

(1967) 06 DEL CK 0006

In the Delhi High Court

Case No : Regular First Appeal No. 16 of 1967

The Municipal Committee, Simla

APPELLANT

Vs

A.R. Pasricha and CO. Pvt. Ltd.

RESPONDENT

Date of Decision : 06-06-1967

Acts Referred:

Citation : (1967) 3 DLT 612 : (1968) ILR Delhi 97 Supp

Hon'ble Judges : S.K. Kapur, J;Hardayal Hardy, J

Bench : Division Bench

Advocate : H.S. Gujral, Sushil Malhorta, Balraj Tuli and M.R. Gupta, for the Appellant;

Judgement

S.K. Kapur, J.

(1) The plaintiff filed a suit against the Municipal Committee Simla for recovery of Rs. 11,520.80 np being the amount alleged to have been illegally charged as octroi from the plaintiff and Rs. 2,765 on account of interest on the said amount at the rate of twelve per cent per annum from 16/7/1962, that is, the date of service of notice u/s 49 of the Punjab Municipal Act on the defendant Committee. The plaintiff also claimed future interest at the same rate.

(2) The principal allegations of the plaintiff were that between 13/9/1959, and 12/8/1960, it brought timber from Himachal Pradesh Forests to Simla Railway Station Goods Shed and Summer Hill Goods Shed on transit passes after making declarations at the Sanjauli Import Barrier that the goods were meant for export; that those goods were in fact exported immediately when the railway wagons were available; and that the railway receipts were shown at the Export Barrier but the Municipal staff declined to look at them on the ground that the octroi had already been charged and they had nothing to do with the railway receipts after the expiry of one and a half hours. The plaintiff further alleged that since the year 1957 the Committee started charging octroi from the plaintiff on the ground that neither the goods were exported from Simla within one and a half hours nor

did the plaintiff Company produce railway receipts at the Export Barrier within that period. The plaintiff-Company, dissatisfied with the alleged illegal levy, filed a suit for declaration and injunction and there-after another suit for recovery of Rs. 144.00 charged by the Committee. The said suit was decreed by Judge, Small Cause Court Simla and the Committee went up in revision before the Punjab High Court. The revision petition was dismissed by judgment dated 15/3/1962. It was claimed by the plaintiff that the said decision operated as res judicata between the parties. The Committee in its written-statement inter alia contended that the levy was legal and that civil Courts had no jurisdiction to entertain the suit in view of the provisions of sections 84 and 86 of the Punjab Municipal Act.

(3) The power to levy octroi duty is derived from section 61 of the Punjab Municipal Act. Octroi is not one of the taxes specified in sub-section (1) of section 61 and is leviable by virtue of sub-section (2). The case proceeded before us on the assumption that the octroi duty had been levied by the Committee on entry of goods in the Municipal limits of Simla for consumption, use or sale therein and learned counsel for the appellant did not in the course of his arguments contend to the contrary. Even in the Municipal Account Code, Chapter V, octroi has been defined for the purposes of the said Chapter by sub-clause (g) of rule V. I as under:-

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""Octroi"" means a case on the entry into a municipality of goods for consumption, use or sale therein." (4) It appears that two barriers had been set up within the Municipal limits for collection of duties. Rules V. 13 to V 15 of the said Municipal Account Code prescribe the procedure regulating the entry and exit of goods in transit into and from the Municipal limits without payment of octroi duty. Under Rule V 13 every person intending to import goods, on which octroi is leviable, is required to take such goods to one of the barriers for collection of octroi at the time of import and declare whether such goods are intended (a) for immediate export or (b) for consumption, use or sale within the octroi limits etc. Rule V. 14 provides:

""When goods liable to octroi are declared to be intended for immediate export under the provisions of sub-rule (1) of rule V. 13, they shall be dealt with under the Transit Pass System." (5) Rule V. 15 prescribes the Transit Pass System and it is appropriate to read the same :

"(1)In municipalities in which the Transit Pass System is in force, a person importing goods intended for immediate export after declaring them as such at the barrier of import, whether the railway barrier or any other barrier shall specify the barrier through which they are to be exported, and the officer-in-charge of the barrier shall fill up a transit pass in Form O.2, and shall on payment of such fee, if any, not exceeding two annas as may be prescribed by the Committee, send the goods under the escort of a peon to the barrier of export

entered in column 9 of the pass, handing the foil of the pass together with the acknowledgment coupon to the peon and the coupon to the person in charge of the goods, provided that, if no peon can be sent, the foil of the pass together with the acknowledgment coupon also shall be handed to such person after an acknowledgment of the receipt of the pass has been taken from such person on the reverse of the counter foil: provided further that no such fee shall be levied if the amount of the tax calculable on articles in respect of which the pass is granted is less than two annas.

(2)When such goods are brought to a barrier for export, the peon or person in charge of them shall present the pass with the acknowledgment coupon attached issued to him under sub-rule (1) of the rule, and the officer-in-charge of the barrier shall note in column 13 of the pass the "time at which it was presented, and shall check the goods with the particulars given columns 5, 6 and 7 of the pass and then-

(A)if the goods tally with the particulars entered in the pass, and the time of export entered in column 10 has not passed, shall allow the goods to pass out, and shall return the pass by the peon to the barrier of import, where it shall be pasted on the back of the counterfoil; or, if there is no peon, shall retain the pass for submission to the head office; and in either case shall hand over the acknowledgment coupon to the exporter duly signed; or.

(B)If the description or weight of the goods does not tally with the particulars entered in the pass, and there is any defect in the weight of any such goods as are ordinarily liable to octroi, or any of the goods are of a description different from the description of the goods entered in the pass and are ordinarily liable to octroi shall make a note of the discrepancy in column 14 of the pass and shall then proceed if goods to the extent of such defect in weight or of such description were being imported for consumption, use or sale within octroi limits: or

(C)If the time entered in column 10 has passed before the pass is presented, shall proceed as if the consignment of goods was being imported for consumption, use or sale within octroi limits.

(3)The Committee shall fix in respect of every barriers the period within which goods imported through either of them for immediate export must be exported through the other and a schedule of the period so fixed shall be exhibited at every barrier and the officer-in-charge of the barrier at which such goods are imported shall calculate and enter the time "accordingly in column 10 of the Transit Pass in Form O.2:

Provided, that in case or (motor vehicle) traffic the period allowed shall not exceed one hour and for other traffic two hours except in special circumstances with the previous sanction of Government. (4)When such goods could not be exported within the period fixed by the Committee under sub-rule (3) and the tax thereon has been duly paid the person in charge of the goods may apply to

the Secretary or, in Municipalities where there is an Executive Officer, to that officer for the refund of the tax paid. The Secretary or Executive officer, as the case may be, shall, if satisfied that the goods have been actually re-exported, and that

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the delay was due to circumstances over which the applicant had no control, grant refund of the amount paid.

(5) Officers in charge of barriers shall each day send to the head office the books of counterfoil of Transit Passes, and the Octroi Superintendent or Assistant Octroi Superintendent shall examine each counterfoil and shall place his dated initials thereon in token of his having done so; and, if in any case the pass is not found pasted on the counterfoil by the evening of the second day following its issue, a special investigation shall at once be made by the Octroi Superintendent, and particulars of every such pass shall be entered in a register to be maintained in Form O -23.

(6) The refunds allowed under sub-rule (4) shall be met in the ordinary manner by making payment by means of a contingent bill.

(6) It is the common case of the parties that the Committee had fixed one and a half hours as the time within which the goods must be cleared out of the Export Barrier after entry at the Import Barrier. It is also agreed between the parties that all the goods were cleared from the Export Barrier within the time prescribed. The Committee, however, proceeded to charge the octroi duty for three reasons: (1) the plaintiff had not exported the goods out of the Municipal limits of Simla within one and a half hours; (2) the goods could not be said to have been imported into the Municipal limits for immediate export and (3) it must be assumed that the goods were meant for consumption, use or sale within the octroi limits. It was also the case of the Municipal Committee that the plaintiff had not within the period prescribed, i.e. one and a half hours, presented the original railway receipts at the Export Barrier as required by Rule V. 15(2) introduced in February 1934 and reading as under:

"RULEV. 15(2). In addition to the provisions of the Code rule, the original railway receipts under which the goods are to be dispatched, shall be presented at the railway export barriers." In the interest of clarity of the scope of the controversy, it is appropriate to set out the contention on behalf of the learned counsel for the defendant as raised in the trial Court :

""The learned counsel for the defendant argued that the plaintiff had no intention of immediately exporting the timber but of exporting it at his convenience and ultimately. Immediate export could not mean export after a number of days. The plaintiff was said to have no intention of exporting goods till at least two wagon loads were there on the railway goods shed and could be loaded economically. The Committee, under the circumstances, was entitled to proceed as if the

consignment of goods was imported for consumption, use or sale within octroi limits and could not be required to wait the convenience of the plaintiff to arrange export of goods. It was argued that whenever there is laxity by the exporter in making export and he foregoes immediately in export, he must pay octroi as if the goods were meant for consumption or sale within octroi limits leaving him to claim refund after the goods were actually exported." (7) More or less the same was the argument of Mr. H. S. Gujral the learned counsel for the appellant before us. He contended that exemption from the octroi duty could be claimed by the plaintiff only if it satisfied the following conditions:-(1) production of railway receipt within one and a half hours at the Export Barrier (2) the goods should be cleared out of the octroi limits within one and a half hours and (3) the goods must be imported for immediate export. He further argued that if the goods were exported out of the octroi limits after the period of one and a half hours prescribed under the Rules, the plaintiff's remedy was to apply for refund of the tax paid under sub-rule (4) of Rule V. 15 but he could not file a suit. In short, his argument was that the exemption from octroi duty and the facility of transit pass system could be availed of by the Plaintiff only if he complied with the above mentioned conditions but otherwise he must apply for refund if the goods were ultimately exported out of the octroi limits and file an appeal u/s 84 if refund was not allowed to him. In a way the argument is self contradictory. To say that the plaintiff could apply for refund under sub-rule (4) is destructive of the argument that the exemption from duty was available to only those who satisfied the aforementioned conditions. It was also the contention of the learned counsel for the appellant that in view of sub-clause (c) of clause (2) of Rule V. 15 the goods not exported within the time prescribed out of the octroi limits were to be deemed to have been imported for consumption, use or sale within the octroi limits. Apart from the fact that the arguments proceeded on the assumption that only the imports for use, sale or consumption attracted the octroi duty if the duty was payable irrespective of the use. sale or consumption of the goods there was no point in allowing refund of duty in case of goods cleared beyond the time prescribed. There is no time limit for clearance of goods in sub-rule (4). Once that is accepted it becomes clear that clause (c) of sub-rule (2) of Rule V. 15 has a limited scope and merely prescribes that in case the time prescribed under sub-clause (3) of Rule V. 15 has expired at the time of presentation of the transit pass at the barrier of export the duty shall be charged leaving A..R. Pasricha & CO. it to the party to claim a refund under sub-clause (4). It does not mean that in that event irrefundable duty of octroi shall become chargeable even if the goods had not been imported for consumption, use or sale within the octroi limits. Rule V. 14 is merely directed towards giving the benefit of Transit Pass System to goods intended for immediate export. The position, Therefore, reduces itself to this that in case the goods are taken out of the Export Barrier and railway receipts presented the party concerned will be entitled to the benefit of Transit Pass System but otherwise it may have to pay the duty and claim refund on proof of re-export either by recourse to sub-rule (4) or to other remedies if available. If the duty be on import of goods for use, sale or consumption within

the octroi limits, the non-availability of the facilities provided under the Transit Pass System cannot make the entry of goods not imported within the octroi limits for use, sale or consumption taxable. It is clearly established from the evidence of Dharam. Paul, Goods Clerk, Railway Station Simla (Public Witness . 1), Ramesh Chand, Goods Clerk, Railway Station Simla (Public Witness . 2), Amrit Singh, Assistant Station Master, Railway Station, Summer Hill, Simla (Public Witness . 3) and A. R. Pasricha, Manager of the plaintiff-company (P.W. 5) that the goods had not been imported either for use or for sale or for consumption within the octroi limits; that they were immediately removed to the railway station; that forwarding notes were prepared with respect to the goods as soon as those arrived at the Railway Station and that the goods were exported out of Simla under the various railway receipts as soon as wagons became available for their export. It follows that the goods had not been imported for use, sale or consumption in the octroi limits and consequently the octroi duty was not chargeable though due to non-compliance with some of the conditions the Transit Pass System may not have been available to the plaintiff.

(8) The learned counsel for the appellant strongly relied on the decision of their Lordships of the Supreme Court in the Lord Krishan Sugar-Mills Ltd. v. the Municipal Board, Saharanpur, (1) In that case rule 2 of the Rules under consideration provided that :

""No person shall enter the toll limits of the Saharanpur Municipalities.... with any headload, bahangi load, laden vehicle or any laden pack animal, on or in respect of which terminal toll is leviable, until the toll due has been paid to such persons and at such places as the Municipal Board may from time to time appoint." (9) It was Rule 8(a) reading as under that fell for consideration by their Lordships of the Supreme Court :

"If the person in charge of any motor lorry laden with taxable goods declares in writing to the moharir at the import barrier that the goods he is importing into the limits of the Municipality are meant for immediate export from such limits without sorting and change of bulk, the moharir shall issue a transit pass in Form 61 of the M.A.C. to such person in charge of the motor lorry, who shall present the same together with the motor lorry carrying the goods covered thereby to the moharir at the barrier of export within half an hour from the time of issue of the transit pass." (10) It was observed:

""We are of opinion that this is neither the intention nor the meaning of R. 8(a). The crucial words in the rule are "meant for immediate export from such limits without sorting and change of bulk." A person would thus be entitled to a transit pass under R. 8(a) if the goods he is bringing into the municipal limits are meant for immediate export from the limits without sorting or change of bulk. The latter part of R. 8(a) is meant to lay down a procedure to check this. Reading the two parts together, immediate export means that within half an hour from the time of issue of transit pass the goods must arrive at the barrier of export which may be on the other side of the city and after checking by the moharir at the barrier pass

out of the municipal limits which will take a few minutes more. But it does not follow from the fact that the goods have arrived at the barrier of export within half an hour from the time of issue of transit pass and have passed the export barrier that the goods are "meant for immediate export from municipal limits" if the goods are not sent out of the municipal limits after crossing the barrier of export and are unloaded within municipal limits. The transit pass is only to be granted if the goods are "meant for immediate export from such limits." That means that the goods must go out of municipal limits as soon as possible and half an hour's period "provided for their arrival at the export barrier after the issue of transit passes is meant merely to check this fact." (11) That case is of no assistance to the Committee. There, the duty was livable under rule 2 on mere entry and the exemption from duty was available only in case of goods cleared outside the Municipal limits within the time prescribed. In this case, the duty itself is livable if the goods are imported for use, sale or consumption. Consequently if the goods are not imported for any of the three aforementioned purposes the plaintiff, though not entitled to the benefit of the Transit Pass System, can still claim it back. In these circumstances, it must A. R. Pasricha & CO. be held that the Municipal Committee was not entitled to charge the duty.

(12) The question then arises about the maintainability of the suit. Since the goods were exported out of the Export Barrier within the time prescribed by sub-rule (3) of Rule V. 15, sub-rule (4) thereof will not be applicable. Under sub-rule (4) the refund can be claimed if the goods are not exported within the period fixed by the Committee under sub-rule (3) and the latter sub-rule prescribes the period within which the goods entered at the Import Barrier should be cleared from the Export Barrier. So far as sections 84 and 86 are concerned, these also do not bar the suit. If the levy charged is completely without authority or outside the provisions of the Act, a suit can be filed. In this case the duty has been charged not on the ground that the goods were imported for use, sale or consumption within the octroi limits but because these were not exported outside the octroi limits within the time prescribed under clause (3) of Rule V. 15. It follows that the suit was maintainable.

(13) It was then contended by the learned counsel for the appellant that the sale in fact took place at the railway station within the octroi limits and, Therefore, the duty was chargeable. He said that since the goods were handed over to the common carrier they passed to the purchaser at the Simla Railway Station. It appears from the evidence of Pasricha (Public Witness . 5) that the measurements of the goods were to be done at Dalmia Nagar. In view of that the goods would not pass to the purchasers at Simla.

(14) This learned counsel for the appellant also challenged the authority of Air Pasricha, the Managing Director of the plaintiff Company to institute the suit. That argument has no force because under Article 29 of the Articles of Association of the Company, lie is competent to institute all legal proceedings and the management of the Company has also been vested in him.

(15) This takes me to the claim of the plaintiff Company for interest. Interest was claimed up to the date of notice and it has been conceded by the learned counsel for the respondent that the same could not be allowed under the Interest Act. He, however, claimed that it should be allowed under the equitable jurisdiction of this Court in as much as the amount had been contumaciously withheld by the committee in spite of the earlier judgment of Punjab High Court. It was also conceded that it is a matter of discretion with the Court to allow or not to allow interest. Even. if it be within our power to allow interest, I do not think that the facts of the case justify the same. The charge- ability of the duty depended upon the plaintiff being able to show that each item imported and been exported which necessarily involved time In these circumstances, it cannot be said that the defendant-Committee withheld the amount contumaciously.

(16) In the result, the appeal is allowed to the extent that the claim of the plaintiff to interest stands rejected. The plaintiff thus gets a decree for Rs. 11,520.80 Paisa. The parties will have their proportionate costs.