(1984) 09 BOM CK 0034

In the Bombay High Court

Case No : Special Civil Application No. 650 of 1977

Shikshan Prasarak Mandal and Another APPELLANT

Vs

Municipal Council and Another RESPONDENT

Date of Decision : 27-09-1984

Acts Referred:

Maharashtra Municipalities (Octroi) Rules, 1968 — Rule 4
Maharashtra Municipalities Act, 1965 — Section 137, 141
Maharashtra Municipalities Act, 1985 — Section 137, 138

Citation : (1985) 1 BomCR 472

Hon'ble Judges : H.D. Patel, J;A.A. Ginwala, J

Bench : Division Bench

Advocate : S.A. Bobde, for the Appellant; D.K. Deshmukh, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

A.A. Ginwala, J.—The important question which inter alia is debated in this writ petition is whether under the provisions of the Maharashtra Municipalities Act, 1965 (the Act for short) octroi is payable and recoverable only at the point of time of the entry of the goods within the octroi limits and not thereafter.

2. A few facts which emerge from the material on record and which are relevant for the decision of this question may be stated at the outset. The first petitioner is a registered Society which is running a college within the municipal limits of the first respondent Municipal Council at Katol (Municipal Council for short). This College has been impleaded as the second petitioner. For the sake of convenience the first and second petitioners would hereinafter be referred to as "the Society" and "the College" respectively. By its resolutions passed on 5-9-1670 under Rule 4(iii) of the Maharashtra Municipalities (Octroi) Rules, 1968 (the Rules for short), the Municipal Council has exempted educational material and equipment for science laboratory imported by the College, from payment of octroi. The college had imported goods from time to time by rail and road from 17-5-1968 onwards

without paying the octroi thereon. The Municipal Council states that the College was allowed to take delivery of these goods at the octroi naka without recovering the octroi on its undertaking to produce the relevant bills for the assessment of the tax. On 5-5-1971 by its letter the Municipal Council called upon the College to pay octroi within five days on the goods imported by it as at red in the list annexed to the letter. The petitioners allege that reply was sent on 21-6-1971 requesting the Municipal Council to exempt the College from payment of octroi and that the demand was dropped since the Municipal Council never made any demand till 1975. However, the Municipal Council says that no reply was received from the College and denies that the demand was dropped. On the other hand, it states that it had issued notices to the College on various dates from 5-5-1971 to 22-4-1975, calling upon it to produce bills and make payment of octroi, but in vain. By its notice dated 14-2-1975, the Municipal Council informed the College that it had imported considerable goods without paying octroi from 17-5-1968 to 30-3-1974 by railway and from 11-7-1969 to 7-11-1974 by road as per list attached to the notice and called upon it to bring the original bills in respect of these items, within seven days in its office and arrange to pay the octroi. It seems that the College did not comply with this notice and subsequent notices sent by the Municipal Council. On 6-5-1976, the College complained to the Collector of harassment by the octroi official at the orders of the President of the Municipal Council. It alleged that material needed for University examinations were withheld by the Municipal Council and contended that the Council was not entitled to recover octroi on goods imported 5 to 7 years ago. It seems that after calling both the parties before him the Collector by his letter dated 20-8-1976 directed the College to place the relevant record before the Municipal Council to enable it to assess the octroi. However, it appears that the College did not comply with this direction of the Collector in spite of demands made by the Municipal Council. The Municipal Council again served notices on 12-11-1976 and 31-12-1976 but without effect. It was at this stage that this petition was filed apprehending action on the part of the Municipal Council. Thereafter, the Municipal Council started distress proceedings and seized some moveable articles from the College which were directed by this Court to be released on the College furnishing security. The Municipal Council is demanding a total amount of Rs. 22,874,63 on account of octroi for the period from 1968 to 1975. The petitioners pray for quashing this recovery.

3. Before adverting to the rival contentions of the parties, we may take a quick survey of the provision s of the Act and the Rules relating to levy and recovery of octroi. Octroi is a tax on the entry of goods into a municipal area for consumption or use therein, which u/s 105(1)(b) it is obligatory on a Municipal Council to impose. Sections 136 to 139 and 141 to 143 deal with octroi. Sections 137, 138 and 141(1) alone are relevant for our purpose. Section 136 lays down that unless otherwise determined by a Municipal Council, its octroi limit should be deemed to be co-terminus with the limits of its municipal area. Section 139 prescribes penalty for evasion of octroi. Section 142 empowers the Municipal

Council to direct persons specified therein to keep current account on its behalf of the octroi due from such persons. Section 143 provides for joint collection of octroi by agreement. Sections 137, 138 and 141(1) are in the following terms :

"137(1) A person bringing into or receiving from beyond the octroi limits of a Council any animal or goods on which octroi is payable shall, when required by an officer authorised in this behalf by the Chief Officer and so far as may be necessary for ascertaining the amount of tax chargeable.---

(a) permit that officer to inspect, examine, weigh and otherwise deal with such animal or goods;

(b) communicate to that officer any information and exhibit to any bill, invoice or document of a like nature, which he may possess relating to such animal or goods; and

(c) make a declaration in writing to that officer regarding the correctness and accuracy of the document shown to him.

(2) If any person bringing into or receiving from beyond the octroi limits of a Council in which octroi is leviable, any conveyance or package, refuses on demand of an officer authorised by the Chief Officer in this behalf, to permit the officer to inspect the contents of the conveyance or packages for the purpose of ascertaining whether it contains anything in respect of which octroi is payable, the officer may cause the conveyance or package to be taken without unnecessary delay before such Executive Magistrate, as the State Government appoints in this behalf by name or office, who shall cause the inspection to be made in his presence.

138. Any Officer demanding octroi by the authority of the Council shall tender to every person introducing or receiving anything on which the tax is claimed, a bill specifying the animal or goods taxable, the amount claimed, and the rate at which the tax is calculated.

139. X X X X 140. X X X X 141(1) In the case of non-payment on demand of any octroi or of any toll leviable by a Council, any person appointed to collect such octroi or toll may seize any animal or goods on which octroi is chargeable, or any vehicle or animal on which the toll is chargeable, or any part of the burden of such vehicle or animal which is of sufficient value to satisfy the demand, and may detain the same. He shall thereupon give the person in possession of the vehicle, animal or thing seized, a list of the property together with a written notice in the form of Schedule VI."

4. Mr. S.A. Bobde, the learned Counsel for the petitioner, challenges the demand of the octroi from the petitioner on these counts. He firstly contended that octroi is payable only at the time when a person brings into or receives goods from beyond octroi limits and is not payable afterwards even if the octroi is not demanded when the goods are brought or received. Secondly he contended that if at all the octroi is payable even after entry of the goods it should be demanded

and recovered promptly or at any rate within a reasonable time but not years thereafter. Thirdly, he contends that the octroi can be recovered only in the manner provided in section 141 of the Act by seizure and sale of the goods on which octroi is chargeable and not in the manner prescribed under Chapter X of the Act for recovery of municipal claims. In support of the first contention, Mr. Bobde relies on the language of sections 137 and 138. He emphasises the words "persons'' bringing into or receiving" and "persons introducing or receiving". He submits that these words indicate that the officer concerned can demand inspection of the goods or information with regard to it only at the moment when the goods cross the octroi limit and has to demand the octroi by furnishing a bill only at that moment and not at any time thereafter. He contends that once the goods are allowed to cross the octroi limits without demanding the octroi it cannot be demanded much less recovered thereafter.

5. There submissions of Mr. Bobde do not appear to be well-founded. The words "bringing into or receiving from beyond the octroi limits" occurring in sub-sections (1) and (2) of section 137 and the words "introducing or receiving anything on which the tax is claimed" occurring in section 138 merely indicate the person who is liable to give inspection or information and to pay the octroi. They cannot be read to mean that such a person is liable to give the inspection or information and pay the octroi only at the time when he brings or receives the goods with the octroi limits. Putting such an interpretation on these sections would lead to anomalous results. A person who honestly bring the goods passing by an octroi post would have to pay the octroi then and there while a dishonest person who surreptitiously bring them would legally escape payment. He can at the most be convicted and punished u/s 139. Certainly the legislature could not have intended such result.

6. A similar question though in a slightly different context came up for consideration before a learned Single Judge of this Court in State Vs. Shriniwas B. Soni, . In that case the accused who was a dealer in yarn and was doing business within the municipal limits of Sholapur had imported a large number of bales of yarn without payment of octroi chargeable thereon. A notice was issued to him u/s 94 of the Bombay Municipal Boroughs Act, 1925, calling upon him to furnish information about the number of bales of yarn imported by him during certain period. As the accused did not comply with the notice he was prosecuted u/s 94 read with section 193-A of the said Act. He was acquitted on the ground that the notice was vague. In the appeal against acquittal before this Court, the contention that the notice was vague was given up on behalf of the accused but it was urged that the provisions of section 94(1) only applied at the time of the introduction of the goods into the octroi limits and that they would have no application after the goods had passed within those limits either after or without making payment of octroi chargeable thereon. While rejecting this contention the learned Single Judge held as follows with regard to the construction of sub-section (1) of section 94 of the said Act.

(5) X X X X

X X X X That sub-section refers only to the liability to comply with the requisitions of the Chief Officer or the officer authorised by him of a person bringing into, or receiving from beyond the octroi limits of a municipal borough any animals or goods on which octroi is payable. It does not say that the requisitions contemplated by that sub-section can only be made at the time of the introduction of the goods or animals within the octroi limits at the octroi naka. The sub-section is worded in general terms and the requisitions contemplated by that sub-section can be made upon any person who has received or brought within the octroi limits of a borough Municipality any goods on which octroi is payable either at the time when the goods are introduced within the octroi limits and the duty to comply with such requisitions is cast upon the person receiving such goods within the octroi limits or bringing them within those limits.

(6) Further, the expression "person receiving into octroi limits" in my opinion is a significant one. It cannot be said that every merchant doing business is a municipal borough should himself go to the octroi naka every time he imports goods from beyond the octroi limits for the purpose of his business to bring them into the octroi limits of the town. He may be just sitting in his business premises and receive the goods which may be brought to him by his servants or agents by some means of transport. If the operation of section 94(1) were to be confined only to the information being called for at the time of the introduction of the goods at the octroi naka, the expression "person receiving the goods within the octroi limits" would militate against that construction. In my view, therefore, the scope of that section cannot be limited to a point of time when the goods chargeable to octroi are introduced within the octroi limits of the borough Municipality. The construction contended for Mr. Lalit would defeat the very purpose of the Act since it is well known that goods are frequently imported within the Municipal limits without payment of octroi. It is only with a view to meeting this contingency that sub-section (1) of section 94 of the Act, empowers the Chief Officer or an officer authorised by him to call for necessary information from the person who has brought or received within the octroi limits goods on which octroi is payable but which has not been paid, in relation to such good so as to enable him to ascertain the amount of tax chargeable on such good. In my judgment, therefore, there is no substance in the contention raised by Mr. Lalit."

7. Now sections 93 to 101 of the Bombay Municipal Boroughs Act fall in Part (5) of Chapter VI of that Act, which deals with octroi and Tolls. These sections are almost identical with sections 136 to 144 falling in Part (3) of Chapter XX of the Maharashtra Municipalities Act, 1965 except for some verbal changes. They appear to have been bodily lifted from the Bombay Municipal Boroughs Act and incorporated in the later Act, with adaptations. Hence whatever has been said in State v. S.B. Soni, in regard to sub-section (1) of section 94 of the Bombay Municipal Boroughs Act, will apply with equal force to sub-section (1) of section

137 of the Act.

8. It is, therefore, clear that the words quoted above from sub-sections (1) and (2) of sections 137 and 138 merely qualify and identify the person who is liable to comply with the requirements under sub-section (1) of section 137 and to whom the bill has to be tendered u/s 138. Instead of using a longer phrase like "person who brings or has brought or receives or has received" the legislature has used a shorter phrase "person bringing or receiving" to convey the same meaning. What has been stated in Soni''s case with regard to liability to furnish information would apply equally to liability to pay octroi. It is, therefore, not possible to uphold the contention of Mr. Bobade that octroi is liable to be paid or recovered only at the time of entry or introduction of the dutiable goods within the octroi limits.

9. Relying on Form 1 prescribed under Rule 14 in which a person importing dutiable goods within octroi limits for consumption, use or sale has to make a declaration, Mr. Bobde contends that the octroi has to be demanded and recovered promptly and at any rate within a year from their import. For this purpose, he has drawn our attention to the undertaking to be given by such person in the said declaration to the effect that he would produce the invoice for the inspection of the office concerned within one year form the making of the declaration whenever demanded by him. According to Mr. Bobde, this places an outer limit on the process of demand and recovery as the importer is liable to preserve the invoice in respect of the imported goods only for one year. He further sought to strengthen his submission by referring to sub-section (1) of section 150 which provides that when any amount becomes due to the Municipal Council under the Act. Rules or Bye-laws the Chief Officer should "with the least practicable delay" cause to be presented to the person liable for the payment thereof a bill for the sum claimed as due. Of course, Mr. Bobde relies on this provision subject to his contention that the provisions contained in Chapter X of the Act regarding recovery of municipal claims do not apply to recovery of octroi dues as according to him, Part (3) of Chapter IX prescribes self-contained procedure for recovery of such dues.

10. It is true that a Municipal Council should make a demand of its dues with the least practicable delay and should avoid any inordinate delay. It may work harsh on the person from whom the dues are sought to be recovered if the demand is made after an inordinately long time. But the question whether the delay has or has not been avoidable will depend on the facts and circumstances of each case. It may be that the demand may depend, as in the present case, on the information to be furnished by the person concerned and he may himself cause delay in doing so. In that case, the Municipal Council cannot be blamed for making the demand after a long time. That is exactly what has happened in the present case. From what we have said in paragraph 2 above, it would appear that time and again the Municipal Council called upon the petitioners to furnish the requisite information but they did not pay heed to it. Obviously, the Municipal

Council was seeking this information u/s 137 of the Act in order to assess the amount of octroi. It is not as if without taking any action whatsoever the Municipal Council woke up for the first time in 1976 and demanded octroi for the goods imported by the petitioners during the preceding seven years. If at all anybody is to be blamed for the delay it is the petitioners themselves. It is surprising that after evading to furnish the requisite information for a long time and getting the goods cleared from the octroi post on undertaking to submit the information, they are now coming forward with the plea of delay. We, therefore, find that on the facts and in the circumstances of the case, it cannot be said that the Municipal Council is demanding the octroi after an inordinate delay.

11. Lastly, Mr. Bobde submitted that the Municipal Council cannot resort to the procedure prescribed under Chapter X for recovery of the octroi dues as the provisions contained in sections 136 to 144 lay down a complete procedure for levy and recovery of octroi dues. He submitted that octroi can be recovered only in the manner provided in section 141 i.e. by seizure and sale of the goods on which octroi is chargeable. He submitted that the words "save as otherwise provided" in section 149 indicate that the procedure prescribed in Chapter X for recovery of Municipal claims will not apply to recovery of octroi dues since section 141 provides otherwise. We do not see much force in this submission. Section 141 may operate at the time when the goods are brought to the octroi post. It will be that time that the goods will be available to the person appointed to collect the octroi, for seizure and detention. Once the goods pass through the post or are otherwise introduced within the octroi limits without payment of the octroi and are used sold or consumed, it would not be possible to collect the octroi in the manner provided in section 141. That section can be read only to empower the person authorised to collect octroi to seize and detain the dutiable goods on the spot in order to recover the octroi chargeable thereon. If cannot be read as an exhaustive remedy for recovering octroi in all cases. If section 141 is to be construed as Mr. Bobde wants us to construe it, we again come to the situation that octroi cannot be recoverable if the goods are surreptitiously imported and used, consumed or sold before the authorities concerned could lay their hands on them. In our opinion, section 141 only provides one more mode for speedy recovery in addition to the mode provided in Chapter X. It cannot be taken to be a complete and self-contained Code in itself so as to replace the provisions of Chapter X.

12. For these reasons, therefore, we do not find any substance in this petition and hence it is dismissed and the rule discharged. The petitioners shall pay the costs of this petition to the first respondent.

13. At this stage Mr. Bobde prayed for suspension. The operative order for three months as the petitioner intend to approach the Supreme Court. The operative order is suspended for three months from today.

