

(1959) 04 MP CK 0012
In the Madhya Pradesh High Court
Case No : C.R. No. 102 of 1958

Municipal Committee, Mungeli

APPELLANT

Vs

Kanhaiyalal Ghansiram

RESPONDENT

Date of Decision : 25-04-1959

Acts Referred:

Provincial Small Cause Courts Act, 1887 — Section 18, 25

Citation : (1960) J LJ 337 : (1959) MPLJ 139

Hon'ble Judges : P.K. Tare, J

Bench : Single Bench

Advocate : R.K. Pandey, for the Appellant; Y.S. Dharmadhikari, for the Respondent

Final Decision : Allowed

Judgement

P.K. Tare, J.

This judgment shall also govern the disposal of Civil Revision. No. 103 of 1958 (Deepchand v. The Municipal Committee, Mungeli), Civil Revision No. 104 of 1958 (Kanwarlal v. The Municipal Committee, Mungeli), Civil Revision No. 105 of 1958 (Hasamal v. The Municipal Committee, Mungeli), Civil Revision No. 106 of 1958 (Khetmal Kochar v. The Municipal Committee, Mungeli), Civil Revision No. 110 of 1958 (Sewakram v. The Municipal Committee, Mungeli), Civil Revision No. 111 of 1958 (Gendmal Chopra v. The Municipal Committee, Mungeli), Civil Revision No. 112 of 1956 (Rekchand Lalwani v. The Municipal Committee, Mungeli), Civil Revision No. 113 of 1958 (Tejmal v. The Municipal Committee, Mungeli) and Civil Revision No. 115 of 1958 (Ishwarlal v. The Municipal Committee, Mungeli).

This revision u/s 25 of the Provincial Small Cause Courts Act is by the Defendant against the judgment and decree passed by Shri R. L. Murab, Second Additional Civil Judge, Bilaspur, empowered u/s 18 of the C. P. Courts Act, in Small Cause Suit No. 114 of 1956 dated 31-12-1957, decreeing the non-applicant's claim for

recovery of the balance of octroi duty.

The applicant, a cloth merchant imported some cloth within the municipal limits and paid octroi duty at the rate of Rs. 3-2-0 per cent, on the value of the cloth imported.

Later, an audit objection was taken to the effect that the recovery of octroi duty should have been at the rate of Rs. 4-11-0 per cent, and not at the rate of Rs. 3-2-0 per cent. Therefore, the non-applicant filed the present suit for recovery of the balance of octroi duty, as according to the non-applicant, the audit objection had been confirmed by the Local Government. The same question is involved in the present revisions and, therefore, a common judgment is sufficient to dispose of all the cases.

The question involved is one about interpretation of Items Nos. 42 to 45 of the entries in the schedule of rates prescribed by the octroi rules. The same are published in C. P. and Berar Gazette, Notification No. 70SS-4994-M-XIII, dated 6th December 1948 published at page 1002 of the C. P. and Berar Gazette dated 17th December 1948, part III. They appear under the heading Class VII Textile-fabric including piece goods and articles of clothing or dress and articles made of leather.

Item 42.

Jari cloth (jari of silver or gold)

. Its. 4-11-0 per cent.

Item 43.

Other clothes

. Rs. 3- 2-0 per cent.

Item 44.

Cotton cloth made of hand

. Rs. 1- 9-0 per cent.

Item 45.

All other kinds of kosa, silk,

. Rs. 4-11-0 percent.

woolen and mixed with woolen and cotton cloth.

It was urged by the Learned Counsel for the applicant that the word "clothes" in item No. 43 was a mistake and that the word should have been "cloths". The Learned Counsel for the non-applicant Municipal Committee, urged that there was no ambiguity in the entries and that the word "clothes" could not be interpreted to be "cloths" on the assumption that it was a mistake.

The Learned Counsel for the applicant pointed out similar entries relating to the octroi schedule of other Municipal Committees in the State; particularly relating to the Champa Municipal Committee, wherein the word used is "other cloths". He pointed out that the Mungeli Municipal Committee had resolved to adopt the octroi rules of the Champa Municipal Committee, and therefore, the word "clothes" appeared to be an obvious mistake. In my opinion, the entries in the schedule of octroi rules of the non-applicant, Committee, cannot be interpreted with reference to similar entries in the octroi rules of other Municipal Committees. That would clearly be opposed to the principles about interpretation of statutes. It may be that the word "clothes" may have been inadvertently put in item No. 43 of the schedule of octroi rules, or, it might have been deliberately put. However, we are required to interpret the entries without reference to any extraneous considerations.

It is significant to note that item No. 42 mentions Jari cloth, while item No. 43 refers to other clothes. Had item No. 42 referred to Jari clothes, the wording "other clothes" in item No. 43 would have been referable to item No. 42 as referring to all other clothes except Jari clothes, but the word used in item No. 42 is "Jari cloth". The wording "other clothes" in item No. 43 becomes meaningless. Further on, item No. 44 refers to cotton cloth made of hand, while item No. 45 mentions all other kinds of kosa, silk, woolen and mixed with woolen and cotton cloth.

With reference to item No. 45, the Learned Counsel for the applicant urged that three distinct categories were mentioned, namely, all other kinds of kosa, silk, and woolen cloths and the qualifying phrase "woolen mixed with woolen and cotton cloth" specifically referred to the three categories of kosa, silk and woolen cloth. On the other hand, the Learned Counsel for the non-applicant urged that cotton cloth was a distinct category and was not to qualify the three categories, namely, kosa, silk and woolen. He urged that the cotton cloth was liable to be taxed at the rate of Rs. 4-11-0 per cent, under item No. 45 and not under item No. 43.

It is a salutary rule of interpretation that a statute ought to be interpreted rationally, so as to make sense. The reasonableness or otherwise of a statute is immaterial for the purpose of interpretation. If the interpretation suggested by the Learned Counsel for the non-applicant, Committee, were to be accepted, it would create anomaly regarding items Nos. 42 and 43. If item No. 42 referring to Jari cloth is to be taxed at the rate of Rs. 4-11-0 per cent., the wording in item No. 43 "other clothes" becomes meaningless; as item No. 42 does not refer to clothes but cloth. Items Nos. 42 and 44 specifically mention a distinct category, regarding which, there is no scope for confusion. Items Nos. 43 and 45 are residuary items, descriptive of cloth of certain descriptions. So far as item No. 45 is concerned, the only rational interpretation, according to me, would be that to accept the contention of the Learned Counsel for the applicant, which means that the residuary item No. 45 refers to three distinct categories of kosa, silk and

woolen cloth and all mixtures of those three categories whether mixed with woolen or cotton cloths. Therefore, in my opinion, item No. 45 contains only 4 categories, the three categories of kosa, silk and woolen and the fourth category which is a mixture. The phrase "woolen and mixed with woolen and cotton cloth" has to be read conjunctively and not disjunctively, so as to create two other separate categories, namely, woolen and mixed with woolen and the cotton cloths. I feel that this description is not a description of distinct and separate categories of cloths, but is only a qualifying description with reference to kosa, silk and woolen and with reference to mixture of cloths. As such, in my opinion, the word "cotton cloth" in item No. 45, not being a distinct category, is not liable to be taxed at the rate of Rs. 4-11-0 per cent. But it is only the mixture of kosa, silk and woolen with either woolen or cotton cloth that is liable to be taxed under item No. 45.

In the light of the above, entries 42 and 43 will have to be rationally interpreted and, in my opinion, item No. 42 mentions Jari cloth, while item No. 43 is the residuary item referring to other cloths. The other cloths, excepting Jari cloth and excepting cotton cloth made of hand and cloth of kosa, silk and woolen with mixture of woolen and cotton cloths would be liable to be taxed under item No. 43 at the rate of Rs. 3-2-0 per cent.

Upon a correct interpretation of the said entries, I am inclined to accept the interpretation suggested by the Learned Counsel for the applicant. Even assuming that the entries are open to two interpretations, as held by their Lordships of the Supreme Court in *The Central India Spinning and Weaving and Manufacturing Company, Ltd., The Empress Mills, Nagpur v. The Municipal Committee, Wardha* 1958 M P L J 775 : A I R 1968 S C 341, I am obliged to follow the interpretation that is in favour of the citizen and against the taxing authority. It is a well-known principle of interpretation of statutes that where two interpretations are possible, the one in favour of the citizen is to be preferred, unless it is specifically excluded by the specific wording of the statute or by necessary implication. Therefore, even if it be assumed that the interpretation suggested by the Learned Counsel for either side be rationally possible, I am bound to accept an interpretation against the taxing authority, as laid down by their Lordships.

The Municipal Committee had no right to recover any extra duty on the supposition that the cotton cloth was liable to be taxed at the rate of Rs. 4-11-0 and, not at the rate of Rs. 3-2-0. The requisite octroi duty at the rate of Rs. 3-2-0 had already been paid by the applicant in each case. The fact that the State Government confirmed the audit objection would not make any difference in the present case.

As held by Cornelius J. in *Ram Labhaya v. Dhani Ram and others* A IB 1947 Lah. 296 SIC, an executive interpretation can be accepted, only if it has prevailed for a long time without any challenge and without being modified by the Court of law. In the present case the said dictum is not applicable.

I, therefore, hold that the non-applicant Committee was not entitled to recover the so-called balance of the octroi duty.

For the reasons aforesaid, this revision succeeds and is allowed with costs throughout. Counsel's fee Rs. 20 if certified.