(2000) 12 J&K CK 0002

In the Jammu And Kashmir High Court

Case No : OWP No's. 576 and 577 of 2000

Rom Industries APPELLANT

Vs

State of Jammu and Kashmir and Others RESPONDENT

Date of Decision : 07-12-2000

Acts Referred:

Constitution of India, 1950 — Article 226

Jammu and Kashmir Levy of Tolls Act, 1995 — Section 3(5)

Citation : (2000) 12 J&K CK 0002

Hon'ble Judges : B.P. Saraf, C.J;G.D. Sharma, J

Bench : Division Bench

Advocate : Sunil Sethi and Ajay Kotwal, for the Appellant; M.A. Bhat, for the Respondent

Judgement

B.P. Saraf, Chief Justice

1. By this writ petition, the petitioner seeks a direction to the Deputy Excise Commissioner, Toll Post Lakhanpur, not to collect toll tax under

SRO-80 of 30th March, 2000 on the crude vegetable oil imported by it in big tankers in the State of Jammu and Kashmir as raw material for

manufacture of edible oil by refining the same. The case of the petitioner is that by virtue of SRO-80 dated 30th March,2000, additional toll tax at

the rate of 4% has been levied on ""edible oil"" and the oil imported by it for refining for manufacture of edible oil being not edible in that form, no

additional toll can be levied and collected in respect thereof under the above SRO.

2. We have heard the learned counsel for the petitioner, Mr.Sunil Sethi. The learned counsel fairly stated that the petitioner is not aggrieved by

SRO 80 but by the levy of toll tax thereunder on the vegetable oil imported by it which, according to the petitioner, is not edible oil. The petitioner wants a direction to the respondents not to collect toll tax under the above SRO, which is applicable to the ""edible oil"", on the oil imported by the

petitioner which is not edible but non-edible.

3. We have also heard the learned counsel for the respondents, Mr. M.A. Bhat, who submits that there being no dispute about the fact that under

SRO 80 dated 30th March, 2000, additional toll tax is leviable only on ""edible oil"" and not on non-edible oil, the controversy sought to be raised in

this writ petition whether the vegetable oil imported by the petitioner is edible oil or not, cannot be decided by this court in exercise of writ

jurisdiction. The appropriate forum for deciding such factual disputes in regard to the nature of the commodity subjected to toll tax, according to

the learned counsel for the respondents, is the assessing officer at the toll gate and it should be raised at the first instance only before him - not

before this Court. The learned counsel submits that this writ petition is not only misconceived but pre-mature and is liable to be dismissed on that

count itself. He stated that if according to the petitioner the vegetable oil imported by it is not edible oil, the petitioner should make appropriate

representation in that behalf to the officer at the toll post, who shall undoubtedly examine the same and not levy any toll tax under SRO 80 if he is

satisfied that the oil imported by the petitioner is not edible oil. He also stated that if such a representation is made, the concerned authority shall

make necessary inquiries and investigations to ascertain whether the oil imported by the petitioner in any consignment or tanker, on which toll is

sought to be levied, is edible oil or not, and if he finds that it is not edible oil, no toll tax shall be collected in respect thereof under SRO 80.

4. We have considered the rival contentions of the learned counsel for the parties. Toll is levied under the Levy of Tolls Act, 1995 (1938 A.D.)

(""Act""), inter alia, on the commodities specified by the State Government imported into the State at the rates notified from time to time. By SRO

80 dated 30th March,2000, in exercise of the powers conferred by sub-section (5) of section 3 of the Levy of Tolls Act, the State Government

directed that with effect from 1st April,2000, additional toll shall be levied on the goods specified therein, brought into and taken out of the State,

ad valorem at the rate of 4 percent of the value of the goods. One of the items included in the list of goods specified therein is ""edible oil"". There is no dispute about that, nor is the petitioner aggrieved by the above SRO. The only contention of the petitioner is that the vegetable oil imported by it

is not edible oil because it cannot be consumed in that form unless it undergoes processing to make it edible. The real dispute before us, therefore,

is whether the vegetable oil imported by the petitioner is edible oil or not. The first question that arises for our consideration is whether this Court in

exercise of writ jurisdiction can decide such a controversy at the first instance or it should be agitated before the authorities under the Act at the

Toll Post.

5. We have given our careful consideration to this aspect of the controversy. Though the power of the High Court under 226 of the Constitution is

very wide and there is no rule of law that the High Court should not entertain a writ petition where alternate remedy is available to a party, it is

always a matter of discretion with the Court. In a given case, the question whether a particular commodity is subject to tax or not can be

determined by the High Court in an application under article 226 of the Constitution. But where the dispute is purely factual, the Court should not

entertain an application to determine the same unless it has been raised before the concerned statutory authorities with all supporting material. In

the instant case, there is no dispute about the true meaning of the expression ""edible oil"" which is the commodity subjected to toll tax under the Act

by SRO 80. The controversy is whether the oil imported by the petitioner is edible oil or not. This controversy, in our opinion, should appropriately

be raised before the concerned statutory authorities and not before this Court in an application under article 226 of the Constitution. It is the

authorities under the Act who can examine the commodity and ascertain, if necessary, even by laboratory test whether the oil imported by the

petitioner is edible oil or not.

6. There is no dispute about the true meaning and import of the expression ""edible oil"". Obviously, in order to describe particular oil as ""edible oil"",

it must be fit to be eaten as food by human beings. In the Prevention of Food Adulteration Rules, standards of edible oils have been laid down. In

order to term a particular variety of oil as ""edible oil"", it must meet those specifications. There is a material difference between ""edible oil"" and

constituents of edible oil"". If a particular type of oil becomes edible only after it undergoes certain process, e.g., process of refining or mixing with

some other oil in specified proportion, it becomes edible oil after it under goes that process. Take for example, rice bran oil. Rice bran oil becomes

edible only after it is refined. It cannot be regarded as edible oil in its unrefined state. This is also the consistent view of the Central Government,

which is evident from the communication dated 31st July, 2000 of the Deputy Director, Government of India, Ministry of Goods and Consumer

Affairs, New Delhi addressed to the General Secretary of the Vanaspati & Refined Oil Manufacturers' Association (Annexure H to the writ

petition) whereby it is clarified that for ascertaining edibility of vegetable oils, section A.17 of Appendix B to the Prevention of Food Adulteration

Rules wherein the standards of edible vegetable oils have been laid down, should be referred. The following clarification has been issued in regard

to the question whether solvent extracted oil is edible or not :

As regards the solvent extracted oils, only refined solvent extracted oils conforming to the standards of quality laid down in part-I of the Third

Schedule to the Solvent Extracted Oil, De-oiled Meal and Edible Flour (Control) Order, 1967 are edible. In other words, unrefined solvent

extracted vegetable oils i.e. crude/raw/degummed solvent extracted vegetable oils including imported oils are not directly edible and, thus, not fit

for human consumption.

7. The real question, therefore, is whether the oil imported by the petitioner is edible oil or not. If according to the petitioner it is not edible oil, the

petitioner should have made a categorical declaration in that behalf before the Officer at the Toll Post. Only when he makes such a declaration, the

officer is required to examine whether it is correct or not. In the absence of such a declaration, he is entitled to treat the oil imported by the

petitioner as edible oil and levy and collect toll tax in respect thereof. From the copy of the credit memo annexed by the petitioner itself at page 20

of the writ petition, it appears that the commodity imported was ""1 Tanker Loose Mustard Oil Expeller"". In the declaration submitted by the carrier

at the toll post, in the column ""Description"" of the commodity, it is stated ""Mustard Oil"", which obviously is an edible oil. In another Consignment

Note, it is described as ""Deegum oil"". Nowhere it is claimed that it is non-edible oil. In yet another Bill, it is described as ""Sunflower oil"" which again, in the absence of some other factor and more details, is edible oil. It appears that the petitioner at no point of time made any

declaration/assertion before the authorities at the toll post that the oil imported by it was not edible oil and hence not liable to toll tax under SRO

80. Moreover, the petitioner has been paying toll tax under the said SRO all through out on the oil imported by it without any protest. In such a

situation, there is no justification for the grievance of the petitioner that the levy and collection of toll tax under SRO 80 was illegal and seeking a

direction from this Court to the respondents not to levy and collect the same.

8. If according to the petitioner the oil imported by it is not edible oil, it should make categorical declaration in that behalf before the concerned

authority who shall examine and decide the same. In fact, such a dispute is visualized by the Jammu and Kashmir Levy of Tolls Rules, 1995

(""Rules"") and procedure has been laid down for dealing with the same. Rules 26 to 28, which deal with such disputes, read as follows:

26. If a dispute arises about the liability of toll, the Officer in charge shall on request order the amount of toll leviable at the prevalent rates to be

kept in deposit and a receipt therefore shall be issued indicating therein the amount kept in deposit with the reasons for doing so.

27. The amount kept in deposit as per rule 26 shall be reflected in the cash deposit register to be maintained at each toll post in form (RT-7).

28. The amount kept in deposit as per rule 26 shall remain with the officer Incharge Toll Post for fifteen days excluding the day on which it is kept

in deposit. If the person keeping the amount in deposit produces the requisite documents to the satisfaction of the Officer In charge and also

receipt issued to him under rule 26 and submits an application requesting the officer In charge to release the amount of toll kept in deposit by him.

The Officer Incharge shall issue order for release of the same after examining thoroughly all the papers put before him and having satisfied himself

about the genuineness of claim"".

9. The petitioner should, therefore, put forward his claim before the officer incharge of the check post and if he is satisfied on verification of the

documents and / or getting the sample of the oil tested in a laboratory that the contention of the petitioner is correct and the oil imported by the

petitioner is not edible oil, he would not levy toll tax under SRO 80 and refund the toll kept in deposit under rule 26, if any, in accordance with rule

28. In the premises, we do not find any merit in this writ petition. It is disposed of accordingly.

