

(1959) 02 MP CK 0031
In the Madhya Pradesh High Court
Case No : L.P.A. No. 3 of 1957

Municipal Committee Raipur

APPELLANT

Vs

Punjab Oil Mill

RESPONDENT

Date of Decision : 12-02-1959

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1959) JLI 537

Hon'ble Judges : T.P. Naik, J;K.L. Pandey, J

Bench : Division Bench

Advocate : J.V. Jakatdar, for the Appellant; A.I. Sen, for the Respondent

Final Decision : Dismissed

Judgement

T.P. Naik, J.—This is a Letters Patent Appeal against the order of Choudhuri, J. declining to quash an order of the Board of Revenue, Madhya Pradesh, dated 25th August 1956, under article 226 of the Constitution of India.

2. The Petitioner-appellant is the Secretary of Municipal Committee, Raipur, Respondent non-applicant No. 1 is Messrs Punjab Oil Mills, Raipur, which imported oil seed within the limits of the Raipur municipality. The imported oil-seed was liable to octroi-tax under the rules framed under clause (e) of sub-section (1) of section 66 of the Madhya Pradesh Municipalities Act 1922 (hereinafter referred to as the Act.). After extracting oil from the oilseed imported by it, respondent No. 1 exported the oil so manufactured outside the limits of the municipality and then claimed a refund of the octroi tax paid by it on the entry of the oilseed into those limits, on the ground that it was used by it for manufacturing oil and, as the oil manufactured was exported out of the limits of the municipality, it was entitled to the refund of the octroi tax paid under proviso (b) to rule 38 of the Rules framed by the State Government under sections 71, 76 and 85 of the Act (hereinafter referred to as the refund rules").

3. The petitioner respondents claim, for refund was rejected by the Municipal

Committee by its resolution dated 5th May 1955, on the ground that the oilseed was "used" by it within the meaning of clause (e) of sub-section (1) of section 66 of the Act, within the limits of the municipality. On appeal, the Sub-Divisional Officer, Raipur, allowed the appeal, set aside the resolution, of the Municipal Committee and directed it to refund such amount as the respondent-non-applicant No. 1 may be found entitled to under proviso (b) to rule 38 of the refund rules. The said order has been affirmed both by the Board of Revenue, Madhya Pradesh, and the learned single Judge.

4. The contention of the Learned Counsel for the appellant municipal committee is that proviso (b) to rule 38 of the, refund rules is ultra vires the rule-making power of the State Government. It is contended that the rules are purported to have been framed under Sections 71, 76 and 85 of the Act, and under, these Sections all that could be done was to make rules regulating the refund of taxes. The rules could not, therefore, provide that if the goods imported within the municipal limits were "consumed or used" within those limits, the imported should yet be entitled to a refund of the octroi-tax on the ground that the goods exported were "manufactured" within the octroi limits from the imported raw material.

5. In our opinion, the contention is misconceived. Under clause (e) of sub-section (1) of section 66 of the Act, the municipal committee is empowered "to impose an octroi on animals or goods brought within the limits of municipality for Sale, consumption or use within those limits." Sub-section (2) of that section further provides that the State Government may, by rules made under the Act, regulate the imposition of taxes under the section and impose maximum amounts of rates for any tax. Sub-section (1) of section 85 of the Act further empowers the State Government to make; rules under the Act for "regulating the refund of taxes". A perusal of the rules framed under the latter section would show that the State Government made rules for, the refund of, tax paid by, an importer, providing that, if the articles imported are exported by the importer out of the, octroi limits without being sold, used or consumed within those limits, he shall be entitled to a refund of the octroi tax paid by him, less 12½%. By a, proviso under, the said, rule, it was further provided that "the refund on exported goods, which have been manufactured within the octroi limits from imported raw material liable to octroi tax, shall, not, exceed the tax paid on the raw material used in the manufacture." The provision is not happily worded, but the intent and purpose, of the rule appears to be that, when goods on which octroi has lightly been paid on their entry into, the octroi limits are exported out of those, limits, the importer is yet entitled to a refund of the octroi tax paid, if (1) the goods are not "sold, consumed or used" Within those limits, and when (2) the goods are used for manufacture within those limits and the manufactured article is exported out of those limits. It was quite within the province of the State Government to have provided that if the imported goods are used for manufacture within the octroi limits, the importer shall not be liable to" tax, if the manufactured article is exported out of those limits.

6. It is, however, contended that this could not be done by a rule framed u/s 85 of the Act, which only governs the refund of taxes when rightly due, and, as in the instant case the goods had been used within the octroi limits, no refund could be claimed on them. In the first place, there is no specific provision providing for the circumstances under which a refund could be claimed by the importer. Secondly, the phrase "regulating the refund of taxes" occurring in section 85 of the Act is wide enough to empower the State Government to frame rules providing for the circumstances under which the refund could be claimable by the importer.

7. Apart from this, it is a cardinal rule of interpretation, of statutes that no rule made under an enactment can be declared ultra vires, unless the Court is satisfied not only that it had no power to act under the power it purported to act, but also that it had no power at all under any law to so act. If power can be found elsewhere than the section quoted, the rules will be referred to that power and held not to be ultra vires. It is not the function of the Court to declare any rule framed by the State Government ultra vires, unless it is driven to it, that is to say. when it is not possible to support the rule under any of the provisions of the Act Now if we examine the provisions of sub-sections (1) and (2) of section 66 of the Act, it would be clear that the state Government has been given the power to regulate the imposition of an octroi tax. It was, there fore quite within the power of the State Government to have provided that if the goods are imported into the octroi limits for the purpose of export in specie or in the shape of a manufactured article they shall not be liable to the full amount of octroi tax, by providing for its refund, or a specified part of it, under the refund rules. This is exactly what appears to have been done by rule 38 and proviso (b) to rule 38 of the refund rules cited above. The rule would be a valid rule and could be referable to the powers of the State Government with regard to it under sub-section (2) of section 66 read with section 85 of the Act.

8. We are, therefore, of opinion that proviso (b) to rule 38 of the refund rules is not ultra vires the rule-making power of the State Government, and the respondent non-applicant No. 1 is entitled to the refund claimed by it.

9. The appeal, therefore, fails and it is dismissed with costs. Counsel's fee Rs. 100/- .