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Heeralal and ors. Vs. State

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Court : Rajasthan

Decided On : Jul-19-1978

Reported in : AIR1979Raj133; 1978(11)WLN597

Judge : Dwarka Prasad, J.

Acts : Rajasthan Municipalities Act, 1959 - Sections 104; ;Rajasthan Municipalities (Octroi) Rules, 1962 - Rule 34A, 34A(1) and 34B(2); Constitution of India

Appeal No. : Civil Writ Petn. Nos. 1345, 1351 to 1359, 1363 to 1366 and 1422 of 1972

Appellant : Heeralal and ors.

Respondent : State

Advocate for Def. : S.L. Mardia, Addl. Govt. Adv. and; N.N. Mathur, Adv. for Respondent No. 2

Advocate for Pet/Ap. : H.M. Parakh, Adv.

Disposition : Petitions allowed

Judgement :
ORDER

Dwarka Prasad, J.

1. These 15 writ petitions arise in similar circumstances and as common questions of fact and law are involved in these petitions, they are disposed of by a common order.

2. The petitioner in each one of these writ petitions carries on his business of retail sale of country liquor within the Municipal limits of the City of Udaipur, having obtained the exclusive privilege for retail sale of country liquor from the State Government. The case of the petitioners is that the Rajasthan State Government is bringing rectified spirit within the Municipal limits of Udaipur Municipal Council from outside such limits and the same is kept or deposited by it in the Excise Warehouse situate within the Municipal limits of the Udaipur Municipal Council. According to the petitioners, country liquor of various varieties is prepared at the Excise Warehouse, Udaipur from the rectified spirit which is brought by the State Government within the Municipal limits of Udaipur Municipal Council and as such octroi could only be charged from the petitioners in respect of the rectified spirit which is brought within the Municipal limits, if at all. The petitioners' case further is that the price of rectified spirit which is brought by the State Government within Municipal limits is about 80 paise per litre whereas the price of the country liquor of various varieties, which is sold to the petitioners by the State Government, varies from Rs. 7.36 per litre to Rs. 23.8 per litre. The petitioners, therefore, contend that no octroi is chargeable on the price of the country liquor, which is sold or supplied to them by the State Government from the Excise Warehouse at Udaipur and if anything can be charged at all, then it could be only Excise duty, payable by the State Government in respect of the rectified spirit brought by it within the Municipal limits of Udaipur. Mr. Hastimal, appearing for the petitioners, contended that the charging of octroi on the issue price of the country liquor supplied to the petitioners from the Excise Warehouse at Udaipur, in accordance with the provisions of Rule 34-A of the Rajasthan Municipalities (Octroi) Rules, 1962 (hereinafter referred to as 'the Rules'), which provide for determination of the amount of octroi on the value of the country liquor delivered to the petitioners from the Excise Warehouse are ultra vires of the Constitution of India as well as of Section 104 of the Rajasthan Municipalities Act, 1959 (hereinafter referred to as 'the Act').

3. The reply of the respondents is that the provisions of Rule 34-A of the Rules are valid and that octroi is rightly charged on the issue price of the country liquor supplied to the petitioners from the Excise Warehouse. The case of the respondents' is that the sale of country liquor to the petitioners takes place as soon as a contract is entered into between the State Government and the petitioners in respect thereof, on account of the grant of exclusive privilege for the sale of country liquor to the petitioners and that it is only the country liquor which is lifted by the petitioners for consumption, use and sale within the Municipal limits which is subjected to payment of octroi. It is contended by the respondents that rectified spirit was not sold in the market as such and that merely bringing of rectified spirit in the bonded warehouse, which is situated within the municipal limits, for giving delivery of liquor to the various contractors having their shops in the Udaipur District does not tantamount to bringing liquor for purposes of sale, consumption or use within the Municipal limits. According to the respondents, the goods are deposited in the bonded Warehouse and octroi is chargeable on such goods of which the delivery is taken therefrom by the petitioners for sale, use or consumption within the municipal limits. Mr. Mardia appearing for the State tried to defend the validity of Rule 34-A of the Rules and the charging of octroi on the issue price of country liquor supplied to the petitioners from the Excise Warehouse at Udaipur by referring to some notifications issued by the State Government or the Excise Commissioner.

4. Rule 34-A of the Rules, the validity of which is under challenge in these writ petitions, runs as under:--

'34-A, Excise warehouses shall be bonded warehouses-- (1) Notwithstanding anything contained in Rules 16 to 34, the excise warehouses of the State situated within the Municipal limits shall be deemed to be licensed warehouses for the purpose of Rule 16 and the procedure of levy of octroi on the goods deposited in such warehouses shall be as under:--

(a) Any person taking delivery of any goods from such warehouse for consumption, use or sale within the limits of the Municipality shall, before taking such delivery, present the paid challan before the Octroi Superintendent.

Explanation:-- Paid challan for the purpose of this rule means the challan by which the value of the exciseable goods is paid in the State treasury or any other office as directed by the State Government.

(b) The Octroi Superintendent shall, then assess the amount of octroi on such goods and pass appropriate orders for collection of the amount of octroi leviable thereon.'

The aforesaid rule provides that the excise warehouse situated within the Municipal limits of any Municipality, may be deemed to be considered as a licensed bonded warehouse for the purposes of Rule 16 of the Rules and that octroi shall be chargeable from the person who takes delivery of the goods from such warehouse for consumption, use or sale within the limits of such Municipality. Sub-clause (b) of Sub-rule (1) of the aforesaid rule authorises the Octroi Superintendent of the Municipality concerned to assess the amount of octroi on 'such goods' and pass orders for collection of octroi leviable thereon. Thereafter the in charge of the octroi outpost is authorised to collect the octroi and the keeper of the excise warehouse is directed not to issue any goods from such warehouse unless the octroi leviable on such goods is paid to the Municipality concerned. Thus according to Sub-clause (b) of Sub-rule (1), octroi is to be charged on the price of the goods which are supplied from the excise warehouse, namely on the issue price of the country liquor, of which delivery is taken by the licensed dealer from the excise warehouse.

5. According to the scheme of the rules, ordinarily octroi is liable to be paid at the octroi outpost in respect of goods brought within the Municipal limits for consumption, use or sale therein, as provided by Rule 6 of the Rules. But in respect of certain goods the facility of bonded warehouse has been provided in Rules 16 to 34 of the Rules. Although the bonded warehouse is situated within the Municipal limits, yet goods are allowed to be brought from the octroi outpost to the bonded warehouse without payment of octroi, on the condition that the goods shall be detained or deposited in the bonded warehouse until octroi is paid thereon. Such goods are delivered to the person concerned from the bonded warehouse only on payment of octroi chargeable in respect thereof. In the case of country

liquor, the same set of rules could be made applicable with the modification that the excise warehouse could also be treated as a bonded warehouse in respect of such goods. But the case of the petitioner as mentioned above, is that it is not the country liquor which is brought from outside within the Municipal limits and kept in the excise warehouse, but what is actually brought from outside the Municipal limits is only rectified spirit. The fact that rectified spirit is brought within the Municipal limits by the State Government is not denied. It is also not contested that country liquor is made or prepared at the bonded warehouse out of the rectified spirit which is brought from outside the Municipal limits by the State Government. Thus, it is country liquor which is made and delivered to the petitioners from the excise warehouse. According to the respondents, country liquor is not manufactured at the bonded warehouse. But it has been asserted on behalf of the respondents that the sale of country liquor had taken place earlier and it is only the delivery thereof which is made by the State Government to the licensed dealer from the bonded warehouse. It is not necessary here to enter into the controversy as to whether the preparation of country liquor in the excise warehouse amounts to a process of manufacture or not, as I am not called upon to decide that matter in these writ petitions. It is also not necessary to decide in these cases as to when the sale of country liquor takes place and whether the sale takes place when the contract is entered into by the licensed dealer with the State Government for the grant of exclusive privilege to such dealer and it is only the delivery thereof, which is made by the State Government to the licensed dealer from the bonded excise warehouse or the sales take place at the time when the licensed dealer is required to deposit the issue price of country liquor by a challan before obtaining the delivery thereof from the excise warehouse.

6. The point of time when octroi becomes chargeable is not the event of sale of goods but it is the event of entry of such goods within the Municipal limits of a Municipality, as octroi is chargeable when goods are brought within the Municipal limits of such Municipality for consumption, use or sale therein. Thus, two conditions appear to be necessary for the purposes of charging of octroi on goods or animals viz. that firstly they should be brought within the limits of the concerned Municipality and secondly that they should be brought for the purposes of consumption, use or sale within such Municipal limits. In case goods or animals

are brought within the limits of a Municipality only for the purpose of being exported outside after sometime and not for consumption, use or sale within the Municipal limits, then the Rules make provision of detention of such goods in the bonded warehouse and also for the refund of octroi paid or deposited in respect of goods exported outside from the limits of such Municipality. Section 104 of the Act authorises the charging of octroi by Municipalities and provides that every Municipal Board may levy, at such rate as the State Government may in each case direct by notification published in the official gazette, octroi on goods and animals brought for consumption, use or sale therein, besides imposing other taxes. This provision is in conformity with the power of the State Legislature under Entry 52 of List 2 of the VII Schedule of the Constitution. Entry 52 of List 2 entitles the State Legislatures to make laws in respect of taxes on the entry of goods into a local area for consumption, use or sale therein, Thus, octroi is a tax imposed on 'the entry of goods' within the Municipal limits of a Municipality and the Municipal Board is authorised to charge octroi only in respect of goods which are brought within such municipal limits. It is not the case of the respondents that country liquor, as it is delivered to the petitioners from the excise warehouse, is brought within the Municipal limits from outside. As I have already mentioned above, what is really brought within the Municipal limits is rectified spirit, which is later on converted into country liquor of various varieties within the percents of the excise warehouse. As octroi is a tax on entry of goods, it can only be levied on rectified spirit which is really the commodity brought within the Municipal limits. It may be that rectified spirit as such, is not consumed or sold within the Municipal limits, but certainly the same is used within the excise warehouse for the purpose of preparing various varieties of country liquor which are delivered from the excise warehouse to the licensed dealers including the petitioners. In this connection, it would not be out of place to refer to the notification issued by the State Government dated July 15, 1967, which was published in the Rajasthan gazette (extraordinary) on August 16, 1967:--

'In exercise of the powers conferred under Clause (2) of Section 104 of the Rajasthan Municipalities Act, 1959 (Rajasthan Act No. 38 of 1959), the State Government are hereby pleased to order that the Municipal Councils/Boards shall levy octroi on rectified spirit at 2 per cent ad valorem when used as raw material for manufacture of country liquor with effect from the date the distilleries at Jaipur and Jodhpur and other places came within the limits of the Municipalities concerned.'

A bare reading of the aforesaid notification shows that rectified spirit is used as raw material and is converted into country liquor in the excise warehouse.

7. Now the question arises is to how octroi, which is essentially a tax on the entry of goods within the Municipal limits, could be charged in respect of country liquor which is delivered from the excise warehouse to the licensed dealers but is not brought within the Municipal limits? If rectified spirit is brought within the Municipal limits, octroi could only be charged on such goods which are brought within those limits. However, if rectified spirit is subsequently, after its entry into the Municipal limits, is converted into country liquor then it is not permissible under the provisions of the Constitution of India or under the provisions of Section 104 of the Act to charge octroi in respect of country liquor which is not brought within municipal limits from outside. Thus the conclusion is irresistible that octroi could be charged by the Municipal Council, Udaipur only in respect of the rectified spirit which is brought by the State Government within the limits of such Municipal Council. It is immaterial for these cases as to whether the State Government brings the rectified spirit within the Municipal limits of Udaipur Municipal Council merely as a carrier on behalf of the licensed dealers or as a seller of such goods. There can be no doubt that octroi is chargeable from the person who brings goods within the Municipal limits and in those cases where the goods are kept in a bonded warehouse, it is chargeable from the person taking delivery of such goods from the bonded warehouse. There can be no quarrel about the validity of Sub-clause (a) of Sub-rule (1) of Rule 34-A, which provides that the excise warehouse shall be deemed to be or considered as a bonded warehouse for the purposes of Rule 16 of the Rules. It also does not appear to be objectionable that payment of the issue price of country liquor, which is to be taken delivery of by the licensed dealer thereof, may be made as a condition precedent to the delivery of such goods from the excise warehouse. But Sub-clauses (b) and (c) of Sub-rule (1) of Rule 34-A and Sub-rule (2) of the said rule are clearly invalid, inasmuch as octroi cannot be assessed on the value of the country liquor issued from the excise

warehouse nor the in charge of the octroi outpost can be authorised to collect octroi from the licensed dealers on the value of the country liquor delivered to them from the excise warehouse. It is evident that country liquor is not brought from outside within the Municipal limits and as such the charging of octroi on the value of such country liquor is clearly outside the ambit of the provisions of Section 104 of the Act as also of Entry 52 of List II of the VIIth Schedule of the Constitution, What is permissible to the Municipal Council is to collect octroi only on the value of the rectified spirit which is brought within the Municipal limits from outside such limits and not on the value of the country liquor, which is only delivered from the excise warehouse to the petitioners. The taxing event, so far as octroi is concerned, is clearly that of entry of the goods within the Municipal limits and not the event of delivery of the goods from the bonded warehouse, although the actual collection or charging of tax may be postponed from the stage of entry of goods to the stage of actual delivery from the bonded warehouse. Even if during the period the goods remain in the bonded warehouse, they are converted from rectified spirit into country liquor of various varieties, then also the octroi could be charged only on the goods which enter the Municipal limits and which are used as raw material for making country liquor within the Municipal limits. In this view of the matter, I hold that Clauses (b) and (c) of Sub-rule (1) of Rule 34-A as well as Sub-rule (2) of Rule 34-A of the Rules are ultra vires of the provisions of Section 104 of the Act and the provisions of the Constitution referred to above. The provisions of Sub-clauses (b) and (c) of Clause (1) and Sub-clause (2) of Rule 34-A of the Rules are, therefore, struck down, being unconstitutional and void.

8. Learned counsel for petitioner has raised some other grounds but in view of the finding arrived at by me above the other submissions were not pressed by the learned counsel and as such it is not necessary to decide the other points raised in these writ petitions.

9. All these writ petitions are consequently allowed. Sub-clauses (b) and (c) of Sub-rule (1) and Sub-rule (2) of Rule 34-A of the Rajasthan Municipalities (Octroi) Rules, 1962 are declared ultra vires and are struck down. The respondents are restrained from levying or collecting octroi duty from the petitioners on the price of the country liquor supplied to them from the excise warehouse situated within the

limits of the Municipal Council, Udaipur. The petitioners would be entitled to the refund of the octroi paid by them to the Municipal Council, Udaipur on the country liquor at the rate of 2% of the issue price during the pendency of these writ petitions. However, the Municipal Council, Udaipur shall be at liberty to charge octroi on the rectified spirit, which is brought within the Municipal limits of that Municipality.

10. In the circumstances of these cases, the parties are left to bear their own costs.

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