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(1986) 01 BOM CK 0048

Bombay High Court

Case No: Writ Petition (O.S.) No. 1844 of 1981

Shroff and Company		APPELLANT
	Vs	
Municipal Corporation of Greater Bombay and Another		RESPONDENT

Date of Decision: Jan. 14, 1986

Acts Referred:

- Bombay Municipal Corporation (Levy of Octroi) Rules, 1965 - Rule 2(7)
- Bombay Prohibition Act, 1949 - Section 106, 192(1)

Citation: (1987) 1 BomCR 281

Hon'ble Judges: S.P. Bharucha, J

Bench: Single Bench

Advocate: G.E. Vahanvati and D.D. Madon, instructed by Gagrat and Company, for the Appellant; R.L. Dalal and R.J. Hemrajani, for the Respondent

Judgement

S.P. Bharucha, J.

Can countervailing duty be included in the value of Indian made foreign liquor for the purposes of calculating octroi when it is imported under bond into Greater Bombay from a State other than Maharashtra? The question must be answered with reference to the Octroi Rules of the Municipal Corporation of Greater Bombay.

2. The Bombay Prohibition Act, 1949 defines, in section 2(14) ''excise duty'' and ''countervailing duty'' to mean such excise duty or countervailing duty, as the case may be, as is mentioned in Entry 51 in List II in the Seventh Schedule to the Constitution. Thereunder excise duty is leviable on the goods therein mentioned which are manufactured or produced in the State and countervailing duty at the same or lower rates is leviable on similar goods manufactured or produced elsewhere in India. Section 105 of the Bombay Prohibition Act imposes an excise duty or countervailing duty as the case may be, on alcoholic liquor for human

consumption at such rate or rates as the State Government directs. u/s 106 excise duty or countervailing duty can be levied in the case of an excisable article imported into the State by payment upon its issue for sale from a warehouse established or licensed under the provision of the Act. Such bonded warehouse is contemplated by section 26(d).

3. In the licence held by the petitioners for storage in bond of foreign liquor there is a provision that no foreign liquor shall be removed by them from the licensed premises for consumption within the State except on payment of excise duty and fees.

4. Section 192(1) of the Bombay Municipal Corporation Act authorises the collection of a tax, at rates not exceeding those specified in Schedule H to the Act, on the entry of the articles mentioned in that Schedule into Greater Bombay for consumption, use or sale therein. This tax is called an octroi.

5. The Bombay Municipal Corporation (levy of) Octroi Rules, 1965, are framed under the provisions of the Bombay Municipal Corporation Act. Rule 2(2) defines ''import'' to mean "the conveying of any article liable to Octroi into Greater Bombay from any other areas outside Greater Bombay." Under Rule 2(4) "place of import" means "the Docks, Bunders, Wharfs, Railway yards, Sidings, Depot, Air Port Terminus, Municipal Octroi Posts at Roads across Greater Bombay Limits and such other places at which the articles arrive within Greater Bombay for the purposes of import. Before 28th July, 1976 Rule 2(7)(a) of the Octroi Rules read thus :

" ''Value of the articles'' where the Octroi is charged ad valorem shall mean the value of the articles made up of the cost price of the articles as ascertained from original invoice plus shipping dues, insurance, custom duties, excise duties, sales tax, vend fees, freight charges, carrier charges and all other incidental charges incurred by the importer till the arrival of the article at the place of import."

On and from 28th July, 1976 it read thus :

" ''Value of the articles'' where the Octroi is charged ad valorem shall mean the value of the articles made up of the cost price of the articles as ascertained from original invoice plus shipping dues, insurance, custom duties, excise duties, sales tax, vend fees, freight charges, carrier charges and all other incidental charges excepting Octroi incurred by the importer, till the articles are removed from the place of import."

It was mentioned again on 28th June, 1983, whereafter it reads thus:

" ''Value of the articles'' where the Octroi is charged ad valorem shall mean the value of the articles as ascertained from original invoice plus shipping dues, insurance, customs duties, excise duties, countervailing duty, sales tax, transport fees, vend freight charges, carrier charges, and all other incidental charges, excepting Octroi incurred or liable to be incurred by an importer till the articles are removed from the

place of import."

Under Rule 9 "Octroi on articles imported by road shall be collected by the Municipal Octroi Staff appointed by the Commissioner at the Municipal Octroi Posts at Roads across the Greater Bombay Limits during whole day and night."

6. A question almost identical to the question posted above came to be considered by the Nagpur Bench of this Court in Special Civil Application No. 779 of 1971. M/s. J.E. Bilimoria & Sons & Nagpur v. Corporation of the City of Nagpur. A Division Bench comprised of Masodkar & Kambli, JJ., upheld the petitioner''s contention by their judgement dated 23rd December, 1976. Rule 10(a) framed under the City of Nagpur Corporation Act, 1948, read thus :

"Rule 10(a) "Where the duty is chargeable on weight, gross profit including that of the package or container shall be adopted.

When the duty chargeable ad valorem the value thereof shall be the cost price to the importer plus all incidental charges, such as custom duty, insurance excise duty, sale tax and freight and such other charges incurred by the importer till arrival of the goods at the octroi naka, if those have not already been included in the cost price."

The Division Bench held, construing the rule, that it did not operate upon liabilities attached to imported goods that arose after the goods had entered the limits of the city of Nagpur for use, consumption of sale. Thus the value at the entry was all relevant for the purpose of calculation of the octroi and not its appreciation or depreciation thereafter. Prepaid or preincurred though not paid duties before the goods were imported into Nagpur would be part of the value. That would not be the position of duties or charges which were not incurred at the time or the entry of the goods within Nagpur but which were charged when the goods were dealt with after such entry. The Nagpur Municipal Corporation was, therefore, directed not to collect octroi upon bonded liquor brought into the limits of Nagpur without payment of excise duty by adding the excise duty payable in the incidental charges contemplated by Rule 10(a).

7. Reliance was placed upon this judgement by Mr. Vahanvati, learned Counsel for the petitioners, and it was submitted that the Municipal Corporation of Greater Bombay cannot collect octroi upon Indian made foreign liquor imported into the limits of Greater Bombay under boned by including the countervailing duty payable thereon in its value.

8. Mr. Dalal, learned Counsel for the Municipal Corporation, submitted that the place of import of the liquor imported under boned by road was the bonded warehouse, although the octroi was collected at the Octroi ''naka''. In his submission, the date of its import was the date of its removal from the bonded warehouse.

9. Section 192(1) empowers the collection of octroi upon entry of articles into Greater Bombay for consumption, use or sale. The Octroi Rules define import to mean the conveying of any article liable to octroi into Greater Bombay from outside Greater Bombay. The place of import is defined to mean the docks, railway yards, air ports and Octroi posts at roads across Greater Bombay limits and such octroi place at which articles arrive within Greater Bombay. The emphasis is upon entry of the goods into the city limits. This is the taxable event. It must therefore be held that the liquor in bond is imported when it is conveyed into Greater Bombay from outside Greater Bombay. When it is conveyed into Greater Bombay by road the place of import is the Octroi post on the road across the limits of Greater Bombay.

10. It is also not possible to held that the date of import is the date upon which the liquor is removed from the bonded warehouse. Under the proviso to section 106 of the Bombay Prohibition Act, where payment is made of countervailing duty upon issue for sale from a bonded warehouse, such payment shall be made at the rate of the duty in force at the date of the issue from such warehouse. At the time when the octroi on liquor in bond imported into the city limits is collected at the Octroi ''naka'' there is no knowing when the goods will be removed from the bonded warehouse. There is, therefore, no means of knowing what would be the applicable rate of countervailing duty on the date of such removal. It is, therefore, impossible to calculate the value of the bonded liquor by including therein the countervailing duty which will be payable on the date upon which the liquor is from the bonded warehouse.

11. Mr. Dalal submitted, with regard to the Division Bench judgement, that there was a difference between Rule 10(a) operative in Nagpur and Rule 2(7)(a) operative here. He emphasised that the Nagpur rule applied to (1) changes incurred by the importer (2) till the arrival of the goods at the Octroi ''naka''. He also pointed out that the Division Bench had observed that it would not be proper to include within the word ''incur'' the charges to be incurred after the import, and that the Bombay rule as it now read used the words "liable to be incurred".

12. Rule 2(7)(a) as it read before 28th July, 1976 mentioned charges incurred till the arrival of the articles at the place of import. The charge of countervailing duty incurred subsequent to the arrival of the bonded liquor at the place of import fell outside the rule as it then read. Between 28th July, 1976 and 27th June, 1983 the rule mentioned charges incurred till the articles were removed from the place of import. Inasmuch as the charge of countervailing duty was incurred after the bonded liquor had been removed from the place of import, the rule as it then read could not apply to such countervailing duty. The rule as it reads subsequent to 28th June, 1983 mentions countervailing duty but among charges incurred or liable to be incurred till the articles are removed from the place of import. The countervailing duty is neither incurred nor is liable to be incurred until after the bonded liquor has been removed from the place of import. Even under the latest version of the rule, such

countervailing duty cannot be included in its value.

13. In the result, the petition must succeed. The respondents are direct to desist from including countervailing duty paid subsequent to the date of import of Indian made foreign liquor in bond into the limits of Greater Bombay and the corresponding transport fee in the value thereof for the purpose of computing the octroi thereon.

14. As a result of interim orders in this petition, until 15th November, 1982 octroi had not been paid by the petitioners on the basis that countervailing duty was includible in the value of the bonded liquor. On and from 18th November, 1982 the petitioners paid octroi on that basis. The Municipal Corporation, on 23rd September, 1983, undertook to forthwith refund such payment to the petitioners in the event of their succeeding in the petition. The Municipal Corporation must, therefore, make such refund within 4 weeks from today.

15. The Municipal Corporation shall pay to the petitioners the costs of the petition.