

(2021) 12 GUJ CK 0008

In the Gujarat High Court

Case No : R/Special Civil Application No. 7641 Of 2018

Nitesh Gaurishankar Joshi

APPELLANT

Vs

State Of Gujarat & 4 Other(S)

RESPONDENT

Date of Decision : 01-12-2021

Acts Referred:

Citation : (2021) 12 GUJ CK 0008

Hon'ble Judges : Biren Vaishnav, J

Bench : Single Bench

Advocate : SP Majmudar, HS Munshaw

Final Decision : Allowed

Judgement

Biren Vaishnav, J

1. Perused the Note for Speaking to Minutes dated 29.11.2021 filed by Mr.S.P.Majmudar, learned advocate for the petitioner.

Perusal of the Note would indicate that, due to inadvertence, in the order dated 26.11.2021 in the present matter, in para 9, instead of 11.08.2005 the date 30.09.2015 is typed, which is now rectified. Thus, the para 9 of the said order dated 26.11.2021 would now read as under:

"9 Accordingly, the petition is allowed. The respondents are directed to pay the octroi amount of Rs.9,75,000/- to the petitioner along with interest at the rate which was deposited in terms of the orders dated 24.07.2017 and 11.08.2005. The said payment shall be made within eight weeks from the date of receipt of the writ of the order of this Court. Rule is made absolute. Direct service is permitted."

2. Rest of the order shall remain the same. Note for Speaking to Minutes is allowed to the aforesaid extent.

3. The petitioner has prayed to direct the respondent no. 4 to pay the octroi

amount of Rs.9,75,000/- to the petitioner along with interest from the date of deposit till the date of payment considering the order dated 24.07.2017 passed by respondent no. 2.

4. It is the case of the petitioner that one Ruchi Soya Industries was allotted sea area by the Gujarat Maritime Board for reclamation and development. The said company after reclaiming the sea area constructed a captive jetty and storage tanks on the reclaimed plot. The said Ruchi Soya Industries after importing the red pamoline sunflower oil stored the same in storage tanks and sold them within the State of Gujarat. Such storage is made in tanks for onward dispatch. It is the case of the petitioner that such edible oil was coming within the limits of Bedi Gram Panchayat and was therefore liable for octroi. The petitioner was granted the right to collect octroi on certain terms and conditions in the year 1999-2000.

5. A Special Civil Application was filed by said Ruchi Industries challenging the levy of octroi by way of SCA No. 11491 of 2000. This court disposed of the petition on 14.03.2014 concluding as under:

"21. Accordingly, it is concluded as under :

(i) The area allotted by the Gujarat Maritime Board to the petitioner for reclamation and development, where the petitioner has constructed a captive jetty and storage tanks on the reclaimed plot, is the area which falls within the territorial jurisdiction of Bedi Gram Panchayat and, therefore, the first challenge of the petitioner fails.

(ii) The second challenge of the petitioner, non-entitlement of the Bedi Gram Panchayat of levying octroi on account of the fact that the goods are only on transit from port area to other parts of the country and are not being used, sold or consumed within the territorial jurisdiction of Bedi Gram Panchayat, this being an issue deserving factual inquiry, this Court chooses not to delve into such an inquiry in the writ jurisdiction. Accordingly, following direction in relation to the second issue contended before the Court is issued as under :

a.The petitioner shall adduce necessary evidences in support of his say that the goods imported in the form of edible oil or any other goods were only transported and, therefore, when in transit from port area to other parts of the country, the concerned authority on receiving such material within four weeks from the date of receipt of this order, shall inquire into this aspect keeping the law in mind as discussed hereinabove.

b.Such inquiry after availing due opportunity to both the sides shall be concluded.

c.In the wake of undertaking furnished to this Court, the payment of necessary octroi if to be made, shall be made by the petitioner within a period of eight weeks of conclusion of such inquiry. On its failure, the respondent-authority may recover the same in accordance with law."

6. The petitioner's appeal before the appellate committee of the panchayat was

disposed of subject to the outcome of the petition. The petitioner thereafter preferred SCA No. 13250 of 2011 seeking a direction to permit the petitioner to withdraw the amount of octroi deposited by the industry namely Ruchi Industries which petition was disposed of by the order dated 09.03.2017 in SCA No. 7233 of 2016. Since the petition of Ruchi Industries was disposed of the court without expressing any opinion on merits directed respondent no. 3 therein to decide the application of the petitioner for payment of the outstanding octroi amount. Pursuant to this, the Jamnagar District Panchayat took a decision on 24.07.2017 holding that during the tenure of the contract of the petitioner, an amount of Rs.11,70,000/- was deposited towards octroi amount and the petitioner was entitled to an amount of Rs.9,75,000/- after deducting an amount of Rs.1,95,000/- towards taxes. In other words, the petitioner was entitled to payment of Rs.9,75,000/- this is the order which the petitioner seeks enforcement of.

7. It is not in dispute that thereafter the area merged into the limits of Jamnagar Municipal Corporation. Mr. Munshaw, learned advocate appearing for the Corporation would rely on the affidavit so filed by one Chandravadan Ramjibhai Mehta, Octroi Superintendent, Jamnagar Municipal Corporation. He would invite the attention of the court to the affidavit-in-reply and submit that the petitioner was granted Ijara for the year 1999-2001. There was a dispute about collection of octroi between the petitioner and Ruchi Industries and because of the pendency of the dispute that the amount outstanding is not being paid to the petitioner. Drawing the attention of the court to the contents of the reply, Mr. Munshaw would further submit that the petitioner was heard wherein he failed to convince the Corporation of the outstanding amount. The Corporation verified the record and considering the records, it concluded that an amount of Rs.11,70,000/- was payable to the petitioner. However, an amount of Rs.6,68,750/- was deducted and a final amount of Rs.5,01,250/- was payable to the petitioner. He would invite the attention of the court to the order dated 17.11.2018 and submit that it is evident on reading the order that there were cases with regard to the disputes regarding octroi pending. That several parties have made requests for refund of deposit namely one Shreeji Enterprises for Rs. 10,000/-, one United Shippers Ltd. for Rs. 5,00,000/- and one Inayat Musa and Company for an amount of Rs.8,750/- and hence an amount of Rs.5,01,250/- has to be paid after deducting the amount of Rs.6,68,750/-. He would also invite the attention of the court to the conditions of Ijara namely conditions no. 24 and 42 of the agreement which bind the petitioner that if there was any case of outstanding amount of octroi then such outstanding amount can be enforced against the petitioner.

8. Having heard learned advocates for the parties and having gone through the records of the case it is clear that the fact that ijara was given to the petitioner for the period from 1999 to 2001 is undisputed. It is also undisputed that for that period an amount of Rs.11,70,000/- was deposited in an auto deposit mode. The said fact is evident from reading the contents of the order dated 24.07.2017. On

the question of the entitlement of the panchayat to collect octroi when challenged by Ruchi Industries by way of SCA No. 11491 of 2000, the challenge failed. Nothing has been brought on record to suggest that thereafter the industry was successful in convincing the authorities that they were not entitled to collect octroi. Reading the order of 17.11.2018 would indicate that the amount of Rs.6,68,750/- is sought to be deducted from the amount of Rs.11,70,000/- only because the Corporation apprehends that it has to honour payments of deposits of three other companies not connected to the ijara which the petitioner had. This therefore makes it evidently clear that except for deducting an amount of Rs.6,68,750/- for which there is no reason except that it is a deduction enforcing recovery by three parties, the amount of Rs.9,75,000/- after deduction of Rs.1,95,000/- as envisaged in the order dated 24.07.2017 and to be paid to the petitioner.

9. Accordingly, the petition is allowed. The respondents are directed to pay the octroi amount of Rs.9,75,000/- to the petitioner along with interest at the rate which was deposited in terms of the orders dated 24.07.2017 and 30.09.2015. The said payment shall be made within eight weeks from the date of receipt of the writ of the order of this court. Rule is made absolute. Direct service is permitted.