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Court : Gujarat

Decided On : Jul-07-1952

Reported in : 1953CriLJ1537

Judge : Shah, C.J. and; Baxi, J.

Appellant : State

Respondent : Koli Amra and anr.

Judgement :

Shah, C.J.

1. This is an appeal by the State against the acquittal of the respondents by the First Class Magistrate, Chotila, of a charge under Section 77(2), Bombay District Municipal Act, as adapted and applied to Saurashtra. The Saurashtra Government has made octroi rules in exercise of their powers under Section 4, Saurashtra Terminal Tax and Octroi Duty Ordinance No. 47 of 1949 and the Chotila Municipality is empowered by the Government, by Notification dated 12.12.1949 issued in the exercise of its powers under Section 3 of the said Ordinance, to levy octroi in accordance with the above said rules.

2. The facts giving rise to the prosecution are that respondent 1 Amra Ramji, who belongs to village Mesaria had contracted to sell 'Methi' to one Dipchand Ujamshi of Chotila, and in accordance with it he brought three carts of 'Methi' to Chotila, in the morning of 7.5.1951 and stopped the carts near the Octroi Naka of the town.

Dipchand came to the place and took delivery of one cart only and rejected the other two carts finding fault with the quality of the goods; and for the cart which he purchased, he paid the octroi. Respondent 1 then went into the town and effected the sale of the 'Methi' to Panaehand Jadavji, after which respondent 2 Jayantilal, who is the son of the said Panachand Jadavji, came there in the afternoon to take delivery of the carts. The octroi clerk at the Naka demanded the octroi, but respondent 2 declined to pay saying that that goods were being taken directly to the Railway Station and were therefore not chargeable to octroi duty, and he asked respondent drive the carts towards the railway station which the said respondent did. Both the respondents were thereupon prosecuted for evasion of the payment of octroi duty.

3. The plea of the respondent 1 was that as he had sold the goods, he was not responsible for the octroi duty, but that the purchaser, respondent 2 was liable. Respondent 2's contention was that the goods were being taken directly to the railway station and that under the rules they were not liable to be charged with octroi duty. Now under Rule 2(1) of Schdule 3 to Chap. 2 of the Rules, all goods which are imported within the octroi limits are liable to octroi duty and by the expression 'import' is meant the introduction of the goods within the octroi limits; so that if it is found that the carts in question were introduced within the octroi limits then the liability to pay octroi on the goods does definitely arise. The octroi naka is well within the octroi limits prescribed for the Chotila Municipality and as the goods had been brought up to the naka, there can be no question that the goods were introduced within the octroi limits of the town. The learned Magistrate's view that the introduction takes place at the stage where the goods enter the octroi limits is no doubt correct, though he has made a confusion between octroi limits and municipal limits. But the Magistrate is manifestly wrong when he says that the goods ceased to be introduced as soon as they stepped into the octroi limits, and that the further carriage of the goods into the town past the naka is merely carrying the goods. In accordance with that erroneous view, he has held that the octroi nakas ought to be established in every case at the border of the octroi limits, and not inside the octroi limits. To accept the Magistrate's view will mean that once the goods enter the octroi limits and the duty is not asked for nor paid at the entrance, the liability to pay it will cease on the footing that the subsequent carrying of the

goods does not amount to introduction thereof. However that is not the true construction of Section 77(2).

4. Now respondent 1 did here introduce the goods into the octroi limits, and in accordance with the rules he was liable to pay the octroi duty. The goods had been already introduced within the octroi limits by respondent 1 in the morning, while respondent 2 went to the place in the afternoon. On a plain reading of the rule above referred to and of Section 77(2) of the Act therefore respondent 2 cannot be deemed to be the person who introduced the goods within the octroi limits and He cannot be held responsible for the duty. The question, however, remains whether in declining to pay the octroi on the goods in question, the respondents committed an offence under Section 77(2). On being asked to pay the tax by the octroi clerk at the naka, respondent 1 pleaded that he had sold the goods and was not himself liable, but that the person who had purchased the goods was liable. No doubt this plea was wrong but it cannot be said that it was not bona fide; and this inference finds support from the fact that for the first cart the octroi was paid by the purchaser Dipchand Ujamshi. As for respondent 2 his refusal to pay was clearly bona fide even assuming that under the rules the liability to pay was his. His main objection was that the goods were not liable to octroi duty because the carts were to be taken directly to the railway station and were not to be brought into the town. Whether this contention was correct or otherwise is immaterial, but there can be no doubt that it was a bona fide contention. The learned Advocate General urged that the refusal of respondent 1 to pay was clearly not well founded, and that as regards respondent 2 his plea that the goods were not liable to payment, of octroi on the ground that they were being taken to the railway station is also not well-founded because in that case he should have paid the duty and gone through the procedure of declaring the goods as 'chalau', meaning in transit, and the learned Advocate General proceeded to argue that the refusal of the respondents was with the intention to defraud the Municipality. We cannot accept this contention, for otherwise it will mean that the denial of the liability to pay the duty and the consequent non-payment thereof will per se amount to defrauding the Municipality. However, that is not contemplated by Section 77(2) of the Act, and a bona fide allegation that the tax is not payable by the party, which allegation, even if proved to be ill-founded, cannot justify a finding

that there was an intention to defraud. This view finds support from-Visram Valji v. Emperor AIR 1935 Bom 162 (A), where it has been observed :

The view taken by the learned Sessions Judge is that the claim of the applicant to be exempt from the tax is not well-founded, and that, therefore, he has endeavoured wrongfully to derive the Municipality of their tax and that the intention to defraud the Municipality must be inferred. I am unable to accept that view. If it is right, it seems to be that every defendant in a suit on money claim, who bona fide sets up a defence which fails, could be said to be intend to defraud the plaintiff, which seems to me a misuse of language. I think an intention to defraud, which no doubt generally has to be inferred from the conduct of the accused must necessarily involve something in the nature of cheating. Section 96 and the bye-law made under it postulate that the Municipality is entitled to the tax, and anybody who seeks to deprive it of that tax by wrongful means can be charged. But a bona fide allegation that the tax is not payable, which allegation is subsequently proved to be ill-founded, cannot justify a finding that there was an intention to defraud, I do not mean to suggest that the setting up of a claim of right to exemption from the tax would necessarily be conclusive in showing that there was no intention to defraud. I can well imagine cases in which it might be held that the claim to exemption was not made bona fide and that the conduct of the accused showed an intention wrongfully to deprive the Municipality of a tax justly due. But to my mind, to justify a conviction, facts must be proved from which the Court can infer that there was an intention to defraud that is to say in some way to cheat the Municipality of their tax.

The above in my opinion lays down the correct approach to the question, and applying the test here it cannot be said that the refusal of the respondents to pay the octroi duty was with the intention to defraud or to cheat the Municipality. None of the respondents has thus committed an offence under Section 77(2) of the Act, and they are properly acquitted. The appeal fails and is dismissed.

Baxi, J.

5. I agree.

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