(1965) 01 P&H CK 0004

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Writ No. 234-D of 1960

Bansi Lal and Ram Kanwar		APPELLANT
	Vs	
Municipal Corporation and Ans.		RESPONDENT

Date of Decision: Jan. 5, 1965

Acts Referred:

- Constitution of India, 1950 - Article 226
- Delhi Municipal Corporation Act, 1957 - Section 178, 183, 479
- Delhi Terminal Tax Rules, 1958 - Rule 17, 17(1), 2(9), 27, 27(1)

Citation: (1965) 1 ILR (P&H) 762

Hon'ble Judges: Daya Krishan Mahajan, J

Bench: Single Bench

Advocate: S.N. Chopra, for the Appellant; H. Hardy, D.D. Chawla, M.K. Chawla and S.P. Aggarwal, Advs, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

Daya Krishan Mahajan, J.
This is a petition under Article 226 of the Constitution of India and is directed against the order of the Municipal Corporation of Delhi refusing refund of terminal tax to the Petitioners.

2. So far as the facts go, there is no dispute. The main dispute is as to the construction of the Delhi Terminal Tax Rules, 1958 (hereinafter referred to as the rules) under which the Petitioners are entitled to refund and on the basis of which the Municipal Corporation has refused the refund. Both parties rely on the rules. Thus it is the construction of these rules which will ultimately settle the case one way or the other.

3. Messrs Bansi Lal-Ram Kanwar are working as Commission Agents at Sonepat in the State of Punjab. They mainly deal in ''gur''. They purchase ''gur'' at Sonepat and send the same to various places in Gujarat State and Rajasthan State. The procedure adopted is that they load the ''gur'' in trucks (motor vehicles) from Sonepat and bring it to Delhi Railway Station, from where the ''gur'' is sent to its destination. u/s 178 of the Delhi Municipal Corporation Act of 1957, terminal tax has been imposed on certain goods which enter the Delhi territory for consumption within that territory. It is common ground that this tax can only be levied on goods which are brought by rail or road into the Union Territory of Delhi. It is not disputed that if the goods pass through the territory of Delhi, according to the rules, those goods are not subjected to this tax. The relevant rules on that part of the case are to be found in Notification No. 8/58-D.M.Cor. dated, New Delhi, the 7th of April, 1958, Ministry of Home Affairs. These rules have been framed under Sections 183 and 479 of the Delhi Municipal Corporation Act, 1957 (66 of 1957). These rules are called the Delhi Terminal Tax Rules, 1958. The terminal tax is not defined in these rules but the ''word "tax" is defined, which means the terminal tax. ''Import'' is defined in the rules but not the phrase ''Export''. ''Import'' as defined under Rule 2(9) means the carrying of goods by railway or road into terminal tax limits. Rule 17 deals with the payment of tax on rail-borne goods and grant of import passes. The relevant part of the rule for our purposes is Rule 17(1)(e)(iv). It may be mentioned that proviso to Sub-clause (iv) of Clause (e) was introduced by a Notification No. 18/31/59, dated the 8th August, 1959. This proviso was not there at the time when the original rules were framed. The other relevant rule is Rule 27. We are only concerned with Rule 27(1)(b) and 27(3). The relevant parts of the rules referred to above are quoted below for facility of reference:

Rule 17(1)(e)(iv)--

Within one week of the expert of goods in accordance with these rules, the importer may apply for a drawback of the tax paid on the goods so exported, supported by the pass in form T.T. 4 and the acknowledgment coupon of the transit pass in form T.T. 5.

Provise to Sub-clause (iv) of Clause (e) Rule 17(1)--

Provided that a claim for drawback of the tax paid in accordance with the second proviso to Clause (b) of Sub-rule (I) of Rule 27 shall be supported either by a duly attested copy of the relevant Rly. Receipt or booking or by a certificate from the concerned Rly. Authority to the effect that the goods were duly booked against the Rly. Receipt of which number and date shall be given in the certificate.

Rule 27(1)(b)--

On receipt of such a declaration the collecting officer shall fill up by the carbon process a transit pass in form T.T. 5 and on payment of a fee of rupee one per vehicle, hand over the foil with both the coupons attached to it to the importer.

Provided that if the amount of tax leviable on such goods, had they not been exempted on account of their being intended for immediate export, be less than rupee one, no fee shall be charged,

Rule 27(3)--

When such goods are brought to the barrier of export, the importer shall present the pass granted to him under Sub-rule (1) intact with the acknowledgement coupon, and the collecting officer shall note in column 15 of the pass the time at which it is presented and shall check the goods with the particulars given in columns 5 to 7 of the pass; and then--

(a) if the goods tally with particulars entered in the pass and time of export entered in column 13 has not expired, the collecting officer shall allow the goods to be, exported retaining the pass for submission to the head office through the barrier of import, and shall hand over the acknowledgement coupon duly signed to the importer; or

(b) if the description or weight of the goods does not tally with the particulars entered in the pass, and there is any shortage in the weight of any such goods or if any of the goods are not of a description of the goods entered in the pass, the collecting officer shall make a note of the discrepancy in column 17 of the pass, and shall demand payment of the amount of tax payable in respect of such shortage in weight or in respect of the goods of such description, and shall thereafter proceed as if the charge was a charge on account of goods imported in the ordinary way; or

(c) if the time entered in column 13 has expired before the pass is presented, the collecting officer shall demand the full amount of tax ordinarily payable on the goods on import, and thereafter shall proceed as if the charge was a charge on account of goods imported in the ordinary way.

Before dealing with these rules, it will be proper to state how the present controversy has arisen. On the 21st December, 1959, two trucks of gur were brought in by the Petitioner for export to Bhavnagar in Gujarat State. The goods entered the import barrier of the terminal tax limits and passed out of the export barrier of these limits on that very day. They were, however, booked for Bhavnagar on 29th December, 1959. When they entered the import territory, tax on these goods was paid as required by Rule 17(1)(e)(ii) read with Rule 27(I)(b) proviso. After the goods were booked on the 29th December, 1959, an application was made for refund of the duty paid thereon, as provided by Rule 17(1)(e)(iv). This application was made on the 30th December, 1959. This application was refused on the ground that it was not made within one week of the export of goods. According to the Corporation, the export of goods was completed on 21st December, 1959, when the goods left the export barrier, whereas according to the Petitioners, the export was made on the day when the goods were actually booked at the railway station. It is again common ground that the booking was open on the 21st and 22nd, but the

booking was closed between 23rd and 28th of December, and opened again on the 29th December, 1959, when the goods were actually booked.

4. The short question that falls for determination is what meaning is to be given to the word ''export'' under Rule 17(1)(e)(iv). Before dealing with this matter, it will be proper to examine the scheme of the rules. If goods are brought into the Union territory of Delhi and remain in the territory and are not immediately exported, they are liable to terminal tax. There is no dispute on this. There is no dispute that if the goods are meant for immediate export and they enter the Union territory of Delhi, they are liable to the terminal tax and it has to be paid thereon, before they are allowed to enter the Union territory. They must leave the export barrier, as specified in form T.T. 5 and the duty paid has to be refunded, if the goods are exported. Before the amendment to Rule 17(1)(e)(iv) was introduced, moment the goods crossed the export barrier, the owner of the goods was entitled to make an application within one week and claim the refund. After the amendment, it is necessary before a refund is allowed to vouch the application for refund with the railway receipt or a certificate showing that the goods have been booked. The application for refund has to be made within one week of the export of goods. It cannot be disputed that so far as Rules 27 and 17 are concerned, there is a notional export, as soon as the goods leave the export barrier. But can it be said that for purposes of Rule 17(1)(e)(iv), the export is merely notional export only and not actual export. After considering the matter from all aspects, I am of the view-that in Rule 17(1)(e)(iv), the word ''export'' has been used to denote ''actual export'' and not ''notional export''. If it "is notional export, the proviso which was added in 1959, would be wholly misplaced. It cannot be disputed that the word ''export'' is to be interpreted in the context in which it is used. In one context, it may only relate to the notional export, whereas in the other context, it may not fit in with the notional export but would actually fit in with actual export. The rule making authority, while defining the word ''import'', did not define the word ''export''. It appears to me that this omission was deliberate, because the word ''export'' was being used in various shades of meaning. To illustrate, take the case of goods which have passed the export barrier on 21st December on to the railway siding and from 21st, the Railway booking is closed for the destination for which the goods are meant for. In this situation, can it be reasonably urged that the exporter would not be entitled to the refund of duty on such goods which were meant for immediate export and could not be so exported for any default on the part of the exporter but by the fact that no booking was available. It is significant that the exporter cannot claim refund unless he furnishes with the application for refund either the railway receipt or a certificate from the railway authority showing that the goods have been booked. Therefore, giving the words ''immediate export'' their proper meaning as well as the limitation placed for refund in Rule 17(1)(e)(iv), it must necessarily be held that the word ''export'' in Rule 17(1)(e)(iv) means actual booking of goods. The limitation for refund will start from that date and not from the date the goods cross the export barrier,

which according to the rules can only be a ''notional export''. The reason why the goods must cross the export barrier without delay is that within the two barriers the goods are not unloaded or changed or dissipated. The object is that what enters the import barrier must leave the export barrier in tact. It is also significant that if the person, who brings in the goods for purposes of export, does not actually export the goods, he is entitled to bring back those goods in accordance with Rule 28 of the Delhi Municipal Corporation Act, 1957 (66 of 1957). But in that eventuality, he is not entitled to refund of duty. There is no limitation provided when he can bring the goods in, when he has changed his mind to export those goods. All that is required under the rules is that he has to show to the authorities the relevant form on the basis of which the goods were brought in at the import barrier and thereafter passed through the export barrier; but he is not required to pay the duty second time on these goods, the duty having already been paid when the goods entered the import barrier. In whatever perspective the matter is examined, it can admit of no doubt that the word ''export'' when used in Rule 17(1)(e)(iv) means ''actual booking'' of the goods, otherwise the rules will work havoc with the trading community. It is for this reason also that I cannot place an interpretation which is wholly unreasonable and would hamper normal trade. That being so, I am clearly of the view that the act of the Municipal Corporation in refusing refund, in the circumstances of this case, is wholly unjustified.

5. What has been stated above relates to the import of two trucks of goods, which were meant for export to Bhavnagar. There is also a dispute with regard to another two trucks of Gur, which were brought in, on the 11th of January, 1960 and were booked on the 12th January, 1960. The application for refund was made within the period of 7 days but the refund has been disallowed on the ground that the trucks were meant for export to Indore, whereas one of the trucks has been sent to Indore and the other to Sidhpur in Gujarat. The application for refund has been granted with regard to the truck which has been exported to Indore and refused with regard to the truck which has been sent to Sidhpur. I see no reason for this differentiation. The fact still remains that the goods contained in these trucks were exported. How does it matter that a different place is substituted for the place for which they were intended. The change in their destination did not, in any manner affect the nature of the transaction of export. There is no provision in the rules, which prohibits such a course. So far as one of these two trucks is concerned, the refusal to refund the terminal tax thereon is wholly unjustified.

6. For the reasons given above, I allow this petition and direct the Municipal Corporation to grant refund of terminal tax, applied for and refused, to the Petitioners. The Petitioners will have their costs which are assessed, at Rs. 100.