(1972) 09 OHC CK 0008

In the Orissa High Court

Case No : O.J.C. No. 242 of 1971

Sri Kamal Mercantile Company Ltd. APPELLANT

Vs

Executive Officer, Cuttack Municipality and Another RESPONDENT

Date of Decision : 05-09-1972

Acts Referred:

Orissa Municipal Act, 1950 — Section 131(1)

Citation : (1972) 38 CLT 1125

Hon'ble Judges : R.N. Misra, J;B.K. Ray, J

Bench : Division Bench

Advocate : A.K. Mohanty, for the Appellant; S. Misra and P.C. Misra and A.G., for the Respondent

Judgement

R.N. Misra, J.—The Petitioner a company is a dealer in iron, steel and other allied products. Its main place of business is at Calcutta and it has branches at Cuttack and Bhubaneswar the last two places being within the jurisdiction of this Court.

4. The Petitioner alleges that it purchases iron and steel goods at Bhubaneswar and sends the same by road to Calcutta on the National Highway No. 5 and a part of that Hihgway passes through Cuttack Municipal area. The Cuttack Municipal authorities have octroi gates on the two terminal points on the National Highway, for the purpose of collection of octroi. Though the Petitioner?s goods carried by motor trucks are meant for transport to Calcutta and such goods do not enter into the municipal area of Cuttack for consumption, use or sale therein, the municipal authorities have illegally imposed octroi duty on such goods. It is alleged that the Way Bills issued at Bhubaneswar and carried by the motor trucks clearly show that the goods are meant for delivery at Calcutta and in the face of such unimpeachable evidence, the municipal authority should not have realised octroi duty in respect of such goods from the Petitioner. It is alleged that these levies have been made at the southern point called the Gopalpur Octroi Check Gate. The Petitioner challenges the realisation of octroi duty and has asked for a writ of mandamus to the opposite parties restraining them from levying octroi

duty in future in respect of the Petitioner?s consignments meant for Calcutta.

2. The municipal authorities on the other hand have in their counter affidavit indicated that the Petitioner has a place of business within the Cuttack Municipal area and the Way Bill as such is not conclusive evidence of the consignment being taken to a place outside the Cuttack Municipal limits for consumption, use or sale. As a matter of fact on many occasions, the consignments are brought to the place of business of the Petitioner located within the municipal limits though the Way Bill shows that the goods are meant for transport to Calcutta. Instances have been given where the consignment has entered into the municipal limits, but has not gone out. It is conceded that in cases where the goods are ultimately found to have gone out of the municipality, octroi if levied would be refunded. In two of the instances in this case, the municipal authorities have even agreed to refund the same if an application is made for refund.

3. There is no dispute that u/s 131(1)(kk) octroi can be levied only on goods brought within the limits of the municipality for consumption, use or sale therein. Keeping in view this provision, rules have been framed in regard to realisation of octroi. After hearing parties we are not satisfied that the leavy in this case is contrary to the provisions of Section 131(1)(kk) of the Orissa Municipal Act. Compendious rules have been framed to avoid harassment in respect of consignments no meant for consumption, use or Bale within the municipal area. If those provisions are strictly followed, there would really be no scope for any difficulty. In the circumstances, we do not find any justification to interfere in this case. On the concession of the municipal council, if any application for refund 18 made to the appropriate authority, such portion of the octroi which had already been collected and is refundable would be refunded within a reasonable time. We accordingly decline to interfere.

The writ petition fails and is dismissed. We make no order as to costs.

B.K. Ray, J.

4. I agree.

