
(1989) 03 KAR CK 0024
In the Karnataka High Court
Case No : W.P. No. 10037/1984

M/s. Kirloskar Electric Co. Ltd.,

APPELLANT

Vs

Hubli-dharwar Municipal Corporation, Dharwar and Others

RESPONDENT

Date of Decision : 10-03-1989

Acts Referred:

Citation : (1989) 1 KarLJ 384

Hon'ble Judges : S. Rajendra Babu, J

Judgement

Rajendra Babu, J.-The petitioner is a Company engaged in the manufacture of electric motors, alternators, and ancillary parts at Hubli. The first-respondent Corporation levied octroi in exercise of its powers under Section 127(2)(a) of the Bombay Provincial Municipal Corporations Act, 1949, (Act for short) While doing so, it also provided for certain concessions to industries as provided in Rule 2(m) of the Octroi Rules and the said Rule 2(m) reads as follows:

"2(m): Any raw materials or machinery belonging to and imported by any industrial concern for the purpose of manufacturing, Processing or assembling within the limits of Industrial estates or areas, included in the octroi limits of the Corporation and so earmarked for the purposes of rapid and orderly industrial development of the city and creation of large employment opportunities to its populace as enumerated below which list may be enlarged by inclusion of additional areas or extension of the existing limits of the Estates and Areas enumerated herein below, with the previous sanction of Government Such exemption shall be available for a period of ten years from the date of these rules coming into force to industrial concerns already established within the limits of the Industrial Estates or Areas enumerated below and to Industrial concerns that may be established in the new estates and Areas that may be demarcated thereafter for a period of ten years from the date of demarcation of such areas or for any lesser period, as notified by the corporation in the official Gazette:

Provided that this exemption shall not be given in respect of any raw-materials imported for the purposes of refilling, packing or repacking only.

Provided also that no exemption for Octroi shall be given or claimable unless the importer produces, at the time of each import but not afterwards a declaration in the form in Schedule "C" signed by the Proprietor or the Manager of the said industrial concern, certifying that the raw-materials or the machinery that are being imported are the property of the ownership of the said industrial concern and that the said material or machinery are to be used or are intended to be used by the said industrial concern for the purpose of manufacturing, processing or assembling the finished articles in the said Industrial Estate or Area.

If the declarant is at any time later found by the Corporation Authorities to have used the raw-materials or machines on the import of which Octroi has been so exempted, in any manner other than declared use for his own industries, then he shall be liable to an octroi extending to 10 times the amount so exempted not withstanding his liability to any penalties provided for the offence".

2) Section 149 of the Act provides that when the Corporation decides to levy any of the taxes mentioned in Section 127(2), it shall make in form of Rules detailed provision, to supplement the Act, including the following matters:

(a) the nature of the tax, the rate thereof, the class or classes of persons articles or properties liable thereto and the exemption therefrom, if any, to be granted;

(b) the system of assessment and method of recovery and the powers exercisable by the Commissioner or other officers in the collection of the tax;

(c) the information required to be given of liability to the tax;

(d) the penalties to which persons evading liability or furnishing incorrect or misleading information or failing to furnish information may be subjected;

(e) such other matters, not inconsistent with the provisions of this Act, as may be deemed expedient by the Corporation:

Provided that no rules shall be made by the Corporation in respect of any tax coming under clause (f) of sub-section (2) of Section 127 unless the Provincial approval to the selection of the tax by the Corporation."

In exercise of the powers referred to above, the first-respondent has framed rules which provides for concession under rule 2(m) referred to above. Petitioner filed declarations under the said rules on various dates between 24-3-1972 and 27-4-1973 and availed of the concession provided under rule 2(m) of the rules. Petitioner sent certain goods to M/s. Indo Malaysian Company at Koulalampur, that is, outside the limits of Hubli-Dnarwar Municipal Corporation area. Respondents initiated proceedings on the ground that the goods had been exported outside the limits of Hubli-Dharwar Municipal Corporation in violation of Rule 2(m) of the Octroi Rules and on an adhoc basis pending finalisation and verification of supplies made, determined that a sum of Rs. 1,50,000/- was due from the petitioner. This notice was challenged in W.P. No. 901 of 1974 on the file of this Court as void and unenforceable and to strike down rule 2(m) of the rules

as violative of Sections 455 and 468 of the Act and to quash the demand raised in that notice. This Court allowed the petition on the short ground that the petitioner did not have reasonable opportunity and there was no due enquiry before making the demand of Rs. 1,50,000/-. However, it was made clear that it was open to the respondents to hold an enquiry into the matter in order to determine whether there is any violation of rule 2(m) of the rules to attract higher liability thereunder. Thereafter an enquiry was held by the Commissioner-first respondent and an order was made levying octroi at a rate equal to three times the normal duty on 44 items and another sum of Rs. 50,000/- in respect of undisclosed 19 items, in all amounting to Rs 1,07,721,77. In this petition, this order is challenged.

3) Learned counsel for the petitioner has raised the following contentions:

(a) that Rule 2(m) of the Octroi Rules is violative of Art 14 and 19(1) (g) of the Constitution and is ultravires of Ss. 455 and 468 of the Act;

(b) The maximum penalty that could have been levied under Sections 455 and 468 of the Act is only Rs. 500/- and therefore ultra vires the section.

(c) that the Commissioner, at any rate, could impose a penalty only in respect of 19 items out of 63 items in respect of which information was not furnished;

(d) Rule 2(m) of the rules being in the nature of penalty, has not made provision of law providing an opportunity to the persons covered by it to contest against the decision or levy of penalty and is therefore violative of Art. 14 of the Constitution; and (e) that the order impugned herein suffers from errors apparent on the face of the record and is therefore liable to be quashed.

4) Learned counsel for the respondents submitted that the rule are valid and authorised. At any rate the concessions granted in the Octroi Rules under Rule 2(m) is a package deal a part of which is a higher levy of octroi, as provided, in cases of violation of condition of concession. Therefore it was submitted that the impugned rule is valid and not violative of Arts. 14 and 19(1)(g) of the Constitution, or, ultra vires Ss. 455 and 468 of the Act.

5) It was further contended in the background of the order of remand made by the High Court in an earlier writ petition and the Commissioner having held a detailed enquiry after giving ample opportunity to the petitioner regarding compliance with the conditions of Rule 2(m) and having failed cannot now complain and therefore the order impugned is perfectly in order and does not call for Interference.

6) Octroi levied as stated earlier is a tax under Section 127(2) of the Act. Therefore in respect of octroi Section 149(1) empowers the Corporation to grant exemption and to impose conditions for grant of exemptions as also to levy penalties to which persons evading liability or furnishing incorrect or misleading information or failing to furnish information may be subjected thereto. Therefore rules that have been framed which are impugned herein is traceable to Section

149(1) of the Act. Section 149(1) of the Act is independent of and distinct from Ss. 455 and 468 of the Act. Therefore the question of examining the vires of the rules with reference to Ss. 455 and 468 of the Act does not arise at all. Octroi rules that have been framed under the authority of Section 149(1) of the Act is a complete code along with the provisions in Ss. 127, 146 and 149 of the Act and the rules framed thereunder. Therefore the first two contentions (a) and (b) are rejected.

7) A bare reading of rule 2(m) of the Rules will disclose that it provides for exemption in respect of raw materials or machinery imported by any industrial concern for the purpose of manufacturing, processing or assembling within the octroi limits of the Corporation and one of the conditions mentioned therein is that if the declarant is at any time later found by the Corporation Authorities to have used the raw materials or machines on the import of which octroi has been exempted to have used in any manner other than declared use for his own industries, then he shall be liable to octroi extending to 10 times the octroi so exempted notwithstanding the fact of his liability to any penalties provided for the offences. This provision is made undoubtedly to deter persons who utilised the concession granted but later on misused such concession. It is not merely to compensate the Corporation that such a provision is enacted but to deter persons from misusing such an exemption. Therefore the inference is obvious that this levy of an amount of 10 times the octroi payable arises only when conditions of concession are violated is in the nature of a penalty. It is not levy of higher rate of octroi by classification of those violating the condition of grant of concessions. Therefore I have no hesitation in rejecting the contention raised on behalf of the respondents that this levy is only in the nature of a higher levy for a certain class of persons.

8. In the very nature of things this provision is an in-built safeguard for proper observance of the conditions of the concession itself. Therefore those who want to avail of the concession must also bear the brunt of payment of higher duty on being found to have misused or abused such a concession. I find nothing unreasonable in making such a provision nor such a penalty to be classified as arbitrary. If the parties concerned do not want to avail of such a concession, they are free to carry on their trade without availing of such concession. Having availed of the concession, subject to the conditions made therein, including the penalty clause it is not open to consider that such a condition is unreasonable. Therefore, the conclusion I draw is that this provision cannot be attacked either on the ground of being violative of Art. 14 or 19(1)(g) of the Constitution. This penal provision being in addition to another penal provision is not violative of Ss. 455 and 468 of the Act as well. Hence I reject the fourth contention raised on behalf of the petitioner.

9. It is too well known and too well settled to need elaborate discussion to state that even if the procedure for levy of penal provision does not provide for safeguards of a reasonable opportunity of being heard or representation before levy

is made, in the exercise of such a power, opportunity will have to be given If Rule 2(m) which is an exemption provision now is read in that manner, no infirmity can be found in not providing for a specific provision of an opportunity of being heard or making a representation before the levy of penalty. It is only whether in the exercise of such power ample opportunity has been given to the person concerned or not has to be examined. In the present case there has been more than an ample opportunity because the Commissioner held an elaborate enquiry and made detailed examination akin to a trial in a law court, and therefore petitioner cannot make any grievance of not providing of an opportunity of being heard in this case at any rate Hence the fourth contention is rejected.

10. Respondent 1 proceeded to levy penalty in the following circumstances:

Petitioner availed of the concession provided under Rule 2(m) of the Octroi Rules, as the petitioner Company was situated within the octroi limits under the declared area. The Corporation discovered in the course of its investigation that petitioner company had supplied certain raw materials to Indo-Malaysian Company at Koulalampur; Mysore Kirloskar Ltd., and Kirloskar Electric Co., Bangalore. The petitioner had availed of the exemption provision regarding levy of octroi on such raw materials with a view to utilise them for its own industries as contemplated in rule 2(m). The supply of such raw materials by the petitioner to these companies on sale basis amounted to using the materials contrary to the declaration and was in violation of Rule 2(m). In the course of the enquiry, the Commissioner directed to obtain an exhaustive list from the company and the company made available several records for verification. The Commissioner also requested the Central Excise Authorities to clarify whether the items contained in the list of company have been exported to Koulalampur. But the Excise Department did not respond to this request. The Corporation Staff therefore verified the vouchers and records and came to the conclusion that out of a total 63 items in respect of 44 items, they were able to verify the records and in respect of 19 items no records were available. The actual cost of 44 items at the normal rate worked out to be Rs. 19,240/- but such valuation could not be worked out in respect of 19 items for want of records In this state of affairs, the petitioner asked the Commissioner to finalise the case on the basis of the available records Before the Commissioner the petitioners contended that octroi was exempted in respect of the goods manufactured by them viz., Electric Motors, Alternators and once the finished products were exempted it would automatically cover the spares or the component parts of the product sold by them and that contention was not accepted by the Commissioner. In the circumstances in respect of the items for which records were available and value could be fixed the Commissioner felt that thrice the normal rate of octroi of Rs. 19240/-=Rs. 57,721 77 should be levied. Further he felt that an amount of Rs. 50,000/-for the 19 items in respect of which records were not disclosed would be reasonable and levied penalty accordingly in a sum of Rs. 1,07,721-77.

11. Exemption under rule 2(m) is only in respect of raw materials which mainly

belonging to and imported by the petitioner for the purpose of manufacturing, processing or assembling within the limits of Industrial Estates or areas. In the present case the raw materials that have been imported in respect of which dispute has arisen, they were spare parts or component parts of the parts sold by the petitioner was not utilised for the purpose of manufacturing, processing or assembling as finished products. It was exported in the same condition in which they were imported within the Corporation limits and this fact is not disputed at all. Therefore, except mentioning in the Form "C" that the raw materials or machinery imported are intended to be used for the purpose of manufacturing finished articles namely, electric motors or alternators, their accessories and parts thereof. So far as 63 items are concerned, it is not the case of the petitioner that some have been objected to any kind of manufacturing, processing or assembling. But its case is that when once the finished product is allowed to be exempted from levy of octroi, the spare parts and components thereof are also exempt whether those spare parts are components that have been used for the purpose of manufacturing, processing or assembling by the petitioner or not. Such a contention is wholly devoid of merit. As stated earlier, the scope of exemption is only in respect of levy of octroi on raw materials or machinery which is utilised in the manufacturing, processing or assembling by the petitioner. Thus the conclusion reached by the Commissioner on facts that the 63 items in respect of which the penalty proceedings have been invoked and levied penalty is perfectly justified.

12. In respect to those items for which records were available the Commissioner has come to the conclusion that the normal rate of octroi levied is Rs 19,240/- and therefore levy of penalty at thrice the rate of normal rate cannot be held to be excessive so as to attract interference by this court. In so far as 19 items in respect of which records were not available to arrive at their valuation for the purpose of octroi and when the burden was upon the petitioner to establish their value and the rate of octroi payable to them, the Commissioner was at liberty to make best judgment assessment in the absence of materials. However, learned counsel for the petitioner drew my attention to the fact that the Excise authorities had been requested to confirm whether the items contained in the list of the company have been exported and to issue a certificate to that effect. When, in fact, such records had been made available for verification, the Commissioner should have merely relied upon the records available with the company and not have insisted upon the Central Excise Department to furnish information and non-furnishing of opinion by that department should not have afforded a ground to the Commissioner to draw an adverse inference against the petitioner. But in my view, this criticism is wholly unjustified. The Commissioner directed the petitioner to produce an exhaustive list in respect of the goods with which they are concerned. The Company could not make available all the records for verification. Therefore, the Commissioner requested the Central Excise Department to furnish information and when the Central Excise Department also failed to furnish such information, the Commissioner had no option but to draw an adverse inference

against the petitioners who should have maintained the records and produced before the Commissioner for verification. It is too much to expect any person other than the petitioners to furnish such information because the items imported, items manufactured by them and which items were utilised for purposes of manufacturing, processing or assembling was within the exclusive knowledge of the petitioner and the company was bound to maintain the records in that behalf. If they have not been able to furnish information in that regard it cannot be said that the Commissioner was wrong in having drawn an adverse inference against them. The Commissioner held that in respect of 19 items the records were not furnished and the exact amount payable on those items should be worked out without any records and hence approximate amount was taken and, in fact, in this regard petitioners itself gave such an option to the Commissioner and now they cannot turn round and say that the assessment made by the Commissioner is wrong in this regard. Hence there is absolutely no substance in this contention raised on behalf of the petitioners and therefore the contention that there are errors apparent on the face of the record in the order made by the Commissioner also falls to the ground.

13. In the result, this writ petition deserves to be and is dismissed. Rule discharged.

Writ petition dismissed.