
(1958) 04 MP CK 0020

In the Madhya Pradesh High Court

Case No : Second Appeal No. 560 of 1952

Ramjilal and Others

APPELLANT

Vs

Municipal Committee

RESPONDENT

Date of Decision : 26-04-1958

Acts Referred:

Central Provinces and Berar Municipalities Act, 1922 — Section 67(7)

Citation : AIR 1959 MP 82 : (1960) JLJ 1174 : (1958) 3 MPLJ 529

Hon'ble Judges : M. Hidayatullah, C.J;G.P. Bhutt, J;B.K. Chaturvedi, J

Bench : Full Bench

Advocate : R.S. Dabir and V.S. Dabir, for the Appellant; A.P. Sen and M. Adhikari, for the Respondent

Final Decision : Dismissed

Judgement

This second appeal is from concurring decrees in the two Courts below, dismissing the suit of the appellants for an injunction against the levy by the Municipal Committee, Piparia, of an octroi tax which, it is contended, was illegally imposed. The two Courts below held that the impost was valid and dismissed the suit. Hence this second appeal.

There existed in the Piparia Municipality a terminal tax from the year 1916. On 5-2-1949, the Committee resolved to impose octroi tax. On 17-3-1949, the Committee adopted the rules regulating assessment, collection and refund of octroi tax and the draft rules were published in the Gazette on 28-4-1949 as required by Section 67(2) of the C. P. and Berar Municipalities Act, 1922 (hereinafter called the Act).

The Committee adopted the final proposals on 27-7-1949 and forwarded them to the Provincial Government as required by Section 67(4) of the Act. The rules for the assessment, collection and refund of octroi tax, as finally adopted by the Committee, were sanctioned by the Provincial Government and published in the Gazette on 4-11-1949 vide notification No. 4638-4865-M-XIII, dated 15-8-1949.

On 12-10-1949, the Provincial Government issued a notification No. 4571-4865-M-XIII, published in the same issue of the Gazette, by which it declared the rules for the imposition of octroi by the municipality in supersession of the rules of terminal tax. The notification purported to be u/s 67(2) of the Act but by a Corrigendum it was altered to Section 67(5) of the Act. In fact, the relevant provision is Section 67(7) of the Act. The Committee then proclaimed in the town that octroi would be levied from 1-12-1949 and the levy and collection began.

The appellants are affected by the tax and their case is that since both the terminal and octroi taxes cannot co-exist, the first had to be abolished and the other imposed in accordance with law. The appellants contend that on both the limbs there is breach of the law.

Section 67(7) of the Act is in these terms:

"If any proposals for taxation have been sanctioned under Sub-section (5), the Provincial Government may, by notification, direct the imposition of the tax as sanctioned from such date as may be specified in such notification, and thereupon the tax shall come into effect as from the date so specified".

The contention of Shri R. S. Dabir for the appellants was that it was obligatory on the Provincial Government under this provision to specify the date from which the octroi tax was sanctioned, and as this was not done, it cannot lawfully be levied. He also contended that as this date was fixed by the Provincial Government, the terminal tax continues to be in force, and accordingly the octroi tax cannot be levied: vide proviso to Clause (o) of Section 66 (1) of the Act.

5-6. The question as to the effect of the omission to mention the date in the notification u/s 67(7) of the Act came up for consideration before a Division Bench of this Court in AIR 1940 293 (Nagpur). Following the canon of construction of statutes, it was held in that case that the omission to mention the date did not invalidate the notification, and the effect of the omission would be to bring into operation the tax from the date of the publication of the notification. This view was challenged before another Division Bench in *Municipal Committee, Akola v. Madhava Wasudeo* ILR 1949 Nag 778: AIR 1951 Nag 464, but no opinion was expressed on that point. The decision in the case of *Onkarsa* has again been challenged before us.

The basis on which the case of AIR 1940 293 (Nagpur) was decided does not, in our opinion, and we say so with the utmost respect, appear to be correct. The rule relied upon there would apply if the statute does not specify any date from which it is to commence. If, however, it requires any authority to specify a date for its commencement, the law will not come into effect until that date is fixed.

Therefore, the question here is whether Section 67(7) of the Act requires the Provincial Government to specify the date from which it has sanctioned the tax. If the answer be in the affirmative, then doubtless the tax shall not come into effect until that date is fixed. Otherwise, there is no reason why the tax shall not

be operative from the date the imposition thereof is notified. This is the only question in this case, since all the other steps required by Section 67 of the Act for the lawful imposition of the octroi tax were taken.

As we read Section 67(7) of the Act, we are of opinion that it only gives discretion to the Provincial Government, after the proposal for taxation has been sanctioned by it under Sub-section (5), to decide whether or not to direct its imposition. If it decides that it should be imposed, it is required to issue a notification directing the imposition of the tax. The Provincial Government may also decide, while sanctioning the proposal of taxation, that the imposition of the tax shall not be forthwith.

In that case, it would be required to determine the date from which it shall come into effect. The latter part of Section 67(7) contemplates this contingency and provides that where such a date is specified in the notification, the tax shall be effective only from that date. No obligation, however, can attach to the Provincial Government to postpone the imposition of the tax. Accordingly, no such limitation can, in the absence of any express provision to that effect be read in Section 67(7).

Therefore, where no date is specified, it shall be presumed that the imposition of the tax has not been postponed. As a consequence, the tax shall have effect from the date on which the notification directing its imposition has been published. It has to be remembered in this connection that in the case of a machinery section in a taxing statute, such as Section 67(7) of the Act, that construction should be preferred which makes the machinery workable: see (1940) 8 ITR 442 (Privy Council); *Bhimraj Panna Lal Vs. The Commissioner of Income Tax*, . Any other construction would militate against this rule.

In the above view the Committee was authorised to levy the tax from 1-12-1949. The necessary effect thereof was that the terminal tax ceased to have effect from that date and was lawfully substituted by octroi. It is to be noticed that the rules for the levy of terminal tax were superseded and without the machinery the tax was not in force. The law requires only that the two taxes should not co-exist and this was achieved by the supersession of the rules of terminal tax.

The result is that the appeal fails and is dismissed with costs.