

(1958) 02 MP CK 0029

In the Madhya Pradesh High Court

Case No : Small Cause R. No. 137 of 1955

Municipal Corporation, Indore

APPELLANT

Vs

Sanghi Brothers (Indore) Ltd.

RESPONDENT

Date of Decision : 05-02-1958

Acts Referred:

Indore City Municipal Act, 1909 — Section 135, 21(6)

Citation : (1958) MPLJ 263

Hon'ble Judges : V.R. Newaskar, J

Bench : Single Bench

Advocate : Jhanjaria, for the Appellant; G.M. Chaphekar, for the Respondent

Final Decision : Allowed

Judgement

V.R. Newaskar, J.

This petition for revision arises out of a suit filed by Sanghi Brothers Ltd., for refund of Rs. 223 recovered from them as Octroi duty by the officers of the Indore Municipality on 16-1-1953.

The facts alleged by the Plaintiff are as follows:

The Development Commissioner, Madhya Bharat, Indore, placed an order with the Petitioner for the supply of a tractor. In pursuance of this order the Petitioner requisitioned one tractor from Bombay. Accordingly the tractor No. Rule 57532 reached Indore on 10-1-1953. The tractor was required for a place in Madhya Bharat outside the City limits of Indore. The tractor reached Indore Octroi Naka. The person in charge of the vehicle asked for passage permit (Rahadari Pass). The Octroi Naker thereupon asked the person to pay the octroi duty and gave assurance that after reference to the octroi officer concerned that the same would be refunded later on when the tractor might be taken outside the City limits. The Plaintiff brought this to the notice of the Revenue Officer of the Municipality and also the Defendant Municipal Commissioner but they too confirmed the position as represented by the octroi Naker. Accordingly the

duty was paid on 16-1-1953 and the tractor was brought within the City limits. Later in pursuance of the order of the Development Commissioner, who had gone out, the tractor was sent to Sana wad on 24-1-1953. But in spite of prior assurance the Officer concerned refused to allow refund. Information about this refusal was made known to the Plaintiff on 6-2-1953. The Plaintiff thereupon gave notice to the Defendant u/s 135 of the Indore Municipal Act and claimed refund of the duty recovered from him which he was not liable to pay. The demand made by the Plaintiff was again rejected. Present suit was therefore filed on 16-7-1953.

The principal ground on which Plaintiff's claim for refund was based was that the Plaintiff was in no way liable for the octroi duty in respect of the tractor as the said tractor had not been brought within the limits of Indore City for consumption but had been there during the stage of transit.

Second ground upon which the claim was based was that, in any case, the tractor, having been exported without the City limits, was not liable to octroi duty.

The defence to this suit was that the goods in question has been rightly taxed and claim to refund rightly rejected as the goods had been imported within the Municipal limits and had been exported there from but not outside the limits of the State.

Learned Small Cause Judge took reliance upon Section 21 (6) of the Indore Municipal Act and held that inasmuch as the tractor in question was imported within the limits of Indore Municipality not for consumption or use within those limits but had been exported beyond them no octroi can be charged for it. The delay which occurred in its export, according to his view, was sufficiently explained by the Plaintiff by establishing that the Development Commissioner, who had ordered it, had gone on tour during this period. He therefore held that the claim of the Plaintiff for its recovery was proper. The suit was accordingly decreed. This petition for revision is directed against that decision.

It was contended by Mr. Jhanjariya for the applicant that under the rules framed in pursuance of the power vested in the Government u/s 84 refund of octroi could be claimed in the manner and under the circumstances laid down in those rules. Civil Courts cannot be moved where either the conditions for the refund do not exist or proper procedure as laid down in the special statute are not followed. He relied upon the decisions reported in *Emperor Vs. Harjivan Valji, Amalner Municipality v. Pratap Spinning, Weaving and Manufacturing Co, Ltd.* A I R 1952 Bom. 401 , AIR 1942 11 (Lahore) and Bindra's Interpretation of Statutes pages 345-348 in support of his contention.

On the other hand Mr. Chaphekar for the other side contended that in this case no power existed in the Municipality to collect the tax. The facts found by the Court below were that the tractor was not imported within the limits of Indore City for consumption or use within those limits but was actually exported on 24-1-53. In face of these facts octroi duty could not have been levied. Section 21

(6) of the Indore Municipal Act confers power upon the Government to impose octroi tax upon goods brought within the limits of Municipality for consumption or use within the limits. The rules cannot go beyond the limits of statutory power conferred under the Act. If they do, the same are ultra vires. It was conceded that Section 21 (6) had later on been amended on 27-3-1948 by removing the condition regarding leviability of tax only upon goods intended for consumption or use within the limits of the Municipality. But it was asserted that no fresh bye-laws were made in pursuance of those powers. The rules framed under the pre-existing law cannot be availed of for the purpose. The amendment only conferred power upon the Municipal Council to impose tax upon goods imported within the limits of Indore Municipality irrespective of the purpose for which they are so done. But in order to make the tax effective this widened power has to be exercised subsequent to the amendment. No such power was, however, exercised. It was therefore contended that the Defendant cannot take shelter under the amended provision and seek to impose tax upon the goods not intended for consumption or use. The rules framed under the pre-existing provisions have got to be read as falling within limits of the statutory power under which they were framed.

.Questions which, on these submissions on either side, fall to be determined are:

(1) Whether the tax in question has been rightly collected as having been duly imposed by the Rules framed by the Municipal Council with the approval of the Government in exercise of their power u/s 84.

(2) Whether the consequent amendment in the Act on 27-3-1948 which widened the taxing power of the Municipal Council can be availed of for justifying the tax in question in the absence of fresh imposition thereunder.

It is clear that in order that a tax may be effective there should not only exist power to impose the tax but actual exercise of that power. In this case the Rules by which the tax was imposed had been framed u/s 21 (6) as it existed when the same were made. They can therefore be read only to authorize imposition of the tax within limits permitted by the statute and not to exceed them. The second question, therefore, as formulated above is easily answered by holding that inasmuch as there had been no fresh imposition in exercise of widened power under amended provisions of Section 21 (6) the collection of tax in exercise of imposition effected under the rules framed under the unamended provisions cannot be justified. It cannot be argued that since Section 21 (6) as amended confers power upon the Municipal Council to impose a tax, with the approval of the Government irrespective of the purpose for which the goods are imported, the collection of tax, with respect to goods not meant for use or consumption within the limits of the Municipality, is proper even if the same could not be said to be justified on the basis of imposition effected under bye-laws dated 7-7-1947. Something positive has to be expressed by the taxing authority subsequent to the widening of its power to indicate that it has applied its mind and decided to impose the tax on goods previously not included within its ambit.

This leaves us to answer only the first question.

Mr. Chaphekar's main contention as regards this is that the rules cannot bring about by any means what the Act itself did not authorize. If the effect of the rules be to support a state of facts, which the Act did not authorize, then these rules are bad to that extent and that since it has been found as a fact in this case that the goods had not been brought in for consumption or use within the limits of the Municipality the collection of tax was illegal and that for that reason the refund was rightly ordered by the Court below.

The contention raised above would have been correct in case the rules framed had gone beyond the limits laid down by the Act. However on careful scrutiny of the rules it appears clear that the same were framed with a view to impose tax upon goods brought in for the purpose of consumption or use within those limits. In this connection it is necessary to refer to Section 3 (1) of the bye-laws for Collection of Octroi which is the charging Section:

Subject to the exemption and provisions hereinafter expressly specified, a tax on all goods of the description mentioned in the Schedule shall, on the import thereof, be payable to the Municipality at the rates specified for such goods respectively in the said Schedule.

The exemptions u/s 3 (2) particularly those contained in Sub-clauses (b), (c), (d) and (e) clearly indicate that the goods imported into City limits which had been temporarily exported, containers imported for their being filled and exported, goods in transit and goods taken for sale outside the limits of Municipality when reimported are not intended to be taxed. But in order to make the taxing law effective and to avoid evasions conditions had to be imposed. These conditions appear in the aforesaid clauses. In the case of exemption referred to under Sub-clause (b) permission of the Municipal Commissioner or any other authorized Officer is needed for the purpose of export and the export or import ought to be within one month of the permission. In case of exemption under Sub-clause (c) there has to be deposit of Octroi tax which is to be returned in case the containers are exported after their being filled within 12 hours. In case of exemption under Sub-clause (d) referring to the goods in transit provision is made for issuing Rahadari or a transit-pass mentioning the actual route by which the goods are to pass. Moreover the goods are to get out of the City limits within 24 hours and if so authorized by the Revenue Officer within 48 hours. In case of exemption referable to Sub-clause (e) the goods taken out in the suburbs the import ought to be within 48 hours. Provision is made for sealing such goods and for securing Bijaks in duplicate, one to remain with the merchant and one with the Municipal authority concerned.

It is thus clear that these rules have been so framed as to tax only such imported goods as are bona fide meant for consumption or use within the City limits. The conditions imposed, in the case of imported goods meant otherwise than for use or consumption, were designed to avoid evasion of tax as far as possible. It

cannot for that reason be said that the rules were ultra vires the statute in case, due to non-observance or transgression of conditions imposed, certain goods, which would otherwise be exempt happened to be taxed. No specific rule has been pointed out in the existing rules which has the effect of taxing goods not meant for consumption or use within the limits of the Municipality. On the other hand as indicated above meticulous care has been taken to enable bona fide imports, not meant for consumption or use, to be free from such tax. A taxing-machinery, in order that it may be effective and should leave no loop-hole for evasion, has to provide for reasonable conditions and limitation subject to which exemptions have to operate. If due to transgression of such conditions or limitation certain goods, which would otherwise have been free from tax, happened to be taxed, it is the persons who violate such conditions or limitations who are to blame and not the taxing-machinery.

In the present case the Plaintiff brought the tractor within the City limits, possibly within the Siyaganj area where his business premises are situated. The tractor under this circumstance, entered into the Municipal limits either as goods in transit or those which had been brought into Siyaganj area for its being exported outside the limits of the State. That area, though within the limits of the Municipality, was so constituted as if it is outside those limits with reference to goods which were to be exported outside the State. It was not suggested that the constitution of such area as tax-free with reference to goods not meant for consumption or use within the limits of the Municipality was illegal. On the other hand this was consistent with the main purpose of the Act.

Now in case the tractor was imported as goods in transit conditions of Clause (d) of Rule 3 (2) had to be followed. They were not followed. No transit-pass was obtained from the Nakerdar prescribing a definite route. The tractor admittedly remained within the City limits for more than 24 hours. If it was an import within Siyaganj area and was meant for export then, in order to claim refund, conditions laid down in Rule (14) ought to have been followed. In the first place in this case export was not meant to be beyond limits of the State but apart from it remedy provided for in the special statute was not followed. No application in the prescribed form is alleged to have been made by the Plaintiff to the Octroi Superintendent within 15 days from the date of import for refund. When the tractor was brought within the limits of the Municipality it was not known where the same would be sent. As the facts turned out later it was exported to a place within the State. Rule (14) therefore did not apply. It could then have been brought within the limits of the Municipality only as in transit and could not have been kept for more than 24 hours.

As the goods admittedly continued within the limits of Municipality from 10-1-1953 to 24-1-1953 the goods had been rightly taxed and the fact that ultimately the same had not been used or consumed within the Municipal limits was immaterial.

The principle above discussed is properly illustrated in a Criminal Case reported

in Emperor Vs. Harjivan Valji, Facts of this case were that a grocer of Bhivandi, who was the accused in that case, put certain goods in a hired motor-lorry at Bombay and drove it past Kalyan Municipal limits. On these facts he was prosecuted u/s 77 (2) of the Bombay District Municipalities Act which prescribed punishment for those who brought the goods liable to Octroi tax within the Municipal limits. It was contended that inasmuch as Section 59 (iv) of that Act empowered the Municipality to impose octroi on goods brought in only for consumption or use within the limits of the Municipality the accused could not be punished. The contention was repelled on the ground that u/s 48 (1) (j) of the Act the Municipality had power to frame bye-laws regulating the system under which refunds are to be made in respect of goods on which octroi has been paid when they are again exported. It was observed by Fawcett J. at page 233 of the report:

But the Act recognizes that provision has to be made for goods in transit through the Municipal district and for safeguarding the Municipality from loss owing to any misrepresentation that may be made when goods are brought within the Municipal limits that they are only being brought in transit and not for use or consumption within such limit.

According to the learned Judge provision in the bye-laws for initial deposit and subsequent refund, to the person who happened to carry the goods through the Municipal limits in case he followed the conditions laid down in the said bye-laws, was an essential and incidental power to make the provision effective by preventing evasion and could not be read as being beyond the scope of the Act.

In the present case it is significant that the Plaintiff had his business premises in Siyaganj and under some impression, regarding applicability of Rule (14) on the part of both the Plaintiff and the Municipal authorities, the deposit was made. It however turned out later that the goods were neither sent outside the City limits nor a claim for refund was made as provided by law nor was any Rahadari or transit-pass obtained. The goods in question therefore could not escape the tax.

Mr. Chaphekar's contention is that Rule (14) went beyond what is permitted by the Act. According to him, the provision for refund only in those cases where the goods are to be exported outside the State, is bad inasmuch as the effect is that the goods, exported outside the limits of the Municipality but inside the State get themselves taxed there under and no refund can be had in their case. I think Mr. Chaphekar misses the main purpose for which the Siyaganj area was made free from octroi tax. The area was so declared tax-free with a view to stimulate the trade in the city and to remove possible misgiving that in case the goods were so taxed there would be no special advantage to the traders at that place who undertook large scale export and import business. The provision was introduced during Holkar State regime for stimulating export and import trade of the State. The area was free from Customs duty as well. It is to give effect to this purpose that provision for refund of octroi was made where the goods went beyond the limits of Holkar State.

But apart from this, to my mind, on the case set up by the Plaintiff in this case question regarding validity of Rule (14) is really not involved. Plaintiff never set up the case that the case fell within Rule (14) and that the said Rule was invalid. His case was that the goods was in transit. On this case the goods in question could remain within the limits of the Municipality only for 24 hours or at the most for 48 hours and that too in case the conditions laid down under Rule 3 (2) (d) are followed.²³

Mr. Chaphekar did not specifically contend that this Rule 3 (2) (d) is ultra vires. Nor can this be said to follow because of the provision of Section 21 (6) as it stood before the amendment.

In a taxing statute, such as this, it is impossible to take into account motives of persons who import goods and to provide machinery to investigate such motives. All that can legitimately be done is to indicate the principle on which the tax is to be imposed and to provide a machinery in the shape of Rules to give effect to that principle and further to prevent evasion. If in face of all such rules if certain goods meant to be exempted happened to be taxed due to failure on the part of persons concerned to follow the rules, it is they who are responsible and not the rules. Rule 3 (2) (d) is a perfectly legitimate Rule dealing with the cases of goods which are brought in during their transit. Conditions requisite for claiming exemption on the ground that the goods are in transit are reasonable. If goods are allowed to remain without reference to Rahadari or transit-pass certifying them to be in transit and for more than a reasonable period needed for transit evasion of tax will be easy and the provision will be ineffective. Now in face of this Rule, which reasonably gives effect to the exemption, if any person either fails to secure a pass indicating by what route he wanted to pass or remains for more than 24 hours within the Municipal limits and for that reason is unable to secure exemption how will the rule be bad ?

As the Plaintiff was circumstanced when he brought in the goods he did not know where the tractor was to go or when the Development Commissioner might return from tour. He might not have expected directions as to the destination of the goods within 24 hours. He might, of necessity, be unaware by what route the tractor would get outside the Municipal limits if at all. It must therefore have been thought prudent to prima facie take recourse to Rule (14), to pay tax and stand a chance of claiming refund ²⁶.

As the facts later turned out the tractor was not sent outside the limits of erstwhile Holkar State and it therefore must have become difficult to claim refund under that Rule. The Plaintiff must have been aware of this position and therefore the claim was based on the ground that the goods was in transit.

For these reasons refusal of the Municipality to refund the tax in question is not any way illegal.

The learned Small Cause Judge failed to take proper account of the Rules framed under the Act and was solely guided, in his decision, by the wording of Section

21 (6) of the Act. His failure to appreciate the case from a correct stand-point has resulted in failure of justice. The case does not involve mere error of judgment as to a question of law. Hardly any dispute existed as to any material question of fact.

The decision thus given does not deserve to stand.

The petition is therefore allowed and Plaintiff's suit is dismissed with costs throughout.