(1974) 02 RAJ CK 0036

In the Rajasthan High Court

Case No : Civil First Appeals No. 111 and 112 of 1972

The State of Rajasthan	APPELLANT
Vs	
Nagar Palika and Another	RESPONDENT

Date of Decision : 01-02-1974

Acts Referred:
Civil Procedure Code, 1908 (CPC) — Section 80

Citation : (1974) WLN 267

Hon'ble Judges : S.N. Modi, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

S.N. Modi, J.—These two first appeals arise out of two suits instituted by the Nagar Palika, Jhalawar, against the State of Rajasthan and Ganganagar Sugar Mills, for the recovery of octroi duly on the liquor brought within the municipal limits of Jhalawar for purposes of sale. As common questions of law and fact are involved in these appeals, they are being disposed of together by this single judgment. It may also be observed here that in the trial court it was agreed that there shall be common evidence in both the cases.

2. The Nagar Palika, Jhalawar, alleged that the State of Rajasthan through its Excise Department brought and sold country liquor within the municipal limits of Jhalawar between 1-4-64 and 31-3-65 and between 1-4-63 and 31-3-64 to the tune of Rs. 1,42,972 41 and Rs. 1,30,705 30 respectively but had not paid octroi duty to it according to law at the rate of six percent. Suit No. 8/67 (36/68) instituted on 3-7-67 related to the recovery of octroi duty for the period between 1-4-64 and suit No. 39/1968 instituted on 15-9-68 related to octroi duty for the period between 1-4-63 and 31-3-64. Both the suits were originally filed against the State of Rajasthan alone, but, later on, Ganganagar Sugar Mills was also impleaded as defendant because the State of Rajasthan took the stand that the liquor was brought within the municipal limits of Jhalawar by Ganganagar Sugar Mills and not by its Excise Depart-ment. Both the defendants resisted the suit.

The State of Rajasthan admitted having supplied liquor to its contractors, but denied that the liquor was brought by it within the municipal limits of Jhalawar. According to the State of Rajasthan, the liquor was supplied to it within the municipal limits of Jhalawar by Ganganagar Sugar Mills which is a limited company. The State of Rajasthan took several other pleas including that the suits were barred by time. The Ganganagar Sugar Mills in its written statement denied all the allegations made in the plaint. It however, admitted having sent liquor to the ware-house at Jhalawar under a contract and in accordance with the Rajasthan Excise Act. The learned Additional District Judge after framing material issues and on consideration of the evidence led by the parties found that the liquor was brought for purposes of sale by the Excise Department of the State of Rajasthan. He also held that the suits were not barred by time. He accordingly passed a decree for Rs. 9259 86 in suit on 8/67 (36/68) and for Rs. 5961 88 P. in suit No. 39 of 1968 against the State of Rajasthan & allowed pendente lite and future interest at the rate of four percent per annum on the decretal amounts. Aggrieved by the said decrees, the State of Rajasthan has preferred appeal No. III of 1972 in suit No. 8/67 (36/68) and appeal No. 112 of 1972 in suit No. 39 of 1968.

3. The liability to pay octroi duty is created u/s 104 of the Rajasthan Municipalities Act, 1959, hereinafter called as the Act. It inter-alia provides that every Municipal Board shall levy at such rates & from such date as the State Government may in each case direct by notification in the official Gazette and such manner as is laid down in the Act & as may be provided in the rules made by the State Govt. in this behalf, an octroi duty on goods and animals brought within the limits of the municipality for consumption, use or sale therein. This Section makes it obligatory for Municipal Board to levy octroi duty on goods and animals brought within the limits of the municipalities for consumption, use or sale therein. But the rate at which and the date from which the duty has to be charged will be provided by a Government notification. The manner of collecting such duty has to be in accordance with the provisions of the Act and rules made by the State Government. Thus it is bringing in of the goods and animals for consumption, use or sale within the municipal limits which attracts the incidence of octroi duty. In other words, it is the person who brings the goods or animals within the municipal limits for he of consumption, use or sale, is liable to pay octroi duty. In the present case, it is admitted that the warehouse for storing liquor is situated within the municipal area of Jhalawar. It is further not in dispute that during the relevant period the liquor as brought to the warehouse at Jhalawar in the trucks of Ganganagar Sugar Mills and further that the liquor so brought was sold by the Excise Department to the lictnce-holders. It is argued on behalf of the State that since the liquor was brought by Ganganagar Sugar Mills within the municipal area of Jhalawar the person liable to pay octroi duty is Ganganagar Mills. On the other hand, it is argued on behalf of Ganganagar Sugar Mills that the liquor was brought by it merely as a carrier on behalf of the Excise Department under a contract sanctioned by the State Government. It is further

contended that the liquor so brought was the property of the Excise Department which got it manufactured under its directions and supervision at Ganganagar Sugar Mills. In my opinion, the contention of the State of Rajasthan cannot be accepted as correct. The evidence on the record shows that Ganganagar Sugar Mills manufactures country liquor under the licence issued by the Excise Department solely for the use of the State Government, It has no power to use it or sell it to any person except the State Government. The entire quantity of liquor manufactured by Ganganagar Sugar Mills is the property of the State of Rajasthan and Ganganagar Sugar Mills merely gets the manufacturing costs from the Stats. It is also borne out from the evidence that the liquor manufactured by Ganganagar Sugar Mills is sent to the various places in the State at the direction and on behalf of the Excise Department and Ganganagar Sugar Mills only acts as a carrier and the liquor so carried is stored in the warehouse belonging to the State of Rajasthan. Again, it is proved that the liquor so stored at the warehouse is sold by the State of Rajasthan at the issue price fixed by the Excise Department. The licence-holders first deposit the amount in the treasury and then apply to the Excise Department for grant of permit and on issue of permit, they obtain liquor from the ware house. During the relevant period, Ganganagar Sugar Mills carried the liquor to the ware-house at Jhalawar under the directions of the Excise Department and in pursuance of the contract Ex. A/1 sanctioned by the State Government. All these facts are amply proved by the testimony of the defendant''s own witnesses, namely, D.W. 1 Kanhaiyalal, an employee of Ganganagar Sugar Mills, D.W. 2 Shri Mahadevmal. Officer-in-charge of the Department concerned in these cases and D.W. 3 Ramswaroop, an employee of Ganganagar Sugar Mills. The learned Additional District Judge has fully discussed the evidence of the witnesses, and it is not challenged that the appraisement of the learned Additional District Judge is in any way incorrect. From the evidence, it follows that the liquor brought within the municipal limits during the relevant period was the property of the State of Rajasthan and that Ganganagar Sugar Mills carried it to the warehouse at Jhalawar at the instance & at the directions of the Excise Department as a mere carrier, the liquor so brought within the municipal limits of Jhalawar was admittedly sold to the licence-holders by the State of Rajasthan and the entire sale-price was collected by the State of Rajasthan. In view of the above fact, the real person who brought the liquor within the municipal limits of Jhalawar for purposes of sale was the State of Rajasthan and not Ganganagar Sugar Mills. The learned Additional District Judge was therefore right in fixing the liability for octroi duty on the State of Rajastban.

4. The next contention on behalf of the State of Rajasthan is that suit No. 3/67 (36/68) was barred by time at least to the extent of the amount of octroi duty on the quantity of the liquor brought within the municipal area of Jhalawar between 1.4.64 to 11.4.64 It is conceded that the suit is governed by Article 113 of the Limitation Act, 1?63 and the plaintiff was required to file the suit within 3 years from the date the octroi duty became payable by the State of Rajasthan. Suit No. 8/67 (36/68) relates to the period between 1-4-64 and 31-3-65 and it was filed

on 3-7-67. The civil courts remained closed on account of summer vacation from 6th June to 2nd July, 1967, both days inclusive and this period is liable to be excluded in calculating the three years period. The plaintiff is further entitled to exclude two months period for the notice u/s 80 Civil P.C. served on the defendant-State of Rajasthan. This notice was admittedly sent on 12-4-67. If all this period is excluded, plaintiff''s claim for recovery of octroi duty between the period 12-4-64 to 31-3-65 is within time. The only difficulty is with regard to the period between 1-4-64 to 11-4-64. There is no material on the record to show bow much of liquor was brought within the municipal limits during this period. It may be that no liquor was brought within the municipal limits during this period of 11 days In the absence of any material, it is difficult to say that the suit is barred by time.

5. The learned Counsel for the State has next contended that the rate at which the plaintiff has charged octroi duty is not proved as the notification issued by the State Government fixing the rate of octroi duty for the country liquor has not been produced. I find no substance in the above contention. The State of Rajasthan in its written statement did not challenge the rate of 6% on the issue price of the country liquor charged by the plaintiff. Nothing was said in the written statement that the rate of 6% is in any way excessive or not in conformity with the notification issued by the Government. It may be pointed out that the notification fixing the rates of octroi duty to be charged by a Municipality on commodities is issued by the State itself and had the rate charged been excessive, the State would not have omitted to raise this ground in the written statement.

6. It is next contended that the plaintiff did not follow the rules as to the manner in which octroi duty should be realised. This point was neither raised in the written statement nor in the memorandum of appeal. The State cannot be allowed no raise the new point in the appeal.

7. No other point has been raised before me.

8. Both the appeals fail and they are dismissed with costs.

