

(2018) 01 BOM CK 0089

Bombay High Court (Nagpur Bench)

Case No: 3515 of 2002

Patni Automobiles

APPELLANT

Vs

The Corporation of City
of Nagpur

RESPONDENT

Date of Decision: Jan. 18, 2018

Acts Referred:

- City of Nagpur Corporation Act, 1948, Section 114(e) - Taxes to be imposed under this Act

Hon'ble Judges: B.P. Dharmadhikari, Swapna Joshi

Bench: Division Bench

Advocate: A.A. Naik

Judgement

1. The petitioner, a dealer of two wheelers manufactured by Bajaj Auto Limited at Pune, for the area, questions denial of transit pass to it for two wheelers which are sent directly to sub-dealers in adjacent districts like Bhandara, Yavatmal etc.

2. Shri Naik, learned counsel for the petitioner, at the threshold pointed out that after introduction of Local Body Tax (LBT), the controversy has remained only academic. He also points out that interim order has been passed by this Court on 18.06.2003 and hence no coercive steps have been taken against the petitioner.

3. By placing reliance upon the judgment of the Hon"ble Apex Court in the case of Tata Engineering & Locomotive Company Limited & Anr. vs. Municipal Corporation of the City of Thane & Ors ., reported at 1993 Supp. (1) SCC 361 (paras 10 to 12), judgment of Division Bench of this Court in the case of Khandelwal Traders, Akola vs. The Akola Municipal Council, reported at AIR 1985 Bom . 218 and a judgment of learned Single Judge of this Court in the case of State Bank of India vs. Municipal Corporation of Greater Bombay, reported at 1997 (3) Mh. L.J. 18, he submits that when there is a sale within

octroi limits, for immediate export, octroi is never leviable. In this situation, demand of transit pass was justified and could not have been denied. He also adds that here, the authorities have taken note of the fact that sale is to a customer outside Municipal limits but then have ignored the most important aspect viz., that there is no import.

4. Nobody appears for the respondents.

5. The petitioner questions communication dated 03.05.2001 by which the Octroi Superintendent informed it that two wheelers were being sent in petitioners" name for sale and thereafter the petitioner was selling it to the customers residing outside the Municipal limits, hence, there was / is no question of issuing transit pass.

6. It appears that against this demand, he made a representation and it has been decided by an order dated 18.07.2002 as an appeal. Therein, the Deputy Municipal Commissioner has observed thus :

"So far as the delivery of goods at Akola and Bhandara is concerned it is the working arrangements of dealer in order to facilitate himself to avoid additional transportation cost, but the fact remains that the whole consignment as per invoice of M/s. Bajaj Auto, Pune or Aurangabad belongs to appellant who is transacting his business within N.M.C. limits and head office at Nagpur. If at all he wants to avail the Octroi exemption facility he may open his branches at the places where he has appointed sub-dealers or selling the goods and can import the goods on that address and carry out the sales from that address only. So far as the question of issuing of transit passes for such consignments which are directly sent to Akola or Bhandara is concerned the octroi rules for transit provide for definite route for such transportation of goods. In the instant case, the goods are already sold out by the Appellant from his Nagpur office, hence the question of issuing transit pass for the already sold out goods does not arise."

7. Thus, only because sale has taken place at Nagpur, the request has been found improper.

7. Section 114(e) of the City of Nagpur Corporation Act, 1948, permits octroi as a cess on animals or goods "brought within the city" for sale, consumption or use therein.
(Emphasis added)

8. The material on record shows that two wheelers in relation to which transit pass was claimed, have never been imported within Nagpur Municipal limits. The authorities also nowhere find any such import. The only finding reached is, the petitioner sold the vehicles at Nagpur and this finding is because the vehicles are sent from Pune in the name of the

petitioner. There is no finding anywhere that vehicles were/ are received by the petitioner within Municipal limits at Nagpur. On the contrary, it is apparent that when transit pass is claimed for two wheelers which are delivered directly to sub- dealers at other places mentioned supra, there is no import of such vehicles within the city. As there is no import, there is no question of respondents demanding any octroi upon it and as such the petitioner's seeking any transit pass for such vehicles. The transit pass at the most may be required to clear Municipal limits of Nagpur city while carrying those two wheelers in a truck or trailer from the entry naka to exit naka. The respondents have under mistaken notion that sale within city attracts octroi, taken impugned action. The impression and action is unsustainable.

9. We, therefore, restrain the respondents from recovering octroi on vehicles which are not brought within octroi limits of Nagpur Municipal Corporation by the petitioner. We, therefore, quash and set aside the impugned communication dated 03.05.2001 and consequential order passed by third respondent i.e. Deputy Municipal Commissioner, NMC, Nagpur on 18.07.2002. Writ Petition is thus partly allowed and disposed of. However, in the facts and circumstances of the case, there shall be no order as to costs.