
(1995) 06 GUJ CK 0001
In the Gujarat High Court

Praful Manilal Hargada and Others

APPELLANT

Vs

Jamnagar Municipal Corporation

RESPONDENT

Date of Decision : 23-06-1995

Acts Referred:

Bombay Provincial Municipal Corporations Act, 1949 — Section 127(2)(a)
Constitution of India, 1950 — Article 286(1)

Citation : (1996) 2 GLR 399

Hon'ble Judges : R.K. Abichandani, J

Bench : Single Bench

Judgement

R.K. Abichandani, J.—The petitioners who are doing the work of printing and dyeing cloth for sarees in Jamnagar seek a declaration that no Octroi is leviable on the cloth or sarees which were brought into the limits of Jamnagar city for the purpose of printing and dyeing by the petitioners. The petitioners had also challenged the validity of Rule 11(1)(e) of the Octroi Rules of the Corporation. However, at the inception of the hearing of this petition, the learned Counsel for the petitioners submitted that the petitioners did not press for that relief prayed for in paragraph 18(a) of the petition and also did not press for the prayer seeking a direction to include the petitioners' job goods in item No. 21 of Schedule "D" of the Octroi Rules of the Corporation contained in paragraph 18(b) of the petition.

2. The petitioners' case is that they are doing job-work of dyeing and printing plain cloth and plain sarees and are not doing business of buying or selling the said goods. According to them plain cloth and plain sarees are brought within the Municipal limits of Jamnagar Municipal Corporation from various surrounding places as also from Bombay and Ahmedabad for dyeing and printing work for which favourable conditions existed in Jamnagar due to the waters of river Rangmati. After the work was carried out on the plain cloth, the coloured and printed sarees were transported to the respective owners' destinations.

3. It was contended on behalf of the petitioners that the plain cloth and plain

sarees were sent to the petitioners by merchants from outside Jamnagar merely for dyeing and printing work to be done thereon by the petitioners under works contract and therefore, the respondent Corporation was not entitled to levy and Octroi on such plain cloth and sarees because they were not imported for consumption use or sale in the city. It was argued that the petitioners were already paying Octroi for colours and chemicals which were used for this job-work of dyeing and printing the plain cloth and plain sarees. These were the only contentions raised for the petitioners and the contentions having bearing on prayer Clauses 18(a), 18(b) were not pressed as noted above.

4. The learned Counsel appearing for the respondent Corporation argued that there was consumption and use of the plain cloth and plain sarees which were within the Municipal limits and converted by the process of dyeing and printing undertaken thereon by the petitioners, into printed and coloured sarees. According to the respondent Corporation, the petitioners are doing printing work on cloth and sarees imported in the city limits. The cloth which is imported is cut into pieces according to the requirement and the goods imported change their original form, condition and appearance and therefore, the petitioners are not entitled to refund of Octroi, Under Rule 11(1)(e) of the Octroi Rules of the respondent Corporation, refund can be given in respect of the goods exported if they have not changed their original form, condition, state or appearance by any process of manufacture or otherwise since their import, Similar provision is also contained in the Standing Orders in paragraph 15(2)(b)(iii).

5. u/s 127(2)(a) of the Bombay Provincial Municipal Corporation Act, 1949 (hereinafter referred to as the Act"), a Municipal Corporation is empowered to impose Octroi which is defined by Section 2(42) of the Act so as to mean a cess on the entry of goods into the limits of city for consumption, use or sale therein. The question that arises is whether plain cloth brought within city limits for the purpose of printing and dyeing work to be done thereon and for making printed and coloured sarees can be said to be goods brought for consumption or use of such plain cloth within the Municipal limits.

6. Under Entry 52 of the State List contained in the 7th Schedule to the Constitution of India. State legislature is empowered to impose taxes on the entry of goods into a local area for consumption, use or sale therein. Accordingly, Octroi is levied under the provisions of Section 127(2)(a) of the said Act On the goods which are brought within the Municipal area for consumption, use or sale. Admittedly, when the plain cloth and plain sarees are brought within the Municipal limits of the respondent Corporation for doing the work of dyeing and printing. Octroi is paid on such goods at the time of entry. The respondent Corporation has, however, taken the stand that by the process of dyeing and printing, these plain goods are converted into printed and coloured sarees and therefore the plain cloth is consumed and used thereby, and the petitioners are not entitled to refund of the Octroi in respect of such goods when they are exported out of the limits of the city after undergoing the said process.

7. The process to which the plain cloth or plain sarees are subjected is of dyeing and printing. The plain sarees which undergo the process become coloured and printed sarees and the plain cloth which is (subjected to the said processes is cut into saree length and converted into coloured and printed sarees. The coloured and printed sarees are different commercial articles from plain cloth or plain cloth cut to saree length. They are different not only in their looks, but also in their utility to the consumers. For making of printed and coloured sarees plain cloth is an article used alongwith colours and other printing material. The word "consume" has the meaning of using up a thing. It was therefore, contended that there is no consumption since the plain goods after being subjected to the dyeing and printing process are sent back and they are not used up. The plain cloth which is brought within the Municipal limits and subjected to these processes loses its identity as plain cloth. Therefore, it can be said that as plain cloth it is used up or consumed.

8. In context of the word "consumption" used in Explanation to Art. 286(1) of the Constitution of India (which was omitted by the Constitution (6th Amendment Act, 1956, Sec. (4)) the Supreme Court in *Anwarkhar Mehboob Company v. State of Bombay* AIR 1961 SC 216 made the following observations :-

The act of consumption with which people are most familiar occurs when they eat, or drink or- smoke. Thus, we speak of people consuming bread, or fish or meat or vegetables, when they eat these articles of food : we speak of people consuming tea or coffee or water or wine, when they drink these articles; we speak of people consuming cigars or cigarettes or bidis when they smoke these. The production of wealth, as economists put it, consists in the creation of "utilities". Consumption consists in the act of taking such advantage of the commodities and services produced as constitutes the "utilisation" thereof. For each commodity, there is ordinarily what is generally considered to be the final act of consumption. For some commodities, there may be even more than one kind of final consumption. Thus, grapes may be "finally consumed" by eating them as fruits; they may also be consumed by drinking the wine prepared from "grapes". Again, the final act of consumption may in some cases be spread over a considerable period of time. Books, articles of furniture, paintings may be mentioned as examples. It may even happen in such cases, that after one consumer, has performed part of the final act of consumption, another portion of the final act of consumption may be performed by his heir or successor-in-interest, a transferee, or even one who has obtained possession by wrongful means. But the fact that there is for each commodity what may be considered ordinarily to be the final act of consumption, should not make us forget that in reaching the stage at which this final act of consumption takes place the commodity may pass through different stages of production and for such different stages, there would exist one or more intermediate acts of consumption. Thus the Final act of consumption of cotton may be considered to be the use as wearing apparel of the cloth produced from it. But before cotton has become a wearing apparel, it passed, through the hands of different

producers, each of whom adds some utility to the commodity received by him. There is first the act of ginning; ginned cotton is spun into yarn by the spinner; the spun yarn is woven into cloth by the weaver; the woven cloth is made into wearing apparel by the tailor. At each of these stages distinct utilities are produced and what is produced is at the next stage consumed. It is usual and correct to speak of raw-cotton being consumed in ginning; of, ginned cotton being consumed in spinning; of spun yarn being consumed in weaving; of woven cloth being consumed in the making of wearing: apparel. The final product - the wearing apparel - is ultimately consumed by men, women and children in using it as dress. In the absence of any words to limit the connotation of the word "consumption" to the final act of consumption, it will be proper to think that the Constitution makers used the word to connote any kind of user which is ordinarily spoken of as consumption of the particular commodity.

9. Keeping in view the aforesaid concept of consumption, it would be clear that the plain cloth or plain sarees which are brought within the Municipal limits for the purpose of dyeing and printing for making printed and coloured sarees are consumed in making of such printed and coloured sarees. The concept of user in context of imposition of Octroi is additional to the concept of consumption which alone was construed by the Supreme Court in context of the Explanation to Article 286(1) in *Anwarkhan Mehboob Company* (supra).

10. The word "use" means the act employing a thing for any purpose, When a thing is used, it is utilised or employed for or with some aim or purpose. Use of a thing can be its application or conversion to some good or useful end. Even if it is assumed that the goods used in the process are not used up or destroyed or devoured or wasted so as to mean consumption in the narrow sense the word "use" has a much wider significance and the plain cloth which goes into the making of printed and coloured sarees is clearly used for making such sarees. Therefore, even by reference to word "use" alone it can be said that the plain cloth and plain sarees which are converted into printed and coloured sarees by the process of dyeing and printing are being put to use so as to attract Octroi at the time of their entry within the Municipal limits. The article which is sent back is commercially totally a different article and it cannot be said that the same article which was imported was sent back out of the limits of the Municipal Corporation. Thus, there is no substance in the contention which is raised on behalf of the petitioner that the plain cloth and plain sarees on which job work is done by the petitioners of dyeing and printing are not liable to be subjected to levy of Octroi or that refund should be given on the goods which are exported after the process of dyeing and printing is carried out on Such plain cloth and plain sarees.

11. Reliance placed by the learned Counsel for the petitioner on the decision of the Supreme Court in *HMM Ltd. and another Vs. The Administrator, Bangalore City Corporation, Bangalore* and another, is wholly misconceived in view of the fact that in the said case, milk powder was put from drums into bottles and there

was no change in the nature of the commodity by subjecting it to any process as is the case here, The Supreme Court held that putting the powder from the drums into the bottles for the purpose of exporting or taking these out of the city would neither be use nor consumption of the powder attracting the levy of Octroi. In the present case, the goods imported are clearly used for making a commercially different article and therefore, the said decision cannot assist the petitioners.

12. Reliance sought to be placed on behalf of the petitioners on the decision of the Supreme Court in *State of Tamil Nadu Vs. Anandam Viswanathan*, is equally misconceived because that was a case in context of the Sales Tax Act, where the Supreme Court held that there was difference between the contract for work or service and a contract for sale, inasmuch as in the former there is in the person performing or rendering service no property in the thing produced as a whole, notwithstanding that a part or even the whole of the material used by him may have been his property, where the finished product supplied to a particular customer is not a commercial commodity in the sense that it cannot be sold in the market to any other person, the transaction is; only a works contract. Reference to this decision was made because according to the petitioners they are given works contract of printing and dyeing plain cloth and plain sarees. The concept of works contract which was considered by the Supreme Court in *State of Tamil Nadu (supra)* was totally in a different context and has no relevance to the present case where we are concerned with bringing plain cloth and plain sarees within the Municipal limits for the purpose of their use for making printed and coloured sarees. If the petitioners are not concerned at all with the entry of the plain cloth and plain sarees and are performing job work only for their customers who take away their goods outside the Municipal limits, then in those instances the question of liability of the petitioners to pay Octroi may not arise. This Court cannot undergo an exercise of finding out who had actually brought the goods within the Municipal limits and who would be liable to pay the Octroi.

13. A reference was also made on behalf of the petitioners to the decision of the Supreme Court in *Tata Engineering and Locomotive Company Limited and another Vs. The Municipal Corporation of the City of Thane and others*, in which it was held that Octroi is not leviable: if the goods are not brought into the Octroi area for the purposes of consumption or use in the area, but for export and in fact exported by the importer himself or the sale by him occasions the export. In the present case as has been held above, the goods are brought for consumption or use and therefore, this decision cannot help the petitioners.

14. In view of the above position, the petition fails, Rule is discharged with no order as to costs.