Entry Tax Officer vs Chandanmal Champalal & Co on 18 April, 1994

Equivalent citations: 1994 SCC (4) 463, JT 1994 (3) 334, AIRONLINE 1994 SC 658

Author: B.P. Jeevan Reddy

Bench: B.P. Jeevan Reddy, N Venkatachala

```
           PETITIONER:
ENTRY TAX OFFICER

        Vs.

RESPONDENT:
CHANDANMAL CHAMPALAL & CO.

DATE OF JUDGMENT18/04/1994

BENCH:
JEEVAN REDDY, B.P. (J)
BENCH:
JEEVAN REDDY, B.P. (J)
VENKATACHALA N. (J)

CITATION:
 1994 SCC  (4) 463        JT 1994 (3)   334
 1994 SCALE  (2)627


ACT:



HEADNOTE:



JUDGMENT:
```

The Judgment of the Court was delivered by B.P. JEEVAN REDDY, J.- Leave granted in the SLP.

2.Entry 52 in List 11 of the Seventh Schedule to the Constitution, says Shri Narasimha Murthy, should not be confined to an impost, formerly known as 'octroi'. He submits that since it is a legislative entry, it must be liberally construed and full effect must be given to the words used therein. He says that when Entry 52 speaks of a tax on the entry of goods into a local area for

consumption, use or sale therein, the words 'sale therein' must be given their due and natural meaning and should not be restricted to a sale for the purpose of consumption or use of the goods sold within the limits of the local area concerned. The submission is urged with reference to the scope and ambit of the Karnataka Tax on Entry of Goods into Local Areas for Consumption, Use or Sale therein Act, 1979.

3.The High Court of Karnataka has held following the decisions of this Court in Burmah Shell Oil Storage & Distributing Co. India Ltd. v. Belgaum Borough Municipality', Hiralal Thakorlal Dalal v. Broach Municipality2 and Municipal Council v. Parekh Automobiles Ltd.3 that the levy created by Section 3 of the Karnataka Act on the sales effected within a local area is confined only to those sales of goods which are meant for consumption or use within such local area. In other words, it held that where the goods sold are not intended for use or consumption within the local area but are meant to be and are taken out of the area for use or consumption elsewhere, no levy is permissible under the said Act. It is this view Shri Murthy disputes. He submits that Burmah Shell', Hiralal Thakorlal2 and Parekh Automobiles3 dealt with cases where the levy was by the municipality/local authority, no doubt under an enactment of the State Legislature. In those cases, he says, there may be justification for taking a restrictive view and for construing the levy imposed by the municipality as one in the nature of octroi but where the levy is created by the State Legislature and the assessment and collection is also by the State Government, there is no reason to restrict the word 'sale' occurring in Section 3 of the Karnataka Act to sale of goods intended for use or consumption within the given local area. It is true, says the counsel, that the levy is at the stage of entry of goods into a local area but the levy is not by the local authority. The Karnataka Act, he says, bears no resemblance or similarity to a levy in the nature of octroi imposed by the local authorities 1 1963 Supp (2) SCR 216: AIR 1963 SC 906 2 (1976) 3 SCC 398 1976 SCC (Tax) 314: AIR 1976 SC 1446 3 (1990) 1 SCC 367 1990 S CC (Tax) 193 and, therefore, it should not be subjected to the limitations applicable to a levy by the local authorities.

4.On the other hand, it is contended by Shri Harish Salve, learned counsel for the respondents that all the submissions now raised by Shri Murthy are concluded against him by the several decisions of this Court. He points out that Hiralal Thakorlal2 first came up before a three-Judge Bench comprising K.K. Mathew, Krishna Iyer and A.C. Gupta, JJ. and the matter was referred to a Constitution Bench precisely to resolve and decide the true meaning and scope of the words 'sale therein' occurring in Entry 52. Para 3 of the order of reference reads thus:

> "3. The short point is whether a person who brings goods into a taxable territory and sells it there for being taken outside the territory for consumption or use is liable to pay octroi. We have been taken, by counsel on both sides, through the judgment of this Court and while we are inclined to the view that the thrust of the judgment is in favour of limiting taxability to such sales within the territory as are intended to be consumed or used in part or in whole within the territory there are observations which strike a different note. A plain reading of the words used impose no qualification of the expression 'sale therein' but the judicial construction based on the history of octroi has also been an input in the interpretative exercise in Burmah Shell'. Be that as it may, we feel that there are blurred areas of sale within the

> territory which may attract a tax under Entry 52 left uncertain by the decision of this Court. We, therefore, regard this case as requiring further clarification particularly because the point is of some substance and affects municipal finances and the business community in the whole country."

5. It is in pursuance of the said reference that the matter came up before the Constitution Bench which reaffirmed the law laid down in Burmah Shell'. The very same question has again been raised in Parekh Automobiles3 but once again the three-Judge Bench affirmed the principle of Burmah Shell' and Hiralal Thakorlal2. Shri Salve submits that at this distance of time the matter should not be allowed to be reagitated.

6. While we cannot deny the force and substance in the submissions urged by Shri Narasimha Murthy, we do not find it possible to give effect to it in the light of the decisions referred to by Shri Salve. It is true that Burmah Shell', Hiralal Thakorlal2 and Parekh Automobiles3 were concerned with State enactments which empowered the municipalities to levy the impost, all the same a close reading of the said decisions does indicate that they have read the words 'sale therein' occurring in Entry 52 of List 11 as meaning 'a sale of goods within a local area for consumption or use therein' - though as a matter of fact, in a given case, the goods may be taken out and consumed there. The decisions clearly say that where the goods are sold within a local area for the purpose of being taken out of that local area and are actually taken out, no levy is permissible under Entry 52. It is not possible to distinguish the said decisions on the grounds suggested by Shri Murthy. There is yet another reason. Octroi or any impost in the nature of that impost has always been looked upon with certain amount of disfavour. Acceptance of the State's contention in this case would ultimately result in driving up the price of these goods to the consumer. It would become another sales tax in effect. In the circumstances, we are inclined to - indeed we have no option but to - affirm the decision of the Karnataka High Court on the meaning of the words 'sale therein' in Section 3 of the Karnataka Act. At the same time, we find it not possible to agree with the Karnataka High Court insofar as it directed refund of the amount, which may be found to have been paid in excess of the legal liability, to the respondents. Any such direction would amount to unjust enrichment of the respondents who are merely dealers and have passed on the burden to the purchasers/consumers. The dealers themselves have not suffered any loss. They merely passed on the liability. In such cases, this Court has been refusing to refund the tax See State of M.P. v. Vyankatlal4 and Amar Nath Om Prakash v. State Of Punjab5.

7. An identical question was considered by a Division Bench of this Court comprising J.S. Verma and A.S. Anand, JJ. in Indian Oil Corpn. v. Municipal Corpn., Jullundhar6 with respect to entry tax itself. After holding that the levy of duty was not justified in law, the Bench dealt with the question of refund in para 23 in the following words:

> (SCC p. 344) "23. Before parting with the appeal, we would however, like to take note of the submission made on behalf of the Municipal Corporation with regard to the question of refund of the octroi duty, already deposited by the appellant. The question of refund, in our opinion, does not arise. The IOC has collected the octroi duty from its dealers and agents, who have in turn passed on the burden to the

consumer.

Thus, having collected the octroi duty, there is no equity in favour of the IOC to claim a refund of the same. Learned counsel for the appellant also conceded that the question of refund, in the facts and circumstances of the case, does not arise and we, therefore, hold that the appellant shall not be entitled to any refund of the octroi duty already deposited by the appellant with the Municipal Corporation."

8. We are in respectful agreement with the above principle. In this case also, it is not brought to our notice that the respondents have alleged and/or established that they have not passed on the duty to the purchasers/ consumers. The normal presumption is that they have done so. If they say otherwise, it is for them to allege and establish the same. In the absence of any such allegation and proof, the direction of refund is not called for.

9. The appeals are accordingly allowed to the extent indicated above. The directions of the High Court "to redo the orders in accordance with the 4 (1985) 2 SCC 544 1985 SCC (Tax) 337 : AIR 1985 SC 901 5 (1985) 1 SCC 345 1985 SCC (Tax) 92: AIR 1985 SC 218 6 (1993) 1 SCC 333 law and in the light of this order" and the further- direction to the authorities "to refund the amount to which each of the petitioners is entitled within three months" as well as the directions to the said effect in the several orders under appeal are set aside. There shall be no order as to costs.