(1960) 10 MP CK 0004

In the Madhya Pradesh High Court

Case No : L.P.A. No. 93 of 1957

Phoolchand APPELLANT

Vs

Municipal Committee Raipur RESPONDENT

Date of Decision : 16-10-1960

Acts Referred:

Citation : (1961) JLJ 496

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

Bench : Division Bench

Advocate : R.S. Dabir, for the Appellant; J.V. Jakatdar, for the Respondent

Final Decision : Allowed

Judgement

T.P. Naik, J.—This is a Letters Patent appeal against the order dated 14-8-1957 of Choudhuri J. In proceedings under article 226 of the Constitution

2. The petitioner-appellant, who is the owner of an oil mill situated at Station Road, Raipur, within the limits of the Raipur Municipality, imports ''Sarson'' for the purpose of extracting oil in his Mill. The respondent Raipur Municipal Committee claims octroi tax on the ''Sarson'' so imported under the Octroi Rules framed for the purpose and treats it as falling under item (44) of the Raipur Municipality Octroi Rules, 1951. In his petition under article 226 of the Constitution the petitioner-appelllant inter alia claimed that item (44) of the said Rules was ultra vires in so far as the word Sarson was mentioned therein and that the respondent No- 1, Raipur Municipal Committee, be directed not to charge octroi tax under item (44) of the said Rules on ''Sarson'' imported by him within the limits of the Raipur Municipality for the purpose of extracting oil there from. The petitioner-appellant also claimed a relief of refund of octroi tax illegally recovered from him in the past.

3. It is not disputed that ''Sarson'' oil seed imported by the petitioner-appellant into the limits of the Raipur Municipality for the manufacture of oil therefrom would be liable to octroi tax in accordance with the Octroi, Rules framed for the

purpose. The only question is under what head of the said Rules can the said tax be appropriately and legally levied.

4. u/s 67 (5) of the Municipalities Act the State Government have sanctioned the Rules made by the Raipur Minicipal Committee u/s 66 (1) (e) of that Act. for the imposition of octroi tax. These rules provide as follows:

RULES

Octroi shall ordinarily be levied on commodities included in the following classes and specified in the schedule here-to annexed and at the rates therein entered,-

Class I.- Articles of food or drink or used for men or animals.

* * * *

Class V.- Drugs, spices and gums, toilet requisites and. perfumes,

* * 7 *

Schedule of goods liable to octroi duty in the Raipur Municipality,

Class I Articles of food or drink or use for men and animals. Alternative rate per maund.

* * * *

(4) Oil-seeds of every description not specifically mentioned elsewhere.} As. /2/-.

* * * *

Class V Drugs, spices and gums. toilet requisites and perfumes

Advalorem rate percent.

(44) Betel-nuts, gums, spices, Indian herbs and Indian raw medicines and drugs such as., sarson rai... etc;&known as kirana"} Rs. 4/11/-

5. The petitioner contends that in so far as Sarson is imported as an oil seed, that is. as an article of food or use for men and animals it should be charged under item (4) as it is not specifically mentioned elsewhere The Raipur Municipal Committee, on the other hand contends that Sarson is specifically mentioned elsewhere under item (44) and hence should be chargeable under the laites head.

6. The learned Single Judge held that the inclusion of Sarson in item (44) of Class V of the Schedule was not ultra vires. He, however, gave no opinion under what particular head Sarson in question which was imported specifically for the purpose of extracting oil therefrom was chargeable, though presumably he impliedly approved of the respondent''s contention that Sarson in question came under item (44). So far as the refund of the tax already collected under item (44) was concerned, he correctly held that the petitioner-appellant had an alternative remedy u/s 83 (IA) of the Act which he may resort to if so advised.

7. We agree with the learned Single Judge that item (44) of the Schedule; is not ultra vires and no arguments were addressed to us to show that it was so. The only question on which the counsel for the parties addressed us was whether the Sarson in question was chargeable under item (4) or (44) of the Schedule.

8. We have considered the question carefully and we are of opinion that Sarson in qustion is chargeable under item (4) only and not under item (44). Our reasons in short are as follows:-

(1) Sarson in question is being imported as a species of oilseeds which have been included under class 1 as an article of food or use for men or animals and not as a species of spices known as Kirana which have been included under class V. Consequently is falls more appropriately under item (4) and not under item (44).

(2) Sarson,qua oil-seed is not specifically mentioned elsewhere- ''Specifically'' means definitely and distinctly mentioned as of a particular specie (See the Shorter Oxford English Dictionary, pages 1961-1962) In the context in which the expression not specifically mentioned elsewhere'' has been used, it would mean ''unless mentioned by name elsewhere qua Sarson oil-seed''. That this is so can be seen from the specific mention of ''groundnuts without rind'' in item No. (6) and coconuts to all kinds in item No. (9) in class 1. Sarson qua oil-seed has not been mentioned elsewhere in the Schedule either under class 1 or under any other class.

(3) It would also seem that the specific mention elsewhere must be as a member of the class in which item (4) occurred, so that any mention outside class I would not be its specific mention elsewhere. On this view the inclusion of Sarson as a kind of spices known as kirana would not be any specific mention of Sarson elsewhere in the Schedule

(4) The mention of Sarson in item (44) is by way of an illustration of the various articles which are covered by the word ''spices'' and included in the expression kirana. There is no specific mention of Sarson in its own right as distinguished from its mention as illustrative of spices known as kirana.

(5) The enumeration of the various articles under various heads in the Schedule is with reference to the purpose for which the article is imported. The classes and the categories are neither arbitrary on haphazard and consequently, in our opinion, it would be defeating the purpose of the relevant Rules to charge octroi-tax on as article imported for the purpose of extracting oil not as an oil-seed but as a specie of spices included in the word kirana. If it were otherwise, practically all oil-seeds would be covered by spices, Indian raw medicines or an article of kirana and nothing would remain to be taxed under item (4).

9. We are, therefore, of opinion that the Sarson in question more appropriately comes under item (4) of the Schedule and not under item (44) thereof. We accordingly order that the Raipur Municipal Committee shall not charge octroi-tax

on Sarson oil-seed imported by the petitioner for the purpose of extracting oil therefrom under item (44).

10. The appellant had, on 9th September 1957, applied for an interim order requiring the defendant Municipal Committee to hold the monies recovered from him on account of octroi-tax on the -Sarson imported by him in a separate fund liable to be dealt with in terms of the final order of this Court in this appeal. The Division Bench, by its order dated 29th September 1957, had accordingly directed that the Municipal Committee shall keep separately the amounts already recovered then or to be recovered thereafter from the appellant, subject to the orders of this Court. We, therefore, order that the excess amounts of octroi-tax recovered from the appellant on account of the sarson imported by him for his oil mill after 9th September 1957 shall be refunded to him.

11. The appeal is allowed with costs. Counsel''s fee Rs. 100- in this appeal and Rs. 50- for the hearing of the petition before the learned Single Judge. All the amounts of security deposits shall be refunded to the appellant.