

# Rex Through Municipal Board vs Uttam Chand on 24 March, 1950

**Equivalent citations: AIR1950ALL541**

## JUDGMENT

P.L. Bhargava, J.

1. On 27th August 1948, Uttam Chand imported within the limits of the Municipal Board of Lalitpur one bag of corks used as stoppers for bottles or phials, without payment of the octroi duty assessed thereon by the Octroi Superintendent of the Board. The octroi duty was assessed under item 1, class IV, of the schedule of rates for such duty prepared by the Board, under Section 128, Sub-section (1), Clause (viii), United Provinces Municipalities Act (II [2] of 1916), Class iv of the schedule relates to "articles used for building and furnishing purposes" and item 1 in this class is "timber and wood and articles made thereof." Appended to the schedule is a list of exemptions specifying the goods exempted from payment of octroi duty. The list opens with item 1, which reads thus: "Packing materials are exempted from octroi duty."

2. Accordingly, Uttam Chand was prosecuted for committing a breach of Rules 144 and 146, Municipal Account Code, for failure to pay the octroi duty assessed by the Octroi Superintendent, punishable under Rule 231 of the same Code.

3. According to the case for the prosecution, corks were assessable to octroi duty under item 1 of class iv of the schedule while Uttam Chand alleged that corks were not articles used for building and furnishing purposes, even though they might fall within item 1 relating to "timber and wood and articles made thereof," and being packing materials the corks were exempt from octroi duty. The Judicial Magistrate who tried the case, held that the corks were assessable to octroi duty under item 1 of class IV of the schedule and that Uttam Chand had committed a breach of the rules, inasmuch as he did not pay the octroi duty assessed thereon by the Octroi Superintendent. Accordingly, he convicted and sentenced Uttam Chand to pay a fine of Rs. 25 or, in default of payment of fine, to undergo one day's simple imprisonment.

4. Uttam Chand filed a revision in the Court of the Sessions Judge of Jhansi, who came to the conclusion that the corks were "packing materials" and, as such, they were exempt from payment of octroi duty, and that Uttam Chand had not committed any offence. He has, there-fore, made this reference, under Section 438, Criminal P. C., and recommended that the conviction of and the sentence imposed upon Uttam Chand may be set aside.

5. Mr. S. N. Varma has appeared on behalf of the Municipal Board of Lalitpur to oppose the reference. In the first place, he has contended that the octroi duty was rightly assessed by the Octroi

Superintendent and the learned Sessions Judge was wrong in holding that the corks were "packing materials." According to his interpretation the expression "packing materials," as used in the list of exemption, mentioned in the schedule of rates of octroi duty, means articles actually used for covering or making packages.

6. I see no force in this contention. The Octroi Superintendent was clearly wrong in assessing the corks imported under item 1 of class IV of the schedule, which, as pointed out above, refers to "timber and wood and articles made thereof," "used for building and furnishing purposes." It is true cork is "the bark or periderm of the cork oak," and as such may be regarded as wood; but surely the corks imported, which were to be used as stoppers for bottles or phials, were not "articles used for building and furnishing purposes." There is no other item in the schedule which may include cork or stoppers made thereof. It follows, therefore, that the corks were not liable to octroi duty; and, in this view of the matter, the question whether they were exempt from payment of octroi duty as packing material did not arise, and I do not propose to discuss it here.

7. In the next place, Mr. Verma has contended that, in view of the provisions of Section 164, Municipalities Act and Rule 145, Municipal Account Code, no objection could be taken by Uttam Chand, in these proceedings, to the assessment of octroi duty on the corks imported by him.

8. Section 164, Municipalities Act is in these terms:

'(1) No objection shall be taken to ..... assessment, ..... in any other manner or by any other authority than is provided in this Act.

(2) The order of the appellate authority confirming, setting aside or modifying an order in respect of valuation or assessment or liability to assessment or taxation shall be final; provided that it shall be lawful for the appellate authority, upon application or his own motion, to review any order passed by him in appeal by a further order passed within three months from the date of his original order,"

Rule 146 of the Municipal Account Code reads thus:

"If the importer disputes the assessment..... of the barrier muharrir, the muharrir shall send the goods on to the head octroi office, with a brief report ..... for the decision of the octroi superintendent. If the importer be dissatisfied with the decision he shall pay the octroi forthwith, but may appeal to the Board provided he lodges his appeal within seven days from the date of payment."

9. Mr. J. N. Agarwal, counsel for Uttam Chand, has contended that he has objected to the assessment of octroi duty by the Octroi Superintendent in the manner and to the authority referred to in the Municipalities Act; and that he was entitled to do so as the Octroi Superintendent had no authority to assess any octroi duty on corks, which were not liable to such duty, and his act was wholly ultra vires and void. In support of his contention he has relied upon a ruling of this Court, reported in Kashi Prasad v. Municipal Board, Benares, 1935 A. L. J. 68 : (A. I. R. (22) 1935 ALL. 28 :

36 Cr. L. J. 560), and another authority reported in *Devi Prasad v. Municipal Board, Kanauj*, 1949 A. L. J. 208 : (A. I. R. (36) 1949 ALL. 741), which had followed two earlier Full Bench decisions of this Court, reported in *Emperor v. Brij Behari Lal*, I. L. R. (1943) ALL. 317 : (A. I. R. (30) 1943 ALL. 123 : 44 Cr. L. J. 426 F. B.) and *District Board of Farrukhabad v. Prag Datt*, 1948 A. L. J. 338 : (A. I. R. (35) 1948 ALL. 382 F. B.).

10. In *Kashi Prasad Verma's case* (1935 A. L. J. 68 : A. I. R. (22) 1935 ALL. 28 : 36 Cr. L. J. 560), the prosecution was under Section 155, Municipalities Act, which provides that a person intending or attempting to introduce within octroi limits any goods or animals liable to the payment of octroi for which the octroi has neither been paid nor tendered, shall be punishable with fine. There it was contended that the provisions of Section 162 of the Act, created an absolute bar against the jurisdiction of civil and criminal Courts in matters of municipal taxation. It was held by this Court that, so far as civil Courts were concerned, the contention was well founded; but the jurisdiction of the criminal Courts was only partially barred, because Sub-section (1) of Section 164, provided that the liability of a person to be assessed or taxed could not be challenged in any other manner or by any other authority than is provided in this Act, and that a criminal Court was one of the authorities referred to in the Act for hearing complaints under Section 155 of the Act.

11. Mr. Verma has attempted to distinguish the above case on the ground that in that case there was no assessment of octroi by the Octroi Superintendent, and the learned Judges, who decided that case, had the distinction in their minds and refrained from expressing any opinion on the question whether in a case where the goods were stopped at the octroi barrier and there has been an assessment by the Octroi Superintendent, under Rule 145, Municipal Account Code, the assessment could not be challenged in any other manner or by any other authority than is provided in the Municipalities Act. But, in that case, it was unnecessary for the learned Judges to enter into that question, and, in my opinion, the principle laid down in that case is applicable to a case where the assessment has been made without any authority by the Octroi Superintendent and a person prosecuted for failure to pay the amount of such an assessment wants to challenge the validity of that assessment.

12. The reason is obvious. In a case where a person is prosecuted for his failure to pay the octroi duty assessed by the Octroi Superintendent, it is open to him to allege in his defence that the assessment being ultra vires and void, he has committed no offence. For instance, in the present case, no octroi duty was payable on corks; consequently the assessment of octroi duty thereon by the Octroi Superintendent was absolutely unwarranted and illegal. When Uttam Chand was prosecuted for committing a breach of the rule requiring him to pay the octroi duty so assessed he was entitled to allege and prove that the assessment was illegal and, as such, there was no valid basis for his conviction.

13. A comparison of the language of Rule 145 of the Municipal Account Code and Section 164, Municipalities Act would show that Rule 145 merely says that a person dissatisfied with the decision of the Octroi Superintendent may appeal to the Board, and there is nothing in that rule which might debar him from raising an objection, when he is prosecuted for committing a breach of that rule, as in the present case.

14. The principle laid down in the Full Bench case of Emperor v. Brij Behari Lal, I. L. R. 1943 ALL. 317 : (A. I. R. (30) 1943 ALL. 125 : 44 Cr. L. J. 426 F. B.), also supports the contention put forward on behalf of Uttam Chand. In that case Brij Behari Lal was prosecuted under Section 307, Municipalities Act, for his failure to comply with a notice issued to him under Section 186 of the same Act. He was allowed, in his defence, to challenge the validity of the notice issued to him. Section 321, Municipalities Act enacts:

"(1) No order or direction referred to in Section 318 shall be questioned In any other manner or by any other authority than is provided therein.

(2) ....."

These words are very much similar to the words used in Section 164, Municipalities Act. In that case it was clearly laid down that it was open to the criminal Courts to go into the question of validity, legality and reasonableness of the notice.

15. In the other Full Bench case of District Board of Farrukhabad v. Prag Datt, (1948 A. L. J. 338 : A. I. R. (35) 1948 ALL. 382 F. B.), and in the Division Bench case of Devi Prasad v. Municipal Board, Kanauj, 1949 A. I. J. 208 : (A. I. R. (36) 1949 ALL. 741), the principle that, if the tax imposed was illegal and beyond the jurisdiction of the Board, the civil Court could grant the relief asked for was recognised.

16. It must, therefore, be held that Uttam Chand was entitled to dispute the validity of the-assessment of octroi duty made by the Octroi Superintendent on the consignment of corks in these proceedings.

17. As the corks were not liable to octroi duty, Uttam Chand had not committed any offence and his conviction by the Judicial Magistrate was illegal and must be set aside. I, therefore, accept the reference and set aside the conviction of and the sentence imposed upon Uttam Chand. The fine, if paid, will be refunded.