

(2006) 03 GUJ CK 0080
In the Gujarat High Court

Case No : Special Civil Application No. 2064 of 1986

Ruby Coach Builders Pvt. Ltd. and Another	APPELLANT
Vs	
State of Gujarat and Another	RESPONDENT

Date of Decision : 24-03-2006

Acts Referred:

Bombay Provincial Municipal Corporations Act, 1949 — Section 149(1), 2(42), 457(7)
Octroi Rules, 1965 — Rule 12[3]

Citation : (2006) 03 GUJ CK 0080

Hon'ble Judges : R.S. Garg, J;R.R. Tripathi, J

Bench : Division Bench

Advocate : K.M. Thakar, for Trivedi and Gupta, for Petitioners 1-2, for the Appellant; Uday R. Bhatt, AGP for Respondent 1 and B.P. Tanna and Mahrook Kerrawala, for Respondent 2, for the Respondent

Final Decision : Dismissed

Judgement

R.S. Garg, J.—The present petition has been filed by the petitioner No. 1, which is a body builder, and the petitioner No. 2, who happens to be the Director of the petitioner No. 1. According to the petitioner, gray chassis are brought in municipal limits of Ahmedabad, so that body is built over the said gray chassis and after the job work is completed, chassis along with the body over it goes back to the customer who has sent the vehicle for body building. According to the petitioner, Section 2(42) of the Bombay Provincial Corporations Act, 1949 [B.P.M.C. Act], defines octroi and leviability of the same and octroi can be levied in form of cess on the goods brought into the limits of a city for consumption, use or sale therein. According to the petitioners as the goods brought in the limits of the township are neither consumed nor used nor sold, but after the job work is completed, are returned back to its owner, no octroi is leviable.

2. The respondents have made different submissions and have stated that in accordance with the powers conferred upon them, they have framed Rules regarding octroi exercising their powers u/s 457(7) read with Section 149(1) of

the B.P.M.C. Act. According to them, Rule-12 relates to refund of the octroi recovered. Clause-[b] of Sub-rule[3] of Rule 12 of the Octroi Rules would allow refund in case the goods since their import have not changed hands or their original form or condition, state or appearance by any process of manufacture or otherwise. According to them, as the chassis was converted either into a truck or in a bus, the item imported within the limits of the Corporation has lost its identity, then, octroi is leviable and the same cannot be refunded.

3. Mr. Thakar, learned counsel for the petitioner, however, submitted that the rules framed by the Corporation run beyond the powers conferred upon them and as Section 2(42) authorises the Corporation to impose octroi in case the goods imported are used, consumed or sold, then, Clause-[b] of Sub-rule [3] of Rule-12 is beyond their legislative competence.

4. Unfortunately, the ground raised at Bar is not a ground in the writ application. In the writ application, the petitioners have not stated that the rules framed by the respondents are contrary to law or are ultra vires the Act or Constitution.

5. Where, an authority, after appreciating its rule making power has framed certain Rules, then, the said Rules would apply with full force unless the validity of the said Rules is challenged.

6. As the action taken by the respondent is protected under Clause [b] of Sub-rule [3] of Rule 12 of the Octroi Rules, it cannot be argued by the petitioner that the action taken by the respondent is patently illegal.

7. The petition deserves to and is accordingly dismissed. Rule is discharged. Inter relief stands vacated. No costs.

8. On 27.5.86, the Court had issued an interim order in favour of the petitioner, directing inter alia, that the petitioner shall pay at the time of import of goods at the check-post 50% of the octroi duty, legally leviable by the Corporation and for the rest 50% he shall furnish general security. The Court also observed that in case the petitioner fails, then, interest at the rate of 18% per annum shall be payable by one of the party to the other successful party. As we are dismissing the petition, the petitioner is hereby directed to pay balance amount of the octroi duty, if any, with 18% interest within a period of eight weeks from today. In case the due amount is not paid within a period of eight weeks, the respondents would be entitled to take appropriate coercive action in accordance with law.