source of harassment and corruption.

6. The petition is partly allowed. The respondent No. 2 Nagar Panchayat can charge terminal tax only as per Rules of 1996 and therefore it must amend its resolution in terms of these rules. It is directed that the respondent No. 2 will not charge terminal tax in excess of the rate provided in these rules. It is further directed that the respondent No. 2 will not recover this tax at the check-post or the barrier. The petitioners will pay this tax on the goods exported by them from its Municipal limits as per Rules of 1996. If any excess recovery of the terminal tax has been made from the petitioners that would be adjusted or refunded.