
(1957) 04 MP CK 0041
In the Madhya Pradesh High Court
Case No : F.A. No. 146 of 1950

Secretary, M.C. Sagar

APPELLANT

Vs

Vrajlal Manilal

RESPONDENT

Date of Decision : 09-04-1957

Acts Referred:

Central Provinces and Berar Municipalities Act, 1922 — Section 66(1)(e)

Citation : (1958) MPLJ 84

Hon'ble Judges : V.R. Sen, J;G.P. Bhutt, J

Bench : Division Bench

Advocate : S.C. Dube, for the Appellant; M.R. Bobde, for the Respondent

Final Decision : Dismissed

Judgement

This is an appeal by the Secretary, Municipal Committee, Sagar, against the decree for money (Rs. 17,246-5-0) passed by the Court of the Additional District Judge, Sagar, in Civil Suit No. 3-A of 1949.

The Plaintiff-respondent is a firm styled "Messrs. Vrajlal Manilal and Company, Sagar". It deals in the manufacture of bidis and for that purpose imports tobacco within the limits of Sagar Municipal Committee. On 18th November 1946, the Plaintiff-firm addressed a communication to the Secretary of the Municipal Committee urging against the collection of octroi duty. At that time, the suit filed by firm Ramkrishna Ramnath of Kamptee against the Municipal Committee of that place, in which imposition of octroi duty on tobacco was challenged, was pending. The Plaintiff-firm prayed that the collection of octroi duty be deferred until the decision in that suit. The Plaintiff-firm was agreeable to declare the goods and it did so every time the tobacco was brought into the octroi limits.

On 2nd December 1946, the Municipal Committee resolved that Octroi duty be demanded and action u/s 80 of the Municipalities Act be taken upon refusal of payment. However, on account of the provisions of the Central Excise Act, the President thought that the Committee was powerless to seize the goods.

Accordingly on 10th January 1947, he ordered recovery of double duty under Rule 17 (b) of the Rules framed u/s 150 (2), Clause (a), of the C.P. Municipal Act, 1903, which are still in force and govern the collection of octroi duty within the limits of the Sagar Municipal Committee.

On 11th February 1947, the replies of tobacco merchants to the notice of demand were placed before the Finance Sub-Committee which resolved that double duty should be recovered. This resolution was approved by the Central Committee on 27th February 1947. No action, however, was taken for recovery of the double duty on this resolution.

On 25th April 1947, the Plaintiff-firm instituted Civil Suit No. 4-A of 1947 for declaration that the levy of octroi duty on tobacco was invalid and for an injunction to restrain the Municipal Committee from recovering it. This suit was dismissed on 13th December 1947. Thereafter the Plaintiff-firm wrote to the Municipal Committee on 10th January 1948 that it was prepared to pay the arrears but there was no reason for payment of double duty. On 16-1-1948 the Secretary of the Municipal Committee asked the Plaintiff-firm to pay single duty as directed by the President, stating that if the money was paid within four days, the question of remitting the double duty would be placed before the General Committee. The sum due, that is, Rs. 17,246-4-10, was paid by the Plaintiff-firm in full on the same day. The question of recovering the double duty was brought before the ordinary meeting of the Municipal Committee on 27th February 1948, but was postponed on that date. At the next ordinary meeting held on 27th March 1948, the Committee resolved not to recover the double duty.

On 26th April 1948, one Premnarayan Gautam made an application to the Deputy Commissioner, Sagar, challenging the proceedings of the meeting of the Municipal Committee held on 29th March 1948. The Provincial Government thereupon addressed a letter to the Deputy Commissioner, Sagar, on 27th May 1949 declaring that the former resolution of the Municipal Committee demanding double duty would have to be given effect to. In pursuance of this communication, a demand, on the order of the President, was made by the Secretary of the Municipal Committee on 21st July 1949 for recovery of the double duty. The Plaintiff-firm thereafter instituted the present suit on 18-8-1949 for an injunction to restrain the Committee from recovering the amount. However, on 21st August 1949 it paid the amount of Rs. 17,246-5-0 due on account of the double duty, and on 31st October 1949 made an application to the Court for amending the plaint by claiming the recovery of this amount. Subsequently it also prayed for withdrawal of the relief of injunction. This amendment was allowed by the Court below on 3rd February 1950. On 20th February 1950, the Plaintiff-firm served a notice of the new claim on the Municipal Committee u/s 48 of the Municipalities Act. Issues were thereafter framed by the lower Court on 14th April 1950 and the case was fixed for trial on 9-8-1950.

The case of the Plaintiff-firm, in effect, was that Rule 17 (b) of the Octroi Collection Rules was illegal so far as the recovery of the double duty was

concerned. This contention prevailed with the lower Court and accordingly it passed a decree for refund of Rs. 17,246-5-0 with interest at 3 p.c p.a. from the date of the decree, namely, 19th August 1950.

Rule 17 of the Rules for the Collection of Octroi is. reproduced below:

17(a) The Secretary, the Superintendent, or Inspector or any member of the Committee or any other person empowered by the Committee may, on meeting a person in charge of dutiable articles within the octroi limits, and before they have reached their destination, call upon him to show his pass, and thereupon it shall be produced and the entries therein may be verified by an inspection of the articles.

(b) If the examination shows that proper duty has not been paid, the amount due shall be realized and a receipt granted for it. If the person in charge refuses or is unable to produce the pass or to pay the extra duty the inspecting Officer may take him with the articles to the outpost through which they have entered the octroi limits or to the Central Office, and there make such enquiry as he thinks fit. If the proper duty is paid, or it is found that it has already been paid, the articles shall be allowed to be removed. In case of intentional evasion or short payment, double duty shall be realized. The payment of double duty will not bar a criminal prosecution.

It will thus appear that unless there is a case of intentional evasion or short payment, there is no power in the Municipal Committee to recover double duty. The first question, therefore, is whether the present case is one of intentional evasion of duty by the Plaintiff-firm. The lower Court has not deemed it necessary to give a finding on this point as, in its view, the decision of the case rested on the vires of Rule 17 (b). There is however, no warrant for this view, as apart from the legality of Rule 17 (b), the first question is whether the case falls within its terms.

Under Section 66(1)(e) of the C.P. and Berar Municipalities Act, 1922, a municipal committee is empowered to impose an octroi on animals or goods brought within the limits of the municipality for sale, consumption or use within those limits. Rules for the Collection of Octroi provide for the establishment of outposts with a suitable number of Moharirs and peons in charge for intercepting the import traffic or directing it to the outpost (rule 2). Rule 9 directs the person in charge of articles subject to the octroi duty to take them, as soon as they are brought within the octroi limits, to the nearest outpost, there to be dealt with according to the rules. It further empowers an official on duty at an outpost to do likewise. After the prescribed declaration of the article is made at the outpost, Rule 10 requires the Moharir to assess the duty and demand its payment, and on such payment being made, to grant a pass for the articles in the prescribed form. The rule also authorises the Committee, with the previous sanction of the Deputy Commissioner, to permit any trading or manufacturing firm to import dutiable articles without paying duty at the outpost, in which case it shall be paid at the

Central Octroi office.

Rule 16 provides that where the person in charge of dutiable articles refuses or is unable to pay the duty thereon, the Moharir shall send them to the bonded warehouse, there to be dealt with as goods in bond. Rule 17 (a) authorizes the officers of the Committee to check the pass and verify the entries therein by an inspection of the articles within the octroi limits. If a proper duty has not been paid, Rule 17 (b) authorises them to realise the amount due. If the necessary payment is refused or is not made, the Inspecting Officer is empowered to take the persons in charge with the articles to the outpost through which they entered the octroi limits or to the Central Office, and there make such enquires as he thinks fit. If the proper duty is paid, or it is found that it was already paid, the articles shall be allowed to be removed. Rule 17 (b) lastly provides that in case of intentional evasion or short payment, double duty shall be realised. This is apart from the ordinary duty that is compulsorily payable.

These rules thus provide for the payment of Octroi duty at the outposts save where permitted by the Committee. They also prescribe a procedure for recovery in case of non-payment or short payment of the duty either at the out-post or within the octroi limits. It, therefore, appears that a case of recovery of double duty would occur in circumstances where the person in charge of the articles manages to avoid the route of the out-post or the officers of the Committee. This contemplates that he should have adopted some kind of subterfuge.

The ordinary meaning of the word "evade" is to escape or avoid artfully; to baffle: See Chamber's Twentieth Century Dictionary. It is no doubt true, as held in *Simms v. Registrar of Probates* 69 L.J.P.C. 51, that it may also mean "nothing more than the intentional avoidance of something disagreeable". However, in the case of penal statutes, it should generally be held to suggest underhand dealing: See *Sims v. Registrar of Probates* (1900) A.C. 323, *Bullivant v. A.G. for Victoria* 1901 A.C. 196, *Payne v. Rex* 1902 A.C. 552, *Commissioner of Stamp Duties v. Byrnes* 1911 A.C. 386 and *A.G. v. Richmond* 1909 A.C. 466. It is in this sense that it should be read in Rule 17 (b) of the Octroi Collection Rules, since it is a penal provision even if the double duty is deemed to be in the nature of a tax as has been held by the lower Court.

Counsel of both the parties were agreed before us that the double duty that is liable to be imposed under Rule 17 (b) is not a tax within the meaning of Section 66 (1) of the C.P. and Berar Municipalities Act. It is, therefore, not necessary to consider whether its collection as a tax is illegal. The question is whether its recovery is within the terms of Clause (a) of Section 150 (2) of the C.P. Municipal Act, 1903, under which the rule was framed. Sub-section (1) of Section 150 *ibid* empowered the Local Government to make rules to carry out the purposes and objects of the Act. Sub-section (2) thereof was in these terms:

(2) In particular and without prejudice to the generality of the foregoing power, such rules may make provisions-

(a) for the collection of taxes imposed under this Act;

In the earlier Act of 1889, Clause (a), Section 129 (1) gave the Local Government the power to make rules "for the assessment and collection of taxes imposed under this Act, and for preventing evasion of the same". (Underlining is ours). Section 76 of the present Act likewise confers on the Provincial Government power to make rules providing inter alia "for the prevention of evasion of payment". The omission of these or similar words in Clause (a) of Section 150 (2) of the Act of 1903 may not be accidental, particularly when they were expressly embodied in the earlier enactment. However, the provision creating a liability for payment of an extra amount is only to ensure due collection of the duty, and, therefore, in our opinion, falls within Clause (a) of Section 150 (2) of the Act of 1903. This not to give an extended meaning to the expression "collection of taxes"; on the other hand, to hold otherwise would be unduly restrictive of its general import. It would obviously not be proper to diminish the efficacy of the provision by reference to the words used in the previous or subsequent enactments. We are, therefore, of the opinion that the provision of recovery of double duty, in the circumstances mentioned in Rule 17 (b), is not ultra vires.

This brings us to the question whether the omission by the Plaintiff-firm to pay octroi duty was an act of intentional evasion. It was not the case of the Municipal Committee that the firm was a habitual defaulter or evaded payment of duty on any previous occasion. Its intention was also not to conceal the articles which were disclosed each time at the outpost. There is, therefore, no doubt that it was on account of its belief in the justice of the stand taken by firm Ramkrishna Ramnath of Kamptee that it had withheld payment. That case had later gone up even to the Supreme Court, which indicates that it was not wholly groundless: See Ram Krishna Ramnath Agarwal of Kamptee Vs. Secretary, Municipal Committee, Kamptee, When a demand was formally made by the Municipal Committee, the Plaintiff-firm instituted a civil suit for declaration of its rights, and when it failed, it promptly made the payment. In these circumstances, and in the absence of any artifice on its part, it cannot be said that the firm had intentionally evaded payment of duty.

It was, however, contended that the suit is hit by Section 48 of the C.P. and Berar Municipalities Act inasmuch as it was instituted the notice of the claim. The initial relief was for perpetual injunction falling u/s 54 of the Specific Relief Act, 1877. As such, the suit came within the exception provided in Sub-section (3) of Section 48 of the Act. When a suit is properly instituted, the Court takes seisin of it and the proceedings are thereafter governed by the Code of Civil Procedure. In such a case, there is no inhibition preventing the Court from allowing the Plaintiff to claim any other relief which arises as a result of subsequent events. Sub-section (1) of Section 48 of the Municipalities Act contemplates a claim requiring notice, which arises before the suit is instituted. It does not, therefore, apply to a suit which was properly instituted and came under the jurisdiction of the Court.

However, the Plaintiff-firm had given notice of the claim on 20th February 1950 and the trial started thereafter on 9th August 1950. The suit could, therefore, be deemed to be instituted after the expiry of 2 months next after notice. The Committee had full knowledge of all the facts and was apparently not prejudiced by the trial. Therefore, keeping in view the fact that Section 48 of the Municipalities Act is only intended to give notice of the claim to the Committee before it is called upon to defend the action there is no reason to hold that the claim arising during the course of the proceedings by an act the Committee itself should be defeated merely because the suit was not formally withdrawn and re-instituted after the expiry of two months next after notice: See Vallabram Purushotam v. Secretary of State for India.

In the view that we have taken, it is not necessary to decide whether the Municipal Committee had the power to remit payment of double duty, or whether the State Government could intervene and direct its recovery. Nor is it necessary to decide whether the President, or the Secretary acting under his orders, could demand payment without reference to the Committee. As the requisite condition for collection of double duty is not proved, the Plaintiff-firm is entitled to refund of the amount which was illegally recovered from it.

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