(1914) 11 BOM CK 0012

In the Bombay High Court

Case No : Second Appeal No. 175 of 1913

The Ahmedabad Municipality — APPELLANT

Vs

Sakarchand Mohakamchand — RESPONDENT

Date of Decision : 13-11-1914

Acts Referred:

District Municipalities Act — Section 59, 76

Citation : AIR 1915 Bom 91 : (1915) 17 BOMLR 182

Hon'ble Judges : Davar, J;Basil Scott, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Basil Scott, Kt., C.J.—Two points have been argued on this appeal, one on behalf of the respondents and the other on behalf of the appellant. The respondents contend that octroi is not leviable upon goods introduced into the city through the agency of the Post Office. In support of that contention, reference is made to Section 59 of the District Municipal Act, which says that subject to any general or special orders which the Governor General in Council may make in this behalf, the Municipality may, after observing the preliminary procedure required by Section 60, impose an octroi on goods brought within the Municipal limits for consumption or use therein, and Section 60 provides that every Municipality, before imposing a tax, shall observe certain preliminary procedure. It is urged that the preliminary procedure required by Section 60 has only been observed under the old Act at a time when the bye-laws framed under it indicated that the framers did not contemplate the possibility of the introduction into the city of goods by post. The rules under the old Code which are still in force include rule No. 84 which imposes the octroi duty at present in force. That rule says octroi duty shall be levied on goods coming into the walled city of Ahmedabad and the walled suburb of Saraspur in accordance with Schedule E, which prescribes the rate.

2. Now it cannot be contended that goods brought in by a postman are not goods

coming into the walled city, and, therefore, those goods are, according to the terms of that rule, subject to octroi duty. Section 76 of the District Municipal Act gives municipal officers certain powers for assessing the octroi duty upon goods so brought in and to the extent of these powers it does not appear to us that any further bye-laws are necessary for the purpose of assessing duty on articles brought in by post.

3. That disposes of the cross-objection of the respondent.

4. Then, coming to the objection of the appellant, it is complained that the learned District Judge has enjoined the Municipality to refrain from calling for production of the account-books of the merchants receiving goods, and for the production of documents other than bills, invoices or documents of a like nature relating to the articles.

5. We are of opinion that the District Judge was perfectly correct in his decision. What Section 76(1)(b) permits is the calling upon the importer to exhibit to the officer the document accompanying the goods or the document sent by the sender of the goods. The bill is a document usually sent by a vendor, and the invoice is a document giving particulars of the goods which is so called because envoy? to the vendee. A document of a like nature is that which accompanies the goods sent by the vendor. It seems to us clear that the terms of the section do not permit a municipal officer to claim inspection of the private account-books of merchants.

6. We, therefore, affirm the decree of the lower appellate Court and dismiss the appeal and cross-objections with costs respectively.

7. The injunction, as set out in the judgment, enjoins the Municipality not to call on "any such person" which no doubt means the plaintiffs. It ought to be so expressed.