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(1969) 03 BOM CK 0019

Bombay High Court

Case No: Spl. C. Application No. 2149 of 1968

Kirloskar Pneumatic Co. Ltd.		APPELLANT
	Vs	
Municipal Corporation for The City of Poona		RESPONDENT

Date of Decision: March 12, 1969

Acts Referred:

- Bombay General Clauses Act, 1904 - Section 7, 7(1)
- Constitution of India, 1950 - Article 133(1)(a)

Citation: (1969) MhLj 832

Hon'ble Judges: D.V. Patel, J; D.P. Madon, J

Bench: Division Bench

Advocate: R.J. Joshi instructed by Manilal Kher Ambalai and Co, for the Appellant; Y.S. Chitale, for the Respondent

Judgement

D.V. Patel, J.
By this petition the petitioner-Company seeks to challenge the right of the Municipal Corporation for Poona to collect octroi duty on raw materials and articles imported by it for the purpose of its manufacture. The short facts are as follows.

2. The respondent-Corporation was constituted as a Municipal Corporation under the Bombay Provincial Municipal Corporations Act of 1949, somewhere in 1949. The Act itself incorporated certain rules for the municipal administration including taxation. u/s 127, sub-section (1) the Corporation is required to impose property taxes and the taxes on vehicles, boats and animals and it has no option not to impose the same. By nub-auction (2) it has option to impose other kinds of taxes, one of which is the octroi. By sub-section (3) it is provided that the municipal taxes shall be assessed and levied in accordance with the provisions of the Act and the rules. Section 149, sub-section (1) requires the Corporation to make detailed provision by rules in connection with the

assessment and collection of any of the taxes which it decides to levy u/s 127, regarding such matters as the rules do not provide for. With other clauses in the sub-sections we are not at present concerned. Sub-section (2) of section 149 enables the Government to either refuse to sanction the rules and refer the same back to the Corporation for reconsideration or to sanction the same with or without modifications. Section 453 provides that the rules in the Schedule as amended from time to time shall be deemed to be parts of the Act. Section 457 relates to the powers of the Corporation to frame rules with regard to the matters enumerated therein. Clause 7 thereof relates to municipal taxes and sub-clause (c) deals with the powers of the Municipal Corporation to frame rules in relation to all matters referred to in sub-section (2) of section 149 in respect of taxes leviable under sub-section (2) of section 127. Thus the rules have to provide for the nature of the taxes to be levied, rate thereof, class or classes of persons, articles of properties liable to tax, exemption therefrom, if any, to be granted.

3. At the time the Act was passed, it contained certain rules for imposition and recovery of taxes by the Corporation. These rules are contained in Chapter 8 of the Schedule. Rules 26 to 29, 35, 49 and 62 relate to octroi. Later on in order to encourage industrial development in Poona, the State Government added rule 62-B to the Schedule by a resolution dated September 7, 1957, and it was published on October 10, 1957. This rule provided for exemption of taxes and reads as follows:

62-B. "Industrial Estate or Area" means the area which Corporation may from time to time demarcate for the purposes of this rule as the area in which industries can be suitably located in the interest of industrialisation of the City of Poona.

In respect of any raw materials or machinery imported by any industrial manufacturing concern established or to be established in the Industrial Estate solely for the purpose of manufacturing finished articles in the said Industrial Estate, the Commissioner shall not, for a period of twelve years only, from the date on which this rule comes into force, levy octroi....

4. Thereafter the Corporation invited applications for allotment of plots in the industrial estate with a guarantee that for a period of 12 years, no octroi would be levied as provided in rule 62-B. The petitioner-Company purchased on this assurance 7,54,436 square feet of land in Hadapsar Industrial Estate for a stun of Rs. 1,12.093.53 P. under a conveyance dated May 23, 195S, which is Annexure "A" to the present petition. The conveyance contains the following clause at item which reads as under:

Octroi will be excused following and according to the Rule made by the Poona City Municipal Corporation from the date 1-11-1957 in respect of Octroi for Hadapsar Industrial Colony Scheme. We have agreed and hereby assure that we will not rescind or alter the Octroi Rule made by the Poona City Municipal Corporation during the period upto 10-10-1969 in such a way as in reduce the facilities given to you according to the said Rule.

In 1903 the octroi rules were rescinded and new rules were made. That rule 5 (8) relates to exemptions and so far as relevant reads as under:

Rule 5 (8). "In respect of any new materials or machinery belonging to and imported by any industrial, manufacturing, processing or assembling concern established or to be established in the Industrial Estate or Area for the purpose of manufacturing, processing or assembling finished articles in the said Industrial Estate or Area the Commissioner shall not levy octroi for a period of 10 years from the date of demarcation of such area as an Industrial Estate or Area: Provided that this exemption shall not be given in respect of any raw materials imported for the purpose of refilling, packing or repacking only:

Provided that no exemption from cetroi shall be given or claimable unless the importer produces at the time of import but not afterwards a certificate in the form prescribed in Schedule "P" signed by the proprietor or the manager of the said industrial concern certifying that the raw materials or the machinery that are being imported are the property of the ownership of the said industrial concern and that the said material or machinery are to be used or are intended to be used by the said industrial concern for the purpose of manufacturing, processing or assembling finished articles in the said Industrial Estate or Area.

For the purpose of this exemption, Industrial Estate or Area" shall mean the area which the Corporation may from time to time demarcate for the purposes of this Rule as the area in which industries can be suitably located in the interest of Industrialisation of the City of Poona." This sub-rule was deleted on September 1, 1968.

5. The petitioner-Company alleges that it was getting exemptions as per these rules and as provided by the Conveyance, until deletion of rule 5 (8) on September 1, 1968. The contention of the Municipal Corporation on one hand is that after this rule is rescinded, the Corporation is entitled to collect octroi on exempted materials brought into the municipal limits by the petitioner-Company and the contention of the petitioner-Company is that the Corporation is not entitled to levy any Octroi until the period of assurance is over i. e. October 10, 1969.

6. Mr. Joshi relies upon section 7 of the Bombay General Clauses Act, relating to construction of a statutory enactment. It is as follows:

7. Where this Act, or any Bombay Act (or Maharashtra Act) made after the commencement of the Act repeals any enactment hitherto made or hereafter to be made, then unless a different intention appears, the repeal shall not,-

(a) revive anything not in force or existing at the time at which the repeal takes effect; or

(b) affect the previous operation of any enactment repealed or anything duly done or suffered thereunder, or

(c) affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repeated; or

(d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any enactment so repealed; or

(e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed as if the repealing Act had not been passed.

On the other hand, Mr. Chitale argues that section 7 (1) of the Bombay General Clauses Act, can have no application to the construction of the rule. It is true that section 7 of the General Clauses Act speaks of Acts and therefore by its own force may not apply to subordinate legislation such as rules and regulations framed by a delegated authority. It seems to us, however, that this argument is not available to Mr. Chitale for the simple reason that by .section 453 of the Bombay Provincial Municipal Corporations Act, the rules prescribed in the Schedule, as well as those made from time to time, are deemed to be part of the Act. By this section, the rules are required to be treated for all purposes as part of the Act, though they really may not be. This deeming provision must under the rules applicable to them be given full effect. The provisions of section 7 of the General Clauses Act must be applied on the footing that the rules are statutory enactment. We are accordingly of the view that section 7 (1) of the Bombay General Clauses Act would be applicable to the repeal of rule 5 (8) of the Exemption Rules and the consequences stated therein must follow, unless there is something in the repealed rule itself which ends the exemption or we are able to discover a contrary intention from the repealing clause.

7. Even apart from the application of the General Clauses Act, the general rule of construction as stated in Maxwell on Interpretation of Statutes, 9th Edn., p. 222 is that

No rule of construction is more firmly established than this: that a retrospective operation is not to be given to a statute so as to impair an existing right or obligation, otherwise than as regards matters of procedure, unless that effect cannot be avoided without doing violence to the language of the enactment.

Unless the language clearly shows the intention of applying it in such a manner as to affect vested rights, it must be construed as not to affect vested rights. In this connection the principles of interpretation applicable to a sub-ordinate legislation, in this respect, are not different, vide paragraph 747 of Halsbury''s Laws of England, Vol. 306, 3rd Ed., where the following appears (p. 494):

747. It may, however, be mentioned that, whereas the question whether it is intended to have retrospective effect is to be answered by the application of principles identical with those by which the question is determined in relation to statutes, R. v. Oliver , (1943) 2 All

E R 800 at p. 803 , the question whether it is capable of having such an effect depends upon the scope of the enabling power.

8. In this connection it is argued by Mr. Chitale that the exemption having been granted by a rule framed by the Corporation, as soon as the rule is repealed, the import of article becomes liable to octroi duty. He contends that rule 5 (8) does not create any right as such in any manufacturer in an industrial estate, but, prohibits the Commissioner from collecting the duties. As soon as the prohibition is taken away, the Commissioner is bound to levy duty as he has no option not to levy it, more particularly because the General Clauses Act does not apply. It is true that by repeal of such rule made by a subordinate authority, nothing will survive and it may not be possible for the petitioner-Company to claim exemption from the levy of octroi. In the present ease, however, the position is entirely different. The right to exemption that the Company claims does not depend upon the term of the repealed rule only, but is a term embodied in the contract between the parties in the conveyance. The Corporation has power under the Act to grant exemption from octroi and it is difficult to hold that merely because the rule is repealed the contract is rendered invalid. In fact there is nothing in the Bombay Provincial Municipal Corporations Act which can nullify the effect of the contract. Section 149 of the Act clearly requires that the Corporation may make rules for the grant of exemption, so that exemptions may not be granted in abuse of its power to grant exemptions. In our view therefore though repealed rule 5 (8) did not create a vested right to exemption, that right was created by the contract between the parties, and the contention therefore does not apply-

9. It was then contended that if the circumstances of the repeal of rule 5 (8) are considered, the intention to affect even the vested rights becomes clear. In this connection we have been referred by Mr. Chitale to the resolution passed by the Municipal Corporation for the repeal of this rule as reproduced in the petition (paragraph 11). The recommendation of the Municipal Corporation in this resolution was to the following effect:

Taking into consideration the reasons given and the recommendation made by the Municipal Corporation in his letter and after taking into consideration the objections and suggestions called for from the citizens before repealing Octroi Rule No. 5 (8) (resolved that) exemptions (concessions) heretofore agreed to by the Municipal Corporation should not be discontinued but no new Industrial Area should be created based on Octroi Rule No. 5 (8) and thereafter no Octroi exemption should be newly given to any factory and for this purpose the present Octroi Rule No. 5 (8) should be deleted and instead the following altered rule is being passed.

The Municipal Commissioner is requested to obtain sanction of the Maharashtra State Government to this alteration in Rule according to Municipal Corporations Act, 1949 section 455.

The matter was then submitted to the State Government who passed a resolution as an Annexure "B", which reads a . under:

In exercise of the powers conferred by sub-sections (2) and (5) of section 149 and sub-section (1) of section 455 of the Bombay Provincial Municipal Corporation Act, 1949, Government is pleased to accord sanction, to the deletion of clause (8) of rule 5 of the Octroi Rules of the Poona Municipal Corporation.

This resolution has further specified that the sanction shall become operative from September 1, 1968. It is argued that because the State Government did not incorporate the safeguard suggested by the Municipal Corporation for continuing the exemption regarding factories entitled to it, the intention to affect vested rights is implied. We find it extremely difficult to draw this inference. It is true, no doubt, that the Court would be entitled to consider while interpreting an enactment the mischief intended to be remedied and all other factors which may affect the interpretation. But then, the intention of the maker is normally to be discovered from language of the enactment and only when there is ambiguity in the language, that other matters have to be taken into account. If there is no ambiguity, it is impossible by reference to other factors to impute an intention, which is not apparent from the language employed. There have been large number of decided cases where in the absence of any ambiguity, the Courts have given effect to only the expressed intention. There is nothing to show in the rule that the rights which were already acquired by contract were intended to be affected by it. It may be that the Government may have thought that whether or not exemption was incorporated in the new rule, it would be available in law and it was not, therefore, necessary to so incorporate it in the new rule. We, therefore, reject the contention. If at all, by the amendment contractual rights were affected, a further question would have arisen and that is whether the rule so made was within the rule making power at all. That question does not fall to be decided.

10. It was then argued, relying on the decision in Motibhai Lalloobhai and Co. Vs. Union of India (UOI) and Another, , that an exemption from payment of a tax does not create a right as such as no one can claim it as a vested right. It is not necessary for us to go into this question for the obvious reason that in the present case, we are not dealing firstly with a simple exemption, but an exemption created for a particular period. Secondly, we are not dealing only with that question but also with the contract between the parties, that no octroi would be charged on raw materials and other machinery imported by the petitioner-Company for the purpose of manufacture for a particular period. In our view, therefore, in the present case the Company is entitled to claim exemption upto October 10, 1969.

11. In the result, therefore, we make the rule absolute and make an order in terms of prayer "A".

12. If the Corporation has recovered any amount from the petitioner-Company as octroi, which it is not entitled to recover, as per our judgment, the Corporation do refund the same to the Company forthwith. The petitioner will get its costs from respondent No. I, which we quantify at Rs. 250.

13. Mr. Chitale submits that the question involved is of some importance to the Corporation and the claim exceeds Rs. 20,000 and a certificate that the case is fit for appeal to the Supreme Court should be granted. In direct that a certificate be issued in terms of Article 133 (1) (a) of the Constitution.