
(2008) 09 P&H CK 0142
In the Punjab And Haryana At Chandigarh

Sony India Pvt. Ltd.

APPELLANT

Vs

Municipal Council and Another

RESPONDENT

Date of Decision : 08-09-2008

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2009) 153 PLR 257 : (2009) 1 RCR(Civil) 245

Hon'ble Judges : Satish Kumar Mittal, J;Jaswant Singh, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Satish Kumar Mittal, J.—The petitioner company has filed this petition under Article 226 of the Constitution of India for quashing the order dated 11.12.2007, passed the Deputy Commissioner-cum-Collector SAS Nagar, whereby the appeal filed by the petitioner company against the demand notice dated 2003 issued by the Municipal Council, Zirakpur has been dismissed. The Appellate Authority dismissed the appeal not only on the ground of limitation but also on merit.

2. The petitioner company is the manufacturer of electronic goods such as Televisions, Audio Systems, Phones, Handycams etc. It has been ware house/store within the limits of the Municipal Limits of Zirakpur. The petitioner company brings the goods at Zirakpur for their onward supply to different dealers in Punjab, Himachal Pradesh and Jammu and Kashmir. Vide letter dated 19.9.2001, the petitioner company had got permission from the competent authority regarding Re-export pass facility under Rule V. Chapter V of the Municipal Account Code, 1930 (hereinafter referred "the 1930 Code) by depositing Rs. 10,000/- as refundable security with undertaking that nothing imported by the petitioner company under export pass system shall be sold within the municipal limits of the Notified Area Committee of Zirakpur. When the erstwhile Nagar Panchayat Zirakpur (now the respondent Municipal Council, Zirakpur), noticed the petitioner company was selling its goods within the municipal limits of the Notified Area Committee of Zirakpur, a show cause notice was issued to the

petitioner company for payment of an amount of Rs. 17,22,900/-. Thereafter, vide letter dated 11.10.2002, notice for recovery was issued by the Executive Officer, Nagar Panchayat, Zirakpur. Against the said letter appeal u/s 84 of the Punjab Municipal Act, 1911 (hereinafter referred to as "the Act") was filed, which was dismissed by the Additional Deputy Commissioner, Patiala, vide order dated 30.10.2003, on account of non-deposit of the amount of octroi, which was required to be deposited under Sub-section (2) of Section 85 of the Act. The said order was challenged by the petitioner company by filing C.W.P. No. 3141 of 2001. Since the petitioner company deposited the disputed amount of octroi therefore, the said petition was allowed; the order dated 30.10.2003 was set aside and the Appellate Authority was directed to re-decide the appeal on merit. During the hearing of the appeal, it was noticed that the said appeal was filed against the letter dated 11.10.2002, which was not an order. Therefore, an application was filed by the petitioner company to challenge the order dated 15.2.2003, in place of letter dated 11.10.2002. The said application was dismissed and the petitioner company was permitted to file an appeal against the said order within 15 days. Thereafter, the petitioner filed appeal against the order dated 15.2.2003. However, with the appeal no application for condonation of delay was filed. Accordingly, vide order dated 11.12.2007, the Appellate Authority dismissed the said appeal on the ground of limitation as well as on merit. Against the said order, the instant petition has been filed.

3. We have heard counsel for the petitioner company and gone through the impugned order.

4. The contention of counsel for the petitioner company is that though the petitioner company has sold the goods to its distributors having their godown within the Notified Area Committee, Zirakpur, but those goods were ultimately sold by those distributors outside the Notified Area Committee, Zirakpur, i.e. in different towns of Punjab, therefore, the actual consumption of the goods had taken place outside the Notified Area Committee, Zirakpur and thus the petitioner company is not liable to pay the octroi in the area of Notified Area Committee, Zirakpur. In support of his contention, learned Counsel has relied upon *Hiralal Thakorlal Dalal Vs. Broach Municipality and Others*, and *Tata Engineering and Locomotive Company Limited and another Vs. The Municipal Corporation of the City of Thane and others*, .

5. After hearing counsel for the petitioner company, we do not find any force in the contention raised by him. The petitioner company was granted permission by the competent authority under Rule V. 32-A of the 1930 Code for Re-export Pass-System with a condition and undertaking that nothing imported by the petitioner under re-export pass system shall be sold within the Municipal limits of Zirakpur. Rule V. 32-A(1) to (4) of the 1930 Code is reproduced below:

V.32-A. The Re-export Pass System.- (1) In a city or municipality in which no trade warehouse is maintained and in which octroi without refunds is in force a person importing goods intended for temporary retention within octroi limits and

eventual re-export may avail, himself of the Re-export Pass System.

(2) No person shall be permitted to make use of the Re-export Pass System unless he has made a security deposit often thousand rupees in cash or in the form of a Post Office Saving Bank account, as security for due compliance with the provisions of these rules. This security shall be liable to confiscation in the event of any infringement of these rules.

Provided that the State Government may waive the condition for the deposit of security in any case or class of cases.

(3) The cash tendered under the foregoing sub-rule or the pass book presented in proof of the deposit in the Post Office Savings Bank shall be acknowledged in form G.8 or by mean of a letter issued over the signature of the Octroi Superintendent, who shall maintain a list of such persons who have thus acquired the title to avail themselves of the Re-export Pass System. The list shall be kept corrected up to date and a copy thereof duly attested by the Octroi Superintendent supplied to and deposited at each barrier.

(4) When a person wishes to import any goods at an outpost barrier on a Re-Export Pass, he shall apply for it to the official in charge of the barrier and make a true declaration according to Rule V. 13 that the goods to be imported are not intended for consumption use or sale, within the limits of the municipality but for temporary retention and re-export under Re-export Pass System. The official in charge after satisfying himself that the applicants name is borne on his list and after referring to the receipt or letter, produced by the applicant in proof of his having made the necessary deposit, shall admit the goods and after preparing a pass in duplicate in Form 0.24 by the carbon process shall hand over the original to the importer and forward the duplicate to the Head Octroi Office.

(5) to (10) x x x x x

6. A perusal of the aforesaid Sub-rule (4) clearly provides that when a person wishes to import any goods at an outpost barrier on a Re-export Pass, he shall apply for it to the official in charge of the barrier and make a true declaration that the goods to be imported are not intended for consumption, use or sale, within the limits of the municipality but for temporary retention and re-export under Re-export Pass System. Admittedly, in the present case, the petitioner company, though brought the goods for temporary retention in its godowns at Zirakpur and to re-export the same under Re-export Pass System, but had sold the same to its distributors having their godown within the Notified Area Committee, Zirakpur, contrary to the permission granted to it under the Re-export Pass system. Merely because the person, to whom those goods were sold, has exported those goods outside the municipal limits to different persons and those goods were consumed there, in our opinion, does not absolve the petitioner company for payment of octroi.

7. The judgment in M/s Hiralal Thakorlal Dalals case (supra), cited by learned

Counsel for the petitioner company is not applicable to the facts and circumstances of the case. In this judgment, the Supreme Court while relying upon its earlier decision in *Burmah Shell Oil Storage and Distributing Co. India Ltd. Vs. The Belgaum Borough Municipality*, held that the company was liable to pay Octroi on goods brought to the local area (a) to be consumed by itself or sold by it to consumers directly (b) for sale to dealers who in their turn sold the goods to consumers within the Municipal Area, irrespective of the fact whether such consumers bought them for use in the area or outside it, but it was not liable to Octroi in respect of goods, which it brought into the local area and which were re-exported. In our opinion, this judgment does not support the case of the petitioner company, but it goes against it, as it clearly says that the company is not liable to pay Octroi in respect of goods which it brought into the local area and which were re-exported. In the present case, the goods were not re-exported, but were sold in the Municipal Area in violation of the undertaking that nothing imported by the petitioner company under re-export pass system shall be sold within the municipal limits of Zirakpur. The second judgment in *Tata Engineering & Locomotive Company Limited's* case (supra), cited by learned Counsel for the petitioner company is also of no help to the petitioner company, as in para 14 of that judgment it was noticed that in that case, the sales were made to the persons who were carrying on business outside the limit of the Municipal Corporation and goods were also intended to be consumed or used outside such limits and in fact, the goods were also exported. But in the instant case, admittedly, the goods were sold by the petitioner company to its distributors, who are located within the Notified Area Committee, Zirakpur.

8. In view of the above, we do not find any illegality in the impugned order, passed by the Appellate Authority.

Dismissed.