(1993) 06 P&H CK 0030

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 9890 of 1992

M/s. EKO Electronics, Patiala and others — APPELLANT

Vs

State of Punjab and others — RESPONDENT

Date of Decision : 04-06-1993

Acts Referred:

City of Nagpur Corporation Act, 1948 — Section 13, 14, 150, 151, 151(1)
Constitution of India, 1950 — Article 226, 227, 256
Punjab Municipal Account Code, 1930 — Rule 1, 11, 43, 44, 47
Punjab Municipal Act, 1911 — Section 115, 76, 77, 77(2), 77(3)

Citation : AIR 1994 P&H 141

Hon'ble Judges : J.S. Sekhon, J

Bench : Single Bench

Advocate : G.C. Dhuriwala, S.P. Garg, Miss Meenu Sharma, Miss Ravita Verma, Miss Niraja Sachdev and Miss Baljeet Bhudar, for the Appellant; Parminder Singh, AAG (Public) and Madan Dev, for the Respondent

Judgement

1. Through this writ petition under Articles 226/227 of the Constitution of India, fifty-one concerns dealing in electronic goods of Patiala town seek the quashing of letter dated 27-6-1989 (Annexure P-I) issued by the Local Bodies, Punjab Government, ''directing all the Commissioners of the Municipal Corporations and Executive Officers of the Municipal Committees and notified Area Committees in the State that the municipal staff is competent to inspect shops and buildings to ascertain whether any goods have been imported without payment of octroi as well as direction for restraining the respondents from entering into the business premises of the petitioners for the purpose of search and seizure of the goods, as there is no provision in the Punjab Municipal Act, 1911, in this regard.

2. In brief the facts are that the Department of Local Self Government to the State of Punjab issued letter, Annexure P-I dated 27-6-1989 directing the Commissioners of the Municipal Corporation, Jalandhar, Ludhiana and Amritsar as well as all the Executive Officers of the Municipal Committee and notified Area Committees in the State to check the evasion of octroi by the inspection of the

shops and business premises located in the Municipal limits under Sections 76 and 77 of the Municipal Act. After quoting the ratio of the decision of the Maharashtra High Court in Parekh Brothers, Nagpur v. Corporation of the City of Nagpur 1975 MLJ 86, it was clarified that the Municipal Authority can inspect shops and buildings to see whether any goods have been imported without payment of the octroi. The petitioners contend that on the basis of the said letter, the Municipal Committee had started harassing the petitioners for furnishing accounts of goods brought in their shops within the Municipal Committee. It was further averred that the Municipal staff along with personnel of the Central Reserve Police Force came to different areas of Patiala town on 14, 15 and 16-7-1989 and started raiding different shops in the town and that they have picked up goods like televisions, radios etc. without issuing any receipts from the shops of many petitioners although under the provisions of Section 77 of the Act, the Municipal staff has no power to search the premises or the shops of, the petitioners located in the Municipal limits, as they can only check any person bringing or receiving the conveyance or package within the octroi or terminal limits of the municipality for detecting the evasion of payment of octroi. Under these circumstances, the petitioners have raised the following questions of decision:--

(a) Whether the Municipal Authorities can enter the premises of the shops of the owners for verifying the payment of octroi on the goods imported from outside?

(b) Whether the authorities can take away the goods without issuing the receipts?

(c) Whether the Annexure P-l is ultra vires?

3. In the return filed on behalf of respondent No. 3: -- Municipal Committee, it is averred that the petitioners had totally misstated the facts regarding the Municipal staff along with the Central Reserve Police Force having raided the business premises of different petitioners or having picked up goods from the shops. Thus it was averred that the petitioners had levelled false allegations in order to mislead the Court. On the other hand, it was maintained that after receiving the letter Exhibit PI from the State Government, the answering respondent have issued notice like Annexure P-l to all the dealers dealing in electrical goods informing that the goods brought into the Municipal limits without paying the octroi are tenable to octroi charges and calling upon them to show the receipts of the electrical goods for which the octroi had been paid and that if they failed to submit the octroi receipts regarding the payment of octroi in respect of certain articles then such articles can be seized from the shops or business premises by the inspecting staff. It was further explained that after receiving the notice, a deputation of the dealers met the Administrator, Municipal Committee on 13-7-1992 and requested for time to pay evaded octroi voluntarily. The Administrator gave them 15 days'' notice/time up to 28-7-1992 and in pursuance of the said promise thirteen petitioners Nos. 3, 4, 5, 9 to 11, 13, 15, 19 to 21, 23 and 37 have deposited the evaded octroi. Thus the answering respondent contend that the writ petition on behalf of these

petitioners have become infructuous. The answering respondent further averred that the petitioners generally do not pay octroi on V.C.P., V.C.R. and coloured televisions, which they store in their godowns outside the Municipal limits and bring the same into Municipal limits from their godowns stealthily in their own vehicles/ conveyance. In the alternative, it was maintained that u/s 77, sub-section (3) of the Act, the Municipal Committee has power to seize the articles regarding which the octroi has not been paid and for this purpose only this information was sought from the petitioners by giving the said notices.

4. In a separate return filed by Sh. Ranjit Singh, Deputy Secretary to the Department of Local Self Government of Punjab on behalf of respondents 1 and 2, it was averred that the provisions of S. 77(3) of the Act and S. 115 of the Punjab Municipal Corporations Act clearly empowers the concerned staff municipality or Corporation to check goods at the business premises of the dealers in order to ascertain whether the octroi has been paid against the ''import of these goods into the limits of Municipal Committee.

5. I have heard the learned counsel for the parties besides perusing the record.

6. The power of the State to levy taxes on the entry of goods into a local area for consumption for use or sale therein flows from Article 256 of the Constitution, read with Entry 52 of List II of the VII Schedule. Thus, there is no doubt that the State is competent to impose taxes on the entry of any goods into the local area for consumption, use or sale therein. The Slate has delegated these powers to the Municipal Committee under S. 161 of the Municipal Act. The explanation to S. 61(2) of the Punjab Municipal Act, 1911 further clarifies that in the said section, the tax will include any duty, cess or fee, which the State Legislature has the power to impose in the State under the Constitution, of course, with the previous sanction of the State Government. The definition of ''octrol'' figuring in Chapter V of Rule I of the Punjab Municipal Code, 1930, also shows that octroi is a cess on the entry into the limits of Municipality, of goods for consumption, use or sale therein. Thus, there is no escape, but to conclude that the imposition of the octroi cess arises if the goods are brought from outside into the Municipal limits of a Municipal Committee for the purpose of use, consumption or sale within the limits of that Committee, but if such goods are simply brought and stored within the Municipal Committee, but thereafter exported beyond the limits of the Committee without effecting the sale within its limits than the incidence of octroi is not involved.

7. The observations of the Divisori Bench of this Court of which I happened to be a member in Indian Oil Corporation Vs. Municipal Corporation, Jullunder and others, , decided on 2-6-1989, can be referred to in this regard. In that case, the writ petition filed by the Indian Oil Corporation was dismissed by holding that the sale of the petrol had taken place within the corporate limits of Jalandhar Corporation and thus the Indian Oil Corporation was liable to pay the octroi,

8. The question then arises whether under the provisions of Ss. 76 and 77 of the

Punjab Municipal Act, the Municipal Authority has the power to check the evasion of octroi by examining the articles liable to octroi in the business premises of the shop-keepers located within the Municipal limits of that area or whether such checking can be made only when a person is bringing or receiving such article to the Municipal limits. To resolve this controversy, it will be worthwhile to reproduce the provisions of Ss. 76 and 77 of the Punjab Municipal Act, 1911, which read as under:--

"76. Power to examine article liable to octroi.-- Every person bringing or receiving within the octroi or terminal limits of any municipality any article on which octroi or terminal tax is payable shall when required by an officer, duly authorized by the State Government or the Committee in this behalf and so far as may be necessary for ascertaining the amount of tax chargeable --

(a) permit that officer to inspect, examine, weigh and otherwise deal with the article, and

(b) communicate to that officer any information and exhibit to him any bill, invoice or document of a like nature which he may possess relating to the article.

77. Power to search where octroi is leviable.--

(1) If any person, bringing or receiving conveyance or package within the octroi or terminal tax limits of a municipality on which octroi or terminal tax is or is believed to be leviable, shall refuse, on the demand of an officer authorized by the State Government or the Committee in this behalf, to permit the officer to inspect, weigh or otherwise examine the contents of the conveyance or package for the purpose of ascertaining whether it contains any articles in respect of which octroi or terminal tax is payable or shall refuse to communicate to that officer any information and exhibit to him any bill, invoice or document of a like nature which he may possess relating to the article, or with the intention of defrauding the committee or a lessee under S. 8.3 shall communicate any such information which is false or exhibit any such bill, invoice or document of a like nature which is false, forged or fraudulent he shall be punishable with a fine which may extend to fifty rupees.

(2) Any such person may demand that the conveyance or package or both, as the case may be, shall be taken without unnecessary delay before a member of the Committee or the Secretary or a Magistrate who shall cause the inspection to be made in his presence.

(3) Without prejudice to the provisions of sub-sec. (1) in case of non-payment of any octroi on demand, the officer referred to in S. 76 may seize any article On which the octroi is chargeable to satisfy the demand.

(4) The Committee or an officer authorised by it in this behalf may after the lapse of five days from the seizure and after the issue of proclamation fixing the time and place of sale, cause any property so seized or so much thereof as may be necessary to be sold by auction to satisfy the demand including the amount of

penalty with the expenses occasioned by the seizure, custody and sale thereof, unless the demand including the amount of penalty and expenses are in the meantime paid:

Provided that by order of the officer authorised by the Committee in this behalf, articles of a perishable nature which cannot be kept for five days without serious risk of damage may be sold after the lapse of such shorter time as he may, having regard to the nature of the articles, think proper."

9. A bare perusal of S. 76 leaves no doubt that it is obligatory on any person bringing or receiving within the octroi limits of any municipality any article on which octroi is payable to permit the officer to inspect, examjne, weigh or otherwise deal with such articles and communicate to that officer any information and produce any bill, invoice or document of like nature which he may possess relating to such article. The provisions of S. 77 reproduced above further makes a person liable to payment of fine which may. extend to Rs. 50/-, if such person refuses to produce any bill or invoicing or document like nature or does not permit any officer to inspect, weigh or otherwise examine the conveyance or package of goods for ascertaining whether it contains any article in respect of which octroi is payable. Subsection (2) of S. 77 safeguards the interests of any person bringing or receiving conveyance or package of articles to demand that such articles will be taken before a Member or Secretary of the Committee or a Magistrate for verification of evasion of octroi. Subsection (3) further empowers that in case of non-payment of octroi on demand, the officer referred to in S.76 may seize;aay article in which octroi is chargeable to satisfy the demand. Sub-section (4) of S. 77 further provides to sell such articles, if after five days of the proclamation for fixing time of a sale, the demand or amount of penalty is not paid in the meanwhile. The proviso to this sub-section further provides the dispensing of five days'' proclamation, if the article is of a perishable nature.

10. No doubt, in both the above referred provisions of S. 76 or S. 77, there is no specific indication of the premises of different shopkeepers to be searched by the Municipal staff in order to ascertain whether the payment of octroi has been evaded on the goods imported from outside, yet all the same, the conjoint reading of the provisions of both these sections leaves no doubt that such inspection can be made at the time of bringing the goods within the limits of Municipal octroi of the Municipal Committee or receiving the goads within the limits of such Committee. The term "receiving the articles, conveyance or package" within the octroi iimits clearly/ necessarily implies that the word "receiving" would cover the storing or keeping of such articles within the Municipal limits also for use, consumption or sate, especially when the enforcing staff can demand the production of any bill, invoice or document of a like nature relating to such articles. Under these circumstances, there is no force in the contention of Mr. Dhuriwala that the enforcing staff of the Municipal Committee cannot examine the articles stored or relevant documents lying in the shops or premises of the petitioners located within the Municipal limits of Patiala town,

although the respondent-Municipal Committee has not yet resorted to conducting such searches but has simply given notice, AnnexureR-1 through its Administrator to the dealers to render full co-operation to the octroi inspecting staff in inspection of articles liable to octroi lying in their shops or enterprize and produce all the relevant documents. Notice Annexure R-I reads as under:--

"Sub:-- Regarding the inspection of articles liable to octroi lying in your shop/ enterprize,

In view of S. 77 of the Punjab Municipal Act and Punjab Govt.-Memo No. 1/9/89 26-U.W. 9236 dated 26-6-1989 (copy attached) you arc informed that the octroi inspecting staff may inspect the articles liable to octroi lying in your shop/ enterprize at any time with the approval of the undersigned. You are requested to give full co-operation to the octroi inspecting staff and submit the octroi receipts of the articles liable to octroi lying in your shop. In case of any violation these articles lying in the shop/enterprize may be seized. You yourselves shall be responsible.

Sd/- Administrator, Municipal Committee, Patiala."

11. The observations of the Full Bench of the Orissa High Court in the Puri Fish Merchants Association and Another Vs. Puri Municipal Council and Others, , relied upon by Mr. Dhuriwala that octroi can be collected or imposed by the Municipality at the time of entry of goods and not at the exit point of the Municipal area or after it had changed `hands for consumption or use or have been sold the goods cannot be followed for collection of octroi from those persons who did not effect entry of the goods within the Municipal area, is of no help to the petitioners in the case in hand, as it will be applicable only if certain goods are seized from their shops and on the basis of invoice/ bills etc., the petitioners succeed in establishing that they had purchased goods from some other persons after these were brought within the Municipal limits. Before the Orissa High Court, the controversy related to the payment of octroi on the fish and prawn brought by fish catchers, fishermen and fish vendors into the Puri Municipal area for the purpose of sale within the Municipal limits and export to places outside. In peculiar facts of that, case, it was held that if such fish or prawn are sold by a person who has brought such articles within the Municipal limits to some other persons, then the latter are not liable to pay the octroi tax. It was further held that if any person purchases fish or prawn within the Municipal limits from fish catchers, fishermen and fish vendors into the Puri Municipal area for the purpose of export to places outside it, cannot be liable to pay octroi at the point of exit. No such controversy is involved in this case as the notice, Annexure R-I reproduced above, clearly shows that the Administrator of the Municipal Committee has simply called upon the traders/businessmen, having their business concerns within the Municipal limits of Patiala town to co-operate with the Municipal staff in the inspection of articles liable to octroi and produce all concerned documents in order to determine the evasion of the octroi duty.

12. On the other hand, the perusal of the judgment of the Division Bench of Maha- rashtra High Court, at Nagpur, in. Parekh Brothers, Nagpur v. Corporation of the City of ,Nagpur 1975 MLJ 86, reveals that while discussing the validity of Rules 43, 44 and 47 of the Rules framed under the Nagpur Corporation Act, read with the provisions of Ss. 150 and 151 of the City of Nagpur Corporation Act, 1948, it has upheld the validity of those Rules 43, 44 and 47 by observing as under:--

"13. We next come to the contention of the petitioner that Rules 43, 45 and 47 are invalid. For the present we shall consider the contention in so far as Rules 43 and 45 are concerned. Now, the argument is that Rules 43 and 45 do not apply to the petitioner and those Rules could really be properly invoked only in cases covered by Rules 11(d), 13 and 14. Now, on this argument it is clear that even according to the petitioner there are cases contemplated by the Rules in which the provisions of Rules 43 and 45 could properly be invoked by the Corporation and, therefore the argument that the Rules are invalid must be rejected. The argument in substance appears to be that so far as the petitioner is concerned, no action can be taken by the Corporation invoking Rules 43 and 45 against it and consequently, as the argument ultimately turns out, the notice is liable to be quashed. The argument is based on Ss. 150 and 151 of the Corporation Act. Section 150 reads:

"Every person bringing or receiving within the limits of the City any article in respect of which a toll or cess on imports is payable, shall when required by an officer duly authorised by the Chief Executive Officer in this behalf and so far as may be necessary for ascertaining the amount of tax chargeable.

(a) permit the officer to inspect, examine, weigh and otherwise deal with the article, and

(b) communicate to the officer any information and exhibit to him any bill, invoice or document of a like nature which such person may possess relating to the article."

Section 151 then reads:

" 151. (I) ff any person, bringing or receiving within the prescribed limits of the City a conveyance or package on which a toll or cess on imports if or is believed to be leviable, refuses on the demand of an officer authorised by the Chief Executive Officer in this behalf to permit the officer to inspect, weigh or otherwise examine the contents of the conveyance or package for the purpose ascertaining whether it contains any article in respect of which a toll or cess on imports is payable, or refuses to communicate to the officer any information or to exhibit to him any bill, invoice or document of a like nature which he may possess relaing to the article, or with the intention of defrauding the Corporation communicates false information or exhibits any false, forged or fraudulent bill, invoice or document of a like nature, he shall be punished with a fine which may extend to fifty rupees.

(2) Any such person may demand that the conveyance or package or both, as the case may be, shall be taken without unnecessary delay before the Chief Executive Officer or a person; appointed by him for this purpose, who shall cause the inspection to be made in his presence."

Now, S. 150 makes it obligatory for the person bringing or receiving any article on which octroi duty is payable to permit an officer to inspect, examine, weigh or otherwise deal with the article. There is also an obligation to communicate to the officer any information and produce before him any bill, invoice or document of a like nature which such person may possess relating to the article. It is in accordance with the provisions of S. 150(b) that the impugned notice has been-issued:"

A bare perusal of the previsions of Ss. 150 and 151 reproduced in parekh Brothers case 1975 MLJ 86 (supra) leaves no doubt that these provisions are analogous to the provisions of Sections 76 and 77 of the Punjab Municipal Act. Simply because under the Punjab Municipal Act, no such rules have been framed, it cannot be said that the Municipal staff has no powers especially when the same flows from the provisions of Sections 76 and 77 of the Act and in the absence of the Rules, the State Government is fully competent to issue instructions like Annexure P-l, in order to avoid evasion of octroi duty.

13. The clarificatory instructions An-nexuw P-1 issued by the1 State Government to the Commissioners of the Municipal Corporations, Ludhiana, Jalandhar and Amritsar as well as to all the Executive Officers of the Municipal Committee and Notified Area Committee of the State read as under:--

"Subject:-- Evasion of octroi inspection of premises- by the Municipal Authority for checking octroi evasion:

1. Reference subject noted above.

2. It has come to the notice of Government that most of the dealers, specifically dealing with the sale of electrical goods such as Televisions, Refrigerators etc., indulge in large scale of evasion of octroi because on these items octroi is charged at the rate of 3% ad valorem which is quite high and, therefore, evasion of octroi being mere paying results in huge profits to them on the sale of these goods. In order to indulge in the octroi evasion such dealers maintain godowns outside the Municipal limits and the fresh consignments of these goods are unloaded in these godowns which are outside the Municipal limits. The dealers of these goods thereafter carry these goods into their shops for sale which are located in Municipal limits in driplets without paying octroi. This practice to import the goods from their godowns into their shops to sale is being done by them on the belief that once the goods are inside their shops even without paying octroi the Municipal staff is not legally permitted to enter their shops and inspect the goods to see whether they were imported without payment of octroi.

3. The presumption of the dealers as well as the Municipal employees that there

is no provision in the Act to check up the goods which have been imported without payment of octroi is not legally correct. There is specific provision in the Municipal Act under Articles 76 and 77 which contain powers of the Municipal Committee to examine articles liable to octroi and power to search where ociroi is leviable. The bare perusal of these sections would reveal that the Municipal authority ean inspect shops and buildings to see whether any goods have been imported without payment of octroi. The above factum stands also proved from the following observations of the court case:--

"Where goods are brought within the Municipal limits in such a manner that they are not subject to inspection and verification at the octroi post it is not a ground for holding that there is no liability to pay the tax. The liability still continues and it is the duty of the person bringing the goods within the Municipal limits to furnish information. Otherwise, the Corporation can get this information by issuing notice Parekh Brothers v. Corporation of Nagpur 1975 MLJ 86".

4. In view of the above decision of the Court as well as the statutory provisions of the Act, Government has decided to clarify that Municipal authority can inspect shops and buildings to see whether any goods have been imported without payment of octroi. You are. therefore, requested to check the octroi evasion accordingly, and for this purpose you can also take police assistance from District Administration.

Please ensure strict compliance of these instructions and also acknowledge receipt.

Sd/- Under Secretary(M)."

copies to:-- x x x

A bare perusal of the said letter leaves no doubt that it has simply clarified the provisions of Sections 76 and 77 of the Act that the Municipal Committee can inspect shops and buildings to see whether any goods have been imported without payment .of octroi.

14. Consequently, for the reasons stated above, it cannot be said that the instructions Annexurc P-1 are ultra vires of the provisions of Sections 76 and 77 of the Punjab Municipal Act. The Municipal staff shall be competent to check or seize the articles lying in the shops or business premises located within the Municipal limits for detection of evasion of octroi. However, it is clarified that the Municipal Authorities cannot take away the goods without issuing the requisite receipts to the concerned traders. The writ petition stands disposed of accordingly. There is no order as to costs.

15. Petition dismissed.

