
(1980) 02 RAJ CK 0018

In the Rajasthan High Court

Case No : Civil Special Appeal No. 9, 13 and 31 of 1977

Municipal Council

APPELLANT

Vs

Parekh Automobiles

RESPONDENT

Date of Decision : 01-02-1980

Acts Referred:

Constitution of India, 1950 — Article 226, 265

Citation : (1980) WLN 107

Hon'ble Judges : C.M. Lodha, C.J.;Milap Chand Jain, J

Bench : Division Bench

Judgement

C.M. Lodha, C.J.—The above three special, appeals u/s 18 of the Rajasthan High Court Ordinances 1949, arise, out of the judgment by M.L. Joshi, J. dated January 28, 1977, where by the "learned Judge partly allowed civil writ petitions Nos. 17 and 21 of 1976, filed by M/s Parekh Automobiles and Sukh Sampat Raj respectively, against the Municipal Council, jodhpur, and restrained the Municipal Council from charging or realising octroi on the goods brought within the limits of the Municipal Council by the Indian Oil Corporation Ltd., but re exported by the said Corporation outside the Municipal limits Council their refile out lets for use and consumption outside the limits of the Municipal Council|. However, the prayer of the petitioners for refund of the octroi, already paid by them was-refused. Aggrieved by the direction" issued against in the Municipal Council has preferred appeals Nos. 9 and 13 of 1977. M/s Parekh Automobiles there in after to be referred to as the petitioner) has also preferred appeal from the order of refusal by the learned single Judge to issue a direction for refund of the octroi already paid The petitioner appeal is registered at No. 31 of 1977. We propose to dispose of all the three appeals by this judgment.

2. The facts relevant for the disposal of these appeals lie within a narrow compass and are not, in dispute We, shall take up the facts in appeals Nos. 9 and of 1977, which arise out of the writ application filed by Messers Parekh Automobiles. The facts in the ohere writ case filed by Sukh Sampat Raj are

stated be almost identical and therefore, we do not consider it necessary to narrate them separately.

3. M/s Indian Oil Corporation (which is respondent No. 2 in all the three appeals and which will be here after referred to as the "Oil Corporation") has a depot within the Municipal limit of Jodhpur, where the petroleum products are stored and the same are supplied by the Oil Corporation to Various petrol pumps situated within the limits of the Municipal Council as well as outside. The retail outlet of the petitioner is situated in village Dangiawas, which is admitted outside the limits of the Municipal Council, Jodhpur. It appears that the Oil Corporation was being extended current account facilities u/s 133 of the Rajasthan Municipalities Act, 1959 (which will hereinafter be referred to as "the Act") so that it may not have to pay octroi on each consignment at the time of the entry of the goods within the limits of the Municipal Council, but the account may be settled at intervals. It further appears that, as provided under Rule 13 of the Rajasthan Municipalities (Octroi) Rules, 1962 (hereinafter referred to as the "Rules"), printed book of entry passes in duplicate as well as printed book of transport passes were supplied in forms N 7 and 5 respectively to the Oil Corporation. Tax on account of the special facilities given to the Corporation, amount of, octroi duty payable by the Oil Corporation was based on total amount of the octroi as shown by the entry passes less total amount of the goods transported outside the Municipal limits, as shown, by the transport passes. The petitioner's case is that all of a sudden on July 25, 1975 the Municipal Council suspended the transport passes facility given to the Oil Corporation and began to charge octroi from the Oil Corporation on the petroleum products brought within the Municipal limits even though they were re-exported by it outside the Municipal limits for consumption outside the limits. The Oil Corporation in its turn therefore, started charging octroi on supplies made by it to the petitioner at Dangiawas by adding the amount of octroi in bills for the supplies made to the petitioner's retail outlet in Dangiawas even though it made representation to the Government of Rajasthan that Octroi was being illegally charged by the Municipal Council on goods taken back outside the Municipal limits and so also consumed outside the limits. The Government, it is alleged, wrote to the Municipal Council (vide letter Ex. 2) that the latter having granted current account facilities to the Oil Corporation u/s 133 of the Act, should charge octroi on the basis of petroleum products imported by the Oil Corporation minus the goods re-exported by it to its other distributing centres in Rajasthan outside the Municipal limits. The petitioner's case is that it also made representation to the Council challenging its right to realise octroi on the petroleum products received by it at the retail outlet at Dangiawas, but to no avail, and therefore, the petitioner filed the writ petition praying that the Municipal Council may be restrained from realising octroi on the petroleum goods received by it at its retail outlet at Dangiawas for consumption or use outside the limits of the Municipal Council, Jodhpur. It has also been contended by the petitioner that the petroleum products supplied to it at Dangiawas are not sold to it within the limits of Municipal

Council, Jodhpur, but the sale takes place at Dargiawas where the retail outlets of the petitioner is situate.

4. The Municipal Council as well as the Corporation filed separated replies to the writ petition. The Oil Corporation admitted the petitioner's case, whereas the Municipal Council contested the petition. The reply of the Municipal Council is that octroi is Chargeable at the place where the sale is made irrespective of the fact where the goods are consumed or used, and therefore, its contention is that since the sale to the respondent is made at Jodhpur, octroi is chargeable even though the goods are re-exported outside the Municipal limits by the Oil Corporation. Certain preliminary objections were also raised by the Municipal Council.

5. The learned Judge overruled the preliminary objections. He held that the petitioner M/s Parekh Automobiles was competent to maintain the writ petition under Article 226 of the Constitution He also held that the petitioner, bring an aggrieved party, had locus standi to file the petition Another objection raised by the Council that the petitioner had an alternative remedy by way of appeal under Rule 40 of the Rules, was also overruled As to the merits of the case, the learned Judge held that the question as to whether the sale of petroleum products takes place at Jodhpur or at Dangiawas, is a question of fact and it cannot be satisfactorily decided in writ jurisdiction without taking evidence He, therefore, refrained from deciding this question. But assuming that the sale takes place within the limits of Municipal Council, he came to the conclusion thai since the goods are exported outside the; limits of the Municipal Council, for use or consumption by the ultimate consumer out side the limits, the taxable event does not take place within octroi limits of the Municipal Council. la this view of the matter, he held that the Municipal Council has no jurisdiction to levy octroi on the goods so exported.

6. The learned Counsel for the; appellate Council has reiterated the tame preliminary objections before us also, but we see no substance in them. The petitioner is a registered partnership firm and is competent to invoke the extraordinary jurisdiction of this court under Article 226 of the Constitution. In overruling this preliminary objection. the learned Judge has placed reliances on Andhra Industrial Works o Chief Controller Imports AIR 1974 SC 1539 The learned Counsel for the Council was not able to satisfy us how view taken by the learned Judge is erroneous, Similarly, there is no gain saying the fact it is the petitioner who has to pay the octroi on the petroleum products supplied to it by the Oil corporation, though the Municipal Council charges the octroi from the Oil corporation on But that is in material. The petitioner is undoubtedly prejudicially affected by the act of the Municipal Council in charging octroi in respect of the goods supplied to it by the Oil Corporation at Dangiawas Depot for consumption outside the Municipal limits and therefore, it has locus" standi to file the writ petition. The fact that the octroi in question is realised by the-Municipal Council from the Oil Corporation is no ground for holding that the petitioner cannot

maintain the petition even though it is the petitioner who has ultimately to pay the octroi. In the facts and circumstances of the case, we are satisfied that the petitioner is an aggrieved person in the matter of payment of octroi in question and is, therefore, entitled to file the writ petition. The petitioner cannot be said to be a stranger to the dispute.

7. The last preliminary objection regarding existence of alternative remedy by way of appeal under Rule 40 of the Rules has also no substance. Rule 40 of the Rules reads as follows,

40. Appeals.-Any person aggrieved by an order of the Octroi Superintendent or the Executive Officer, as the case may be, may within thirty days from the date of such "order, exclusive of the time requisite "for obtaining a copy thereof appeal to the:

1. Executive officer, if the order Appealed from is passed by the Octroi Superintendent, and

2. Board where the order appealed from is passed by the Executive Officer.

The petitioner, in the present case is not aggrieved by any particular order of the Octroi Superintendent or the Executive Officer. What it has challenged is the very jurisdiction of the Municipal Council to levy octroi on the petroleum products which are sent from the Depot of Oil Corporation situated within the Municipal limits of Jodhpur, to Dargiawas retail outlet (outside the limit of the Council). In other words, the contention raised on behalf of the respondent is that octroi is being levied or collected without authority of law. Article 265 of the Constitution of India provides that no tax shall be levied or collected except by the authority of law. Consequently, if there is complete lack of jurisdiction on the part of the Municipal Council to levy and collect octroi on the petroleum product re-exported outside the Municipal limits, it would be clearly a case of infringement of legal right guaranteed under Article 265 of the Constitution, & in such a case, writ petition would be maintainable.

8. This brings us to the consideration of the case on merits. Section 10, of the Act, inter alia, provides that every Board shall levy a such rate and from such date as the State Government may in each case direct by notification in the official Gazette and in such manner as is laid down in this Act, and as may be provided under the Rules made by the State Government in this behalf an octroi on goods and animals brought within the limits of the Municipality for consumption use or sale therein. The main point for decision, therefore, is whether it can be said in the facts and circumstances of the present case that the petroleum products which are supplied to the petitioner by the Oil Corporation from the depot at the retail outlet of the petitioner at Dargiawas (situated outside the limits of Municipal Council for consumption or use outside the limits of the Municipality) would attract the levy of octroi. This point, it appears to us has been finally decided by their Lordships of the Supreme Court in *Burmah Shell Oil Storage and Distributing Co. India Ltd. Vs. The Belgaum Borough Municipality*,

Section 73(1)(iv) of the Bombay Municipal Boroughs Act (10 of 1925), which reads as under, came up for consideration before the Supreme Court:

(iv) An octroi on animals or goods or both, brought within the octroi limits for consumption, use or sale therein;

(2) Note: The words "use" or "sale" were substituted for the words "or use" from May 5, 1954, by an Amending Act of 1954 (Bombay Act 35 of 1954). In other words before 1954, the word "sale" did not figure in the description of "octroi on animals or goods or both", which the Municipality was authorised to impose.

9. In this connection, their Lordships observed as follows:

22. In our opinion, even without the word "gain" in the Boroughs Act the position was the same provided the goods were sold in the local area to a consumer who bought them for the purpose of use or consumption or even for resale to others for the purpose of use or consumption by them in the area. It was only when the goods were re-exported out of the area that the tax could not legitimately be levied and in this case the Municipality has agreed to refund the amount of tax on goods re-exported without being used or consumed in the Municipal area. In this view of the matter it was not necessary for the Municipality to follow the procedure for imposing taxes when the section was amended. The tax still remained the same. Its nature, incidence or rates were not altered.

23. In our opinion, the company was liable to pay octroi tax on goods brought into local area (a) to be consumed by it or sold by it to consumers direct and (b) for sale to dealers who in their turn sold the goods to consumers within the Municipal area irrespective of whether such consumers bought them for use in the area or outside it. The Company was, however, not liable to octroi in respect of goods which it brought into local area and which were re-exported. But to enable the company to save itself from tax in that case it had to follow the procedure laid down by rules for refund of taxes. (The italics is ours).

This case makes it clear that the words "use or sale" could not make any difference so far as the event of taxability) is concerned, so, according to the Supreme Court. "sale" simpliciter will not attract the levy of the octroi. Thus, the issue qua non for levy of octroi is consumption. Consequently, no octroi can be levied in respect of goods which are re-exported for consumption or was outside the Municipal limits. The point again came up for consideration before the Supreme Court in *M/s Hiralal Thakarlal Dalal v. Broach Municipality and Ors.* (3), The grievance of the petitioner in that case was that the Municipality had collected octroi on goods which were imported within octroi limits of the Municipality, but which were re-exported and the court observed as follows:

5. The law on the subject-matter of the present controversy has thus been laid down quite clearly in the *Burmah Shell Oil Storage and Distributing Co. India Ltd. Vs. The Belgaum Borough Municipality*, and the present case squarely falls to be governed by it. We are also in agreement with that interpretation of the law. It

may be mentioned. that the learned counsel have not been able to advance any new argument justifying reconsideration of the decision.

10. Thus, the matter is concluded by the aforesaid two decisions of the Supreme Court. According, we hold that no octroi is leviable on the petroleum products reexported by the Oil Corporation to the retail outlets situated outside the Municipal Units for consumption and use outside the limits.

11. The learned Counsel for the Municipal Council, however, submitted that the rationale of the decisions of the Supreme Court referred to above, has no application to the present case, in view of Rules 6 and 9, Rules 6 and 9 read as under:

6. Payment of octroi duty. No goods liable to payment of octroi shall, except as otherwise provided in these rules, be brought, within the Municipal limits until the octroi duty leviable in respect of such goods has been paid at the octroi outpost situated on the route of entry as notified by the Board from time to time for the purpose.

9. Declaration of goods brought into the Municipal limits.--(I) Every person bringing within the Municipal, limits goods liable to payment of octroi shall produce such goods at the octroi outpost and shall declare whether goods are intended:

(i) FOR consumption, use or sale within the Municipality, or

(ii) For immediate transportation outside the Municipality, or

(iii) For temporary detention within Municipal limits and eventual transportation outside Municipal limit."

(2) Declaration under Clause (i) of Sub-rule (1) may be oral declaration, under Clause (ii) and (iii) shall be in writing in Form No. 1 shall be tendered to the incharge of the octroi outpost at the time of bringing the goods within the Municipality If no such declaration is made, the goods shall be treated as having been brought within the Municipal limits for consumption, use or sale therein.

12. The contention raised on behalf of the Municipal Council on the basis of the aforesaid two rules is that since the goods are brought within the octroi limits, they become liable to octroi unless a declaration, as contemplated by Rule 9, has been made by the person bringing such goods. It is submitted that in the present case no such declaration is made by the Oil Corporation &, therefore, under Rule 9, the goods must be treated, as having been brought 1 within the Municipal limits for consumption, use or sale therein. This argument, however, ignores the provision regarding special facilities for, current accounts provided in Rule 13, under which in case of a person to whom such facilities are given, amount of octroi duty payable is determined by deducting the total amount of goods transported outside the Municipal limits as shown by the transport passes from the total amount of octroi as shown by the entry passes. In this connection,

attention may be drawn to Section 133 of the Act, which confers power on the Board to direct that current accounts may be kept on behalf of the Board with the firm or public body in lieu of octroi on Introduction of goods. Reading Section 133 of the Act along with Rule 13 of the Rules, there is no doubt left in our minds that no conclusive presumption of the goods having been brought within the Municipal limits for consumption, use or sale therein, can be drawn in a case where special current accounts facilities are given to a person. In the present case, special facilities for current accounts have been given to the Oil Corporation, which supplies petroleum products to the petitioner and therefore Rule 9 has no application. Apart from that, it is submitted by Mr. Hastimal, learned counsel for the petitioner and not without force, that at the time of entry of petrol or diesel, it is not possible for the Oil Corporation to give a declaration as to how much would be re-exported to retail outlets situated outside the Municipal limits. In view, the arguments on behalf of the Municipal Council regarding the necessity of giving a declaration to the present case, appears to us to be futile.

13. The result is that we do not see any force in Special Appeals Nos. 9 and 13 of 1977 preferred by the Municipal Council, Jodhpur, and dismiss the same, but without any order as to costs.

14. Coming to Special Appeal No. 31 of 1977 filed by M/s Parekh Automobiles, for refund, it has been urged by Shri Hastimal Parekh that the Municipal Council had given an undertaking that it would refund the octroi charged from the petitioner on the petroleum products re-exported outside the Municipal limits of Jodhpur, in case the writ petitions are allowed. The prayer for refund has been disallowed by the learned Single Judge, firstly, on the ground that the octroi has been charged from the Oil Corporation and not from the respondents and in any case, the respondent has not succeeded in establishing his claim for refund against the Oil Corporation.

15. It appears to us that the relief by way of refund can be granted in a writ petition. Reference in this connection may be made to *Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and Others*, wherein it was observed that the State would have to refund to the assessee the amount of sales-tax, for which the Government was bound to exempt him. Similarly, in *State of Madhya Pradesh Vs. Bhailal Bhai and Others*, it was held that High Courts have power for the purpose of enforcement of fundamental rights & statutory rights to give relief by ordering repayment of money raised by the Government without the authority of law. Thus, there is no doubt that even in a writ petition this court can order refund of tax realised without authority of law. There is, however, one difficulty in the present case in ordering refund of octroi paid on the goods in question to the petitioner and it is this that the octroi has been paid by the Oil Corporation to the Municipal Council and not by the petitioner. All that we can say, therefore, is that the Municipal Council would have to refund to the Oil Corporation the amount of octroi paid on the petroleum product re-exported by it.

to Dangiawas outlet for supply to the petitioner and the petitioner may recover the same from the Oil Corporation, Thus, Special Appeal No. 31 of 1977 filed by M/s Parekh Automobiles. for partly are, however, left "to bear their own" costs of the appeal also.

16. In sum up, Special Appeals Nos. 9 and 13 of 1977 are dismissed. Special Appeal No. 31 of 1977 is allowed in part to the extent mentioned above. However, the parties are left to bear their own costs in all the appeals.

17. Let a copy of this judgment be placed on each of the three appeals.