

(1958) 03 MP CK 0008

Madhya Pradesh High Court

Case No: Rev. R. No. 7/XXIV-2 of 1957

Municipal Committee, Damoh

APPELLANT

Vs

Jaswantlal Prahalad Bhai and
Company

RESPONDENT

Date of Decision: March 3, 1958

Citation: (1958) MPLJ 441

Hon'ble Judges: R.D. Shukla, Member

Bench: Single Bench

Advocate: Shiv Dayal Shrivastava, for the Appellant; V.K. Sapre, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

R.S. Shukla, Member

This order will dispose of Revision Applications Nos. 7 and 8 /XXIV-2 /57 as both involve the same points for consideration.

The non-applicant in Revision No. 7/57 is a merchant of Damoh. He was refused refund of octroi tax by the Municipal Committee on the export of Hessian-bags outside the limit of Damoh on the ground that the import duty paid was on Hessian-cloth and not on Boris (Hessian-bags), the latter being different from Hessian-cloth itself. In appeal, the Sub-Divisional Officer ordered refund against which the Municipal Committee has now come up in revision.

Two main contentions were raised on behalf of the Municipal Committee, viz.:

(i) That the lower Court did not call upon the non-applicant to prove the fact that the Boris in question were manufactured out of the Hessian-cloth and that in this respect, the Sub-Divisional Officer was wrong in relying only on the affidavit of the non-applicant; and

(ii) That the Hessian-cloth being different from Boris no refund was permissible.

A perusal of the written reply submitted by the Municipal Committee before the lower-appellate Court shows that the Committee did not dispute the fact that the Boris in question were made out of the imported Hessian-cloth. It is only at the revisional stage that the ground No. 1 has been raised. Whether Boris in question were made out of imported cloth or some other cloth is a question of fact and cannot be opened at this stage. In fact, as this question was not raised, it was not necessary for the learned Sub-Divisional Officer to call upon the non-applicant to file an affidavit in this respect. That was probably done as a measure of abundant precaution. In any case, the Committee is not entitled to dispute the fact at this stage.

With regard to the second ground the refund rules issued under Government Notification No. 7085-5025/N-XIII, dated 5-12-48 are quite clear on the point. Rule 27 (b) reads as follows:

27 (b). The refund on the exported goods which have been manufactured within the limits of the Municipal Committee from imported raw materials liable to octroi, shall not exceed the octroi on the raw materials used in the manufacture.

This makes it clear that if finished goods are manufactured out of imported raw materials, refund is permissible on the export of manufactured goods. The question, whether raw material in this context should be interpreted as material in the natural state or should it include the material which has undergone some process of manufacturing before its import, was dealt with by the Nagpur High Court in *M.C. Burhanpur v. Allauddin* 1957 NLJ 278. It was held in that decision that the rule should not be construed in the sense of unmanufactured material or materials in the raw state. Thus if the non-applicant prepared Boris (a manufactured goods) out of the Hessian-cloth, the imported raw material in this case, he would be entitled to refund of octroi duty on the export of Boris in accordance with Rule 27 (b) cited above.

The order of the Sub-Divisional Officer does not, therefore, call for any interference. The applications are dismissed.