(1997) 11 SC CK 0075

In the Supreme Court Of India

Case No : Civil Appeal No. 486 of 1989

Municipal Council, Alwar APPELLANT

Vs

P.R. Daga and Another RESPONDENT

Date of Decision : 19-11-1997

Acts Referred:
Rajasthan Municipalities (Octroi) Rules, 1962 — Rule 14(2)

Citation : (1998) 8 JT 83 : (1999) 2 RLW 207 : (1998) 9 SCC 391

Hon'ble Judges : V. N. Khare, J;S. C. Sen, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. The question raised in this case is as follows:

"Whether the term ''value of goods'' used in Rule 14 of the Rajasthan Municipalities (Octroi) Rules, 1962 (hereinafter referred to as ''the Rules'') includes the excise duty chargeable on the goods though has not been incorporated in the bills or invoice produced by the dealer."

2. The dispute in this case is about valuation of goods for the purpose of levy of octroi duty under the Rajasthan Municipalities (Octroi) Rules, 1962. The Division Bench of the High Court came to the conclusion that if the invoice of the seller did not include excise duty as an element of the value of the goods sold, the octroi duty will have to be calculated on the value as shown in the invoice. There is no way excise duty could be added back for the purpose of valuation of the goods. This view is based on the argument that taxation will be according to the full value "as given in the original bill or invoice". We are of the view that this argument is without any substance and the High Court should have rejected it.

3. The rule relating to determination of valuation of goods is as under:

"14. Determination of the value of goods for assessment of octroi.--(1) Before the octroi duty is paid the original invoice (bijak) bearing the signature of the selling dealer or the despatching agent, if any, shall be produced and may be considered valid and accepted as evidence of the value of the goods. The original or its copy produced by the person bringing the goods shall be pasted on the bill-cum-receipt in Form 2.

(2) All goods, on which an ad valorem octroi is leviable will be taxed according to their full value as given in the original bill or invoice (bijak).

Note.--Full value includes all taxes or excise duty and charges but does not include, railway freight, commission or other incidental charges on the goods."

4. Excise duty is an indirect tax. The seller is entitled to include the excise duty in the value of the goods for the purpose of passing on the burden of the duty to the consumer. The rule has been drafted on the assumption that excise duty and other duties will be included in the value of the goods. The Note to Sub-section (2) of Section 14 puts the matter beyond doubt when it says "full value includes all taxes, excise duty and charges". Octroi duty is to be levied on the "full value" of the goods. If the assessee does not include excise duties or other taxes payable on the goods in his invoice then the invoice value will not be treated as "full value" of the goods. The amount of excise duty payable on such goods will have to be added to the invoice value of the goods. The construction suggested on behalf of the assessee and accepted by the High Court leaves open the door for tax evasion. All that the dealer has to do to avoid payment of full amount of octroi duty is to exclude excise duty and other taxes payable on the goods from his bill. It is not the case of the assessee that the seller did not pass on the burden of excise duty to the consumer but decided to bear the burden himself.

5. The view taken by the Division Bench in this case has already been overruled by a Bench of three Judges of the Rajasthan High Court where it has been held that for determination of value of goods on which ad valorem octroi duty is payable, "full value" will include excise duty even if such duty has not been included in the value shown in the original bill. We are in agreement with this view expressed in the case of Jasveer Singh Shiv Dayal and Party v. Municipal Board, Sawai Madhopur.

6. The appeal is allowed. The judgment under appeal is set aside. There will be no order as to costs.