(1976) 08 BOM CK 0007

In the Bombay High Court

Case No : Second Appeal No. 173 of 1969

R.B. Shirke Brothers	APPELLANT
Vs	
Ratnagiri Municipal Borough	RESPONDENT

Date of Decision : 24-08-1976

Acts Referred:

Bombay Municipal Boroughs Act, 1925 — Section 73(1)

Citation : AIR 1978 Bom 25

Hon'ble Judges : Hajarnavis, J

Bench : Single Bench

Advocate : K.J. Abhyankar, for the Appellant; D.G. Rege, for the Respondent

Judgement

1. This is plaintiff''s appeal against the appellate decree of the District Judge, Ratnagiri allowing the defendant''s appeal against the decree passed by the Civil Judge, Senior Division, Ratnagiri.

2. The appellant-plaintiff is a firm doing transport business with its Head Office at Ratnagiri. The firm owns many trucks. In Dec. 1962, the plaintiff brought two trucks bearing registration Nos. M. H. T. 501 and M. H. T. 502 with goods. The octroi was paid on the goods brought by the trucks but no octroi was paid on the trucks. On 9th Feb. 1963 and 4th April 1964, the Municipal Council issued notices demanding octroi duty on those trucks on the ground that the plaintiff had brought those trucks for use in the octroi limits of the Municipal Council. The plaintiff paid the octroi duty on 16th June 1964 under protest. The appellant then served a notice on the defendant demanding the refund of the octroi stating that the octroi was illegally collected because the motor trucks were not goods and that the plaintiff had not brought those trucks for use in the Municipal limits. The Municipal Council did not refund the amount and the plaintiff filed a suit in the Court of Civil Judge, Senior Division, Ratnagiri. This suit was resisted by the defendant on the ground that the plaintiff had brought those trucks within the octroi limits for use and that the trucks were goods and, therefore, the octroi was validly levied.

3. The learned Judge framed necessary issues. The parties led evidence. The learned Judge, after examining the material, came to the conclusion that the defendant has wrongly levied the octroi duty on those two trucks. He, therefore, decreed the plaintiff''s suit. The defendant, thereafter, filed an appeal before the District Judge, Ratnagiri, who, after hearing the parties, held that the motor trucks were goods as understood by clause (iv) of Sub-section (1) of Section 73 of the Bombay Municipal Boroughs Act and that the plaintiff had brought those trucks for use within the octroi limits. Therefore, the octroi hag been validly levied. He, therefore, allowed the appeal and dismissed the plaintiff''s suit. It is against this judgment that the present appeal has been filed.

4. Mr. Abhyankar, the learned counsel for the appellant, took me through both the judgments and the relevant provisions of the Bombay Municipal Boroughs Act. He invited (my attention to the decision of this court in Chunilal Jethalal Vs. Ahmedabad Borough Municipality, and urged that the learned Judge ought to have followed that decision. It is not possible to accept this contention of the learned counsel for the appellant. That case deals with clause (ii) of Sub-section (1) of Section 73 of the Bombay Municipal Boroughs Act. Under that clause, the Municipality is authorised to levy a tax on all vehicles, boats, or animals used for riding draught or burden and kept for the use within the said Borough, whether they are actually kept within or outside the said Borough. Under clause (iv) of Sub-section (1) of Section 73, the octroi duty is levied on animals or goods or both, brought within the octroi limits for consumption, use or sale. Under clause (ii), tax is leviable when these things are kept for use within the octroi limits, while under clause (iv), introduction of the goods and animals for sale, use and consumption invites the incidence of the tax. Therefore, the decision cited is not applicable with the facts of this case. As stated earlier, the incidence is on the introduction of the animals and the goods within the octroi limits for sale, use and consumption.

5. Here, in this particular case, it has been found that the plaintiff was doing transport business with its Head Office at Ratnagiri. He had a workshop there and he paid Wheel Tax on these vehicles also. When these two vehicles were registered with the Regional Transport Officer, the address supplied by the appellant in respect of these vehicles was also of Ratnagiri. Therefore, there cannot be any doubt that these two vehicles were brought within the octroi limits for use. It is true that these are transport vehicles and these will be plied all over the country and, therefore, they may not be stationary at one place. The activity of these vehicles, however, would definitely originate from Ratnagiri. The learned Judge was, therefore, right in holding that the vehicles were brought within the Municipal limits for use,

6. Mr. Abhyankar, the learned coun- sel for the appellant, urged that the trucks were not goods. It is not possible to accept this contention. The matter is already concluded by the decision of this Court in The Ratnagiri Municipal Borough Vs. Dr. Shantaram Hari Ketkar, The learned Judge was, therefore right in holding that

the octroi has been validly levied,

7. The appeal, therefore, deserves to be dismissed and is hereby dismissed with costs.

8. Appeal dismissed.