

**Phipson and Co. Ltd. and anr. Vs. State of West Bengal and ors.**

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**SooperKanoon Citation :** [sooperkanoon.com/864262](http://sooperkanoon.com/864262)

**Court :** Kolkata

**Decided On :** Jul-29-1981

**Reported in :** AIR1981Cal432

**Judge :** Dipak Kumar Sen, J.

**Acts :** Taxes on Entry of Goods into Calcutta Metropolitan Area Act, 1972 - Sections 8 and 9; ;Imports Control Order; ;[Constitution of India](#)

**Appeal No. :** Matter No. 849 of 1973

**Appellant :** Phipson and Co. Ltd. and anr.

**Respondent :** State of West Bengal and ors.

**Disposition :** Petition allowed

**Judgement :**

ORDER

**Dipak Kumar Sen, J.**

1. The transactions in dispute are supplies of imported alcoholic liquor to foreign vessels and foreign going ships sailing out of the Port of Calcutta and to foreign Consulates, in Calcutta. It is not in dispute that such liquor is imported free of duty under an open general licence and are meant only for re-export as ship's stores or for consumption in foreign Embassies and Consulates and not for domestic

consumption. Between importation and re-export such liquor is kept in an approved bonded warehouse under the direct supervision, control and seal of the Customs Authorities. Even after the said liquor is delivered to a foreign going vessel they still remain under the supervision, control and seal of the Customs Authorities till the vessel leaves the territorial waters of India and the liquor can only be consumed beyond the territorial limits or within diplomatic or consular premises. Such transactions are governed by Clause 11 (d) of the Import Control Order which provides as follows :--

'11 (d) by transshipment, or imported and bonded on arrival for re-export as ships stores or otherwise to any country outside India, except Nepal, Tibet and Bhutan or imported and bonded on arrival for re-export as aforesaid but subsequently released for use of Diplomatic Personnel. Consular Officers in India and the officials of the United Nations Organisation and its specialised agencies who are exempt from payment of duty under Ministry of Finance (D. R.) Notification No. 3 dated the 8th January, 1957 and United Nations (Privileges and Immunities) Act 1947, respectively.'

2. The case of the petitioner is that the said transactions do not come within the mischief of the Taxes on Entry of Goods into Calcutta Metropolitan Area Act, 1972 (hereinafter referred to as the said Act) promulgated for levy of taxes on entry of goods of certain kinds into the Calcutta Metropolitan Area for consumption, use or sale therein. Sections 8 and 9 of the Act provide as follows:--

'8. Exemption from tax on goods belonging to certain consular officers -- Every specified goods brought into the Calcutta Metropolitan Area by or on behalf of such diplomatic or consular officers, stationed in that Area, as may be specified in this behalf by the State Government by any special or general order, shall be exempted from the tax leviable under this Act to such extent and subject to such conditions as may be specified in the said order.

'9. Exemption from tax on goods meant for export -- Subject to such rules, not inconsistent with the provisions of this Act, as the State Government may make in this behalf, any specified goods which are brought into the Calcutta Metropolitan Area for the immediate export thereof may, at the option of the dealer, be

exempted from the tax leviable thereon under this Act, if such goods are conveyed direct from the place of entry into the Calcutta Metropolitan Area to the place of export under such supervision and on payment of such fees therefore, as may be specified by the said rules.'

3. The petitioner's grievance is that the Entry Tax Authorities of the Government of West Bengal have been seeking to levy entry tax in respect of liquors which have been and are being imported into India for being re-exported in the manner as aforesaid. The Entry Tax Authorities have their check posts at the Port Commissioner's establishment at the Calcutta Port and they insist that the petitioner and the other importers fill up a form being Form No. IV stating particulars of the liquor imported and meant for warehousing in Calcutta under Bond and at that stage they also make assessments of entry tax in a form being Form No. V which also contains a demand for the tax assessed. Only after such tax is paid and certified transportation of the liquors are allowed from the jetties or docks of the Port Commissioners to bonded warehouses. The petitioners contend that the said liquor imported solely for re-export do not enter the Metropolitan area of Calcutta for the purpose of consumption, use or sale therein and entry tax is not leviable thereon.

4. In support of the case of the petitioner a decision of this Court in *Ranjit Shipping (P. Ltd. v. State of West Bengal* reported in (1980) 84 Cal WN 730 was cited. In this case T. K. Basu, J. on identical facts came to the conclusion that supply of ship's stores does not amount to a sale within the Calcutta Metropolitan Area. The learned Judge observed as follows :--

'Apart from authorities, on principle it seems to me that an essential ingredient of sale is that the buyer must have full right of disposal over the goods which form the subject-matter of the sale. In the facts of the present case, the right of disposal does not appear to accrue to the buyer till the ship leaves the Indian territorial waters well outside the Calcutta Metropolitan Area to put it differently, until the ship leaves the Indian territorial waters. Although the ship's stores may be stacked with a large number of bottles of beer however thirsty the ship's Master or a member of the crew may be, he cannot open and drink a single bottle of beer for the simple

reason that the receptacle where the beer is stored is not only under the seal of the Customs Authorities which is not opened till the ship leaves the Indian territorial waters. For this reason, it seems to me that the property passes and the buyer acquires a right of disposal over the goods in the instant case well outside the Calcutta Metropolitan Area. As such, in my view, there is no sale within the area so as to make the goods liable to duty under the Act.'

5. This application is opposed. Learned Standing Counsel appearing for the respondents have drawn my attention to two unreported judgments of this Court, both of P. K. Banerjee, J. The first is in Civil Rule No. 2129 (W) of 1971 instituted Monmohan Singh Baveja v. Commercial Tax Officer where the learned Judge considered the question whether a similar transaction would be eligible to Bengal Finance (Sales Tax) Act. On the facts before him the learned Judge found that the bonded stores involved had been sold to the Shipping Corporation of India and that the shipping bills did not contain the name of any foreign buyer. It was held that there was no exportation of goods, nor any bar under Article 286 of the Constitution on levy of the tax.

6. Subsequently in Civil Rule No. 10522 (W) of 1975 instituted Ranjit Kumar Banerjee (Shipping) Pvt. Ltd. v. Commercial Tax Officer, Lyons Range Charge the attention of P. K. Banerjee, J. was drawn to the decision in Ranjit Shipping Company ((1980) 84 Cal WN 730) (supra). The learned Judge after considering the said decision came to the conclusion again on the facts before him, that the sale was complete when the goods were delivered to the foreign going vessel within the territorial waters.

7. Learned Standing Counsel has submitted that the ratio of the decisions of P, K. Banerjee, J. in the aforesaid Civil Rules is that delivery of ship stores for a price even to a foreign going vessel amounted to a sale within West Bengal and, therefore, such a transaction was eligible to sales tax. It was further submitted that the ratio in Ranjit Shipping Company (supra) was that delivery of ship's stores to a foreign going vessel though for a price was not sale and, therefore, not eligible to entry tax. Learned Standing Counsel submitted that there was a conflict of decisions and that this application should be referred to a larger Bench.

8. On a consideration of the above decisions, it appears to me that the decisions of P. K. Banerjee, J. can be distinguished from that in Ranjit Shipping Company ((1980) 84 Cal WN 730) (supra) on facts. In the first decision it was found as a fact by P. K. Banerjee, J. that the transaction was with Shipping Corporation of India, a local corporation and that the goods were not consigned to any foreign going vessel. In the subsequent case the learned Judge again held on facts that the sale was complete at the time of the delivery of the goods to the foreign going vessel and on that ground alone the learned Judge distinguished the decision in Ranjit Shipping Company (supra). P. K. Banerjee J. however did not expressly dissent from the views expressed by T. K. Basu, J. nor did he give any reasons for any dissent.

9. The decision in Ranjit Shipping Company (supra) is a decision on the Entry Tax Act and is an authority directly on the controversy before me. I am bound by the decision and only in the event I express my dissent from the view, the question of referring the matter to a larger Bench would arise.

10. I, however, respectfully agree with the conclusion of T. K. Basu, J. in Ranjit Shipping Company ((1980) 84 Cal WN 730) (supra) on the reasons of the learned Judge and also on further reasons and grounds as stated hereafter.

11. The essential elements in the transactions involved are that the said liquor is imported in India, duty free meant only for re-export and not for sale or consumption within the country. At all material times the goods remain under the exclusive control and/or custody of the Customs Authorities. The transactions satisfy all the requirements of a normal export where goods are despatched out of the country and it is quite clear that the goods are not meant for local sale, Even if such exports involve a sale, the same is in the course of export and the fundamental nature of the transactions are not affected thereby. The said Act is not intended to levy a tax on export which is a matter exclusively controllable by the Union and not the State. Even otherwise, the goods being throughout in the control and custody of the Customs Authorities cannot be held to have even brought into India, and, in any event, cannot be deemed to have entered the metropolitan area involved in a manner so as to come within the jurisdiction of the

Entry Tax Authorities.

12. Sale and supply of such liquor to diplomatic personnel belonging to Consulates is also a special class of transaction as recognised in the Act itself. It is for the State authorities to formulate Rules and Regulations and grant exemptions for such supplies which the State Authorities, it appears, have not done up-till now. Under Entry 11 of the List I of the Union List of the Seventh Schedule to the Constitution, Legislation in respect of diplomatic personnel of foreign Embassies and consulates or trade representations from foreign countries fall exclusively within the jurisdiction of the Centre. The supply of imported articles to diplomatic personnel in the consular precincts under Customs Bond and meant to be consumed only within such precincts in my view fall beyond the ambit of the said Act.

13. For the reasons above the petitioner succeeds in this application and the Rule is made absolute. There will be no order as to costs.

14. The amount collected by way of Entry Tax in respect of the transactions in dispute are directed to be refunded to the petitioner by the respondents.

15. There will be a stay of operation of this order for four weeks.

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